



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Santiago Villalpando

JAEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:

Nicholas Christonikos

Counsel for Respondent:

Stephen Margetts, ALS/OHRM, UN Secretariat

Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Notice: This Order has been corrected in accordance with the Rules of Procedure of the Dispute Tribunal.

Introduction

1. On 13 January 2011 the Applicant, a staff member of the International Civil Service Commission (“ICSC”), submitted an application for suspension of action of the administrative decision not to continue her special post allowance (“SPA”) for the month of January 2011 and thereafter. The Applicant submits that this decision would go into effect on 17 January 2011 as she has been informed by the Accounts Division in the Office of Programme Planning, Budget, and Accounts (“OPPBA”) of the United Nations Secretariat that her salary would be paid without the SPA unless a personnel action form extending the SPA was processed on or before 17 January 2011.

2. On 13 January 2011 the New York Registry of the Dispute Tribunal directed the Respondent to file his reply, if any, by Friday, 14 January 2011, 5:00 p.m. Following this, the parties filed further documentation pertaining to the issues in this case.

3. On 17 January 2011 the Dispute Tribunal held a hearing on the application for suspension of action. The Applicant appeared before the Tribunal in person and was represented by her Counsel. At the hearing, the Applicant gave oral evidence under affirmation. No additional witnesses were called by either party. In view of the uncontested submission made by the Applicant that her January salary would not include SPA unless action was taken to authorise its payment by the end of 17 January 2011 at the latest, I informed the parties that I would issue an order on the application later that same day, with detailed reasons to follow in a later ruling.

Brief facts

4. On 11 December 2000 the Applicant was transferred to the ICSC as a general service-level Administrative Assistant in the Office of the Executive Secretary. She was granted SPA to the P-2 level from 2001 through December 2003, and then was promoted to the P-2 level as an Administrative Officer on a fixed-term contract

limited to service with the ICSC. Since 2004 the Applicant has been on a series of fixed-term appointments at the P-2 level and has been receiving SPA at the P-3 level, effective retroactively 1 January 2004. On 7 January 2011 the Applicant received an email from an official in the OPPBA Accounts Division, sent in response to her enquiry of the same date, stating that:

After checking the system, yes indeed the SPA to the P-3 expired on 31 December 2010, therefore for the month of January 2011 you will be paid at the original level which is P-2-12 unless the SPA is extended and for this to happen this month the PA should be done and approved before the cut-off date which is on Mon[day] 17 Jan[uary] 2011.

5. On 7 January 2011 the Applicant filed a request for management evaluation.

Preliminary observations

6. In a separate case involving the same parties—Case No. UNDT/NY/2009/098—the Applicant contested the decision not to reclassify the P-2 post encumbered by her to the P-3 level. In *Jaen* UNDT/2010/165, rendered on 17 September 2010, the Dispute Tribunal ruled in favour of the Respondent, dismissing the application. The Applicant subsequently appealed this Judgment. In her present application for suspension of action, the Applicant requests that the Tribunal order that the SPA continue beyond the duration of the management evaluation and until her appeal against *Jaen* UNDT/2010/165 is adjudicated by the United Nations Appeals Tribunal.

7. I explained to the Applicant at the hearing that any suspension of action that may be ordered at this stage would fall under art. 2.2 of the Statute and art. 13 of the Rules of Procedure. Therefore, any suspension of action would necessarily be limited to the pendency of management evaluation and would not last until the time the pending appeal on the issue of reclassification is resolved. Should the Applicant decide to file an application on the merits in this case, she may thereafter request a further suspension of action of the contested decision under art. 10.2 of the Statute

and art. 14 of the Rules of Procedure (interim measures during the proceedings). Of course, whether or not such application would be granted would depend on further determination by the Tribunal.

8. In her application the Applicant identified the “Chairman of the International Civil Service Commission” as the Respondent in the present case. At the time of the submission of her application, the Applicant was self-represented. I explained to the Applicant at the hearing that, for the purposes of the proceedings before the Dispute Tribunal, the Secretary-General appears as the Respondent before the Tribunal in his representative capacity regardless of the actual entity involved in the matter. The Secretary-General is therefore always cited as the Respondent in all cases. The Applicant agreed to the amendment of her application and the Respondent’s Counsel did not object to proceeding on this basis.

Conclusion

9. Having carefully considered the facts before it and the submissions made by both parties, the Tribunal grants the application for suspension of action during the pendency of the management evaluation. A reasoned order shall follow in due course.

Order

10. The Applicant is permitted to amend her application to identify the Secretary-General as the Respondent in the present case.

11. The Tribunal orders suspension of action, during the pendency of the management evaluation, of the decision not to continue the SPA at the P-3 level. The Respondent shall ensure that appropriate and immediate administrative arrangements are made to implement this Order.

(Signed)

Judge Ebrahim-Carstens

Dated this 17th day of January 2011