



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2024/055
Order No.: 123 (NBI/2024)
Date: 6 September 2024
Original: English

Before: Judge Francesco Buffa

Registry: Nairobi

Registrar: Wanda Carter

CLINE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Shubha Suresh Naik, OSLA

Counsel for Respondent:

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Introduction

1. By application filed on 29 August 2024, the Applicant, a staff member of the Economic Commission for Africa (“ECA”), requests Suspension of Action (“SoA”) of the decision to remove her functions as ascribed in her job description and her reassignment to the Division of Administration
2. The application for suspension of action was served on the Respondent, who filed his reply on 3 September 2024.

Facts

3. On 25 January 2024, the Applicant filed a complaint with the Conduct and Discipline Focal Point against the Secretary to the Commission, her First Reporting Officer (“FRO”).
4. By email dated the same day, the Conduct and Discipline Focal Point wrote to the Deputy Executive Secretary (“DES”) about the disagreements between the Applicant and her FRO, recommending that the matter be addressed internally.
5. From 25 January to 5 February 2024, the Conduct and Discipline Focal Point had separate meetings with the Applicant and her FRO to discuss their differences.
6. To improve their working environment, the DES and the Conduct and Discipline Focal Point held several meetings with the Applicant and her FRO between 13 February and 13 May 2024.
7. Following these meetings, the Applicant’s FRO wrote to the Applicant about their working relationship, informing her that he would seek the DES’s guidance and direction regarding their working relationship. In addition, he would request the presence of a third party as a witness during their interaction.
8. On 13 May 2024, the Applicant wrote to the Office of Internal Oversight Services (“OIOS”) complaining of harassment, abuse of authority, and discrimination against her FRO. The Applicant’s complaint was referred to the Executive Secretary on 30 May 2024.

9. During a meeting called by the ECA Executive Secretary on 26 June 2024, the Applicant sought two weeks to consider withdrawing her complaint and expressed her wish that she be transferred away from her FRO.

10. By email dated 5 July 2024, the Applicant wrote to the ECA Executive Secretary requesting to be “Transfer or [to change] reporting line with tasks that match [her] job description for [her] post.”

11. In his reply dated 5 August 2024, the ECA Executive Secretary explained to the Applicant that he was “taking [her] request of lateral transfer seriously and will inform [her] of the outcome in 2 weeks’ time after scanning through the system to identify possibilities available.”

12. By Interoffice Memorandum dated 12 Aug 2024, the ECA Executive Secretary wrote to the Applicant informing her of her lateral transfer to the Division of Administration at her current level and grade, effective from 1 September 2024. The Applicant replied to the same day, on 12 August 2024, raising “serious concerns regarding this reassignment.”

13. On 28 August 2024, the Applicant requested management evaluation of the contested decision.

Consideration

14. The Tribunal preliminarily notes that the Applicant requested that the challenged decision (and in particular her reassignment to the Division of Administration, ECA), be suspended pending management evaluation review and filed a motion Pursuant to Article 19 and 36 of the UNDT Rules of Procedure (*Villamorán*) to have it suspended during time, pending the SoA proceedings.

15. The tribunal further notes that the Applicant is not entitled to the *Villamorán* order she requested, seeking the suspension of the contested administrative decision.

16. Indeed, as stated in *Villamorán*, 2011-UNAT-160, the suspension is possible when the implementation of an administrative decision is imminent through no fault

or delay on the part of the staff member; therefore, the *Villamorán* order is possible only if there is an urgency that was not created by the Applicant herself., in the instant case, the challenged decision is on 12 Aug 2024 (when the Executive Secretary, through a memo, notified the Applicant of her lateral reassignment to the Division of Administration effective 1 Sep 2024), and the Applicant lodged the complaint with the Tribunal (including the request for a *Villamorán* order) only on 28 August 2024, only a few days away the date of effectiveness of the challenged decision.

17. As to the requested suspension of the implementation of the challenged administrative decision during the pendency of management evaluation, the Applicant challenged the decision to remove functions ascribed in her Terms of Reference (“ToRs”) and the subsequent reassignment to Division of Administration, ECA.

18. The Tribunal notes that the Applicant has been reassigned to a different position and that there is no removal of functions; in addition, the Respondent himself acknowledges that there is no decision to remove the functions ascribed in the Applicant’s ToR and therefore those functions are still in force.

19. For this part, therefore, the application is not receivable, on the presupposition that Applicant’s ToRs remain the same for the new functions.

20. Art. 2.2 of the Tribunal’s Statute provides 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. These three requirements are cumulative. In other words, they must all be met in order for a suspension of action to be granted. Furthermore, the burden of proof rests on the Applicant.

21. For the part of the application challenging the reassignment to the Division of Administration, ECA, the application lacks merit, as the Executive Secretary’s decision to reassign the Applicant to the Legal Officer role in the ECA’s Division of Administration was legal, rational, procedurally correct, and proportionate.

22. The Tribunal recalls that the threshold required in assessing this condition is that of “serious and reasonable doubts” about the lawfulness of the impugned decision (*Allen*, 2011-UNAT-187, para. 22; *Kaddoura*, 2011-UNAT-151, para. 39).

23. The decision to transfer the Applicant to the ECA Division of Administration is not prima facie unlawful. Under staff regulation 1.2 (c), the Secretary-General has broad discretion to reassign a staff member according to the Organization's needs and the staff member's capacity to meet them.

24. The Tribunal is specifically highlights that it was the Applicant herself who requested to the Executive Secretary to be transferred or to change her reporting lines.

25. In this situation, the reassignment of the staff member has been made to a post at the same grade as the previous one; also, the reassignment was commensurate with the Applicant's level, competence, and skills.

26. It has to be added that the decision is formally respectful of the level of the functions provided in the Applicant's current ToRs (still in force, following from above), and it is only with the implementation of the decision and the concrete assignment of duties that one can tell if the ToRs are violated or not.

27. Moreover, the decision is also reasonable in consideration of the disagreements between the Applicant and the Secretary to the Commission existing in the workplace before the Applicant's reassignment, and the Applicant's formal complaint of harassment, abuse of authority, and discrimination against the Secretary to the Commission.

28. In the said context, the reassignment of a staff member may be applied by way of a managerial action, being based on the broad discretion of the Organization to use its resources and personnel as it deems appropriate provided in Staff Regulation 1.2(c).

29. Given the context, the challenged decision was in line with the Tribunal's jurisprudence in *Cahn*, given that the staff member's reassignment by the

Administration fulfils its duty of care towards the Applicant, taking protective action upon being made aware of the disharmonious working environment and the Applicant's pending formal complaint (see *Humackic*, 2024-UNAT-1470).

30. The Applicant has therefore failed to establish that the contested decision is *prima facie* unlawful.

31. Given the cumulative nature of the conditions to be met for the granting of a suspension of action, the Tribunal does not find it necessary to consider whether the contested decision is urgent, or whether it would cause irreparable damage

Conclusion

32. In view of the foregoing, it is decided that:

- a. the request for *Villamorán* order is inadmissible;
- b. the application for suspension of action pending management evaluation for the part related to violation of ToRs is unreceivable;
- c. the application for suspension of action pending management evaluation for the part related to reassignment is rejected.

(Signed)

Judge Francesco Buffa

Dated this 6th day of September 2024

Entered in the Register on this 6th day of September 2024

(Signed)

Wanda Carter, Registrar, Nairobi