



Before: Judge Sean Wallace
Registry: Nairobi
Registrar: René M. Vargas M., Officer-in-Charge

BENNETT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for the Applicant:

Manuel Calzada

Counsel for the Respondent:

Victoria Nakaddu Mujunga, AS/ALD/OHR, UN Secretariat

Introduction

1. On 18 April 2024, the Applicant, a Human Resources Assistant with the United Nations Multidimensional Integrated Stabilization Mission in Mali (“MINUSMA”), filed an application for suspension of action pending management evaluation with the Tribunal sitting in Nairobi. She seeks to suspend the decision to separate her from service contrary to the provisions of ST/AI/2005/3 (Sick leave).
2. The Respondent filed a reply on 22 April 2024. In his reply, the Respondent submits that the Dispute Tribunal lacks jurisdiction to adjudicate this application because “there is no administrative decision to terminate the Applicant’s appointment with immediate effect, and as such nothing to suspend”. The Respondent further submits that the Applicant is still a staff member of the Organization and no decision has been taken by MINUSMA to terminate her appointment and, therefore, there is no justiciable matter before the Tribunal.
3. On the same day, the Tribunal invited the Applicant to file a rejoinder to the reply but she did not do so.

Background

4. On 3 January 2024, the Applicant entered into an agreement with MINUSMA to postpone the date of her separation until 31 January 2024 based on the liquidation priorities of MINUSMA. The agreement was amended and the Applicant’s appointment was further extended.
5. On 15 March 2024, MINUSMA sought to change the Applicant’s separation date to 19 April 2024 and requested her signature to amend the agreement.
6. On 18 March 2024, the Applicant was admitted at a Hospital in Bamako for an emergency surgical procedure and thus did not sign the proposed amendment to the agreement.
7. The Applicant’s fixed-term appointment (“FTA”) was extended to 30 April 2024 according to a personnel action effective 27 March 2024. It is not clear from the case record that the Applicant was privy to this personnel action.

8. On 16 April 2024, the Applicant requested management evaluation of the decision to separate her on 19 April 2024. The Management Advice and Evaluation Section is yet to issue its decision.

Consideration

9. Article 2.2 of the Tribunal's Statute and art. 13 of its Rules of Procedure provide that the Tribunal shall be competent to suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. The Dispute Tribunal can suspend the contested decision only if all three requirements have been met.

10. The Applicant states that the decision of MINUSMA is to terminate her FTA "with immediate effect, believed to be circa 19 April 2024, although the dates are unclear". She attaches various documents showing that her termination date was a moving target, as she was asked to extend her contract several times for the benefit of the Organization. Then, on 18 March 2024 she was admitted "for an emergency surgical procedure".

11. The Respondent says that "[t]he Applicant is still a staff member of the Organization, and no decision has been taken by MINUSMA to terminate her appointment" referencing Annex R/1 of his reply. However, that annex is a personnel action form dated 27 March 2024 for renewal of appointment showing her "Contract Type/Expiration Date" to be "Fixed Term/30.04.2024" and then again "Contract end date 30.04.2024". This clearly shows that the Organization has taken a decision to separate the Applicant on 30 April 2024, namely eight days after the reply was filed.

12. The Applicant further alleges that she is currently on certified sick leave and will require more surgery and recuperation for some time. She also states that she has a current balance of approximately 135 days of sick leave at full pay and 195 days of sick leave at half pay. Again, the Respondent does not dispute this.

13. Under art. 3.9 of ST/AI/2005/3, the Applicant is entitled to an “extension of the appointment for a continuous period of certified illness up to the maximum to sick leave”. Thus, the decision reflected in annex R/1 to separate her on 30 April 2024 seems to be *prima facie* unlawful.

14. Additionally, there is certainly urgency as the termination is set for next week, and implementation of that termination would cause irreparable harm to the Applicant who will lose her job and medical insurance coverage.

Conclusion

15. In view of the foregoing, it is ORDERED that the decision to separate the Applicant on 30 April 2024 be suspended pending the outcome of the management evaluation.

(Signed)

Judge Sean Wallace

Dated this 24th day of April 2024

Entered in the Register on this 24th day of April 2024

(Signed)

René M. Vargas M., Officer-in-Charge, Nairobi