



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

SARROUH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
George G. Irving

Counsel for Respondent:
Thomas Elftmann, UNDP

Introduction

1. On 23 May 2014, the Applicant, a D-1 level Special Advisor, Bureau for Policy Development, United Nations Development Programme (“UNDP”), filed an application for suspension of action, pending management evaluation, of the decision not to renew her fixed-term appointment beyond 31 May 2014.

2. The Registry transmitted the present application to the Respondent on 23 May 2014. The Respondent duly filed his reply on 28 May 2014, stating that UNDP

decided to extend the contract of the Applicant to 31 August 2014. This decision is without prejudice to the Respondent’s position on any aspects of the Applicant’s substantive appeal. In an email of 27 May 2014, the Applicant was notified of the extension of her appointment.

3. The Respondent further stated that, in view of the extension of the Applicant’s contract, the Respondent “considers the application to be moot”.

4. On 28 May 2014, the Tribunal issued Order No. 124 (NY/2014), directing the Respondent to file a copy of the email dated 27 May 2014, referred to in the Respondent’s reply, confirming the extension of the Applicant’s contract. The Applicant was directed to file a submission confirming whether she received the Respondent’s email of 27 May 2014.

5. On 28 May 2014, the Respondent filed a copy of the email to the Applicant, dated 27 March 2014, informing her of the extension of her contract until 31 August 2014. Also attached to the Respondent’s submission was an excerpt from UNDP’s resource planning system showing that the Applicant’s contract was extended until 31 August 2014.

6. On 29 May 2014, the Applicant filed her submission in response to Order No. 124 (NY/2014), confirming receipt of the Respondent's email of 27 May 2014, but adding that, as of the date of her submission, she has not received any new contract or signed a notice of extension. The Applicant further stated in her submission of 29 May 2014 that "it appears from the personnel action form that was sent [by the Respondent] in response to the Tribunal's inquiry, that the Applicant has been rendered unassigned and given a three month notice of termination, rather than the one year contract she has previously been given".

Background

7. The following factual chronology is based on the parties' submissions to the Tribunal and the written documentation before it.

8. The Applicant submits that, in 2007, she successfully took the UNDP Resident Coordinator assessment and qualified for Resident Coordinator/Resident Representative ("RC/RR") position. In 2010, she was selected for the position of RC/RR for the United Arab Emirates. Having served there for two years, in April 2012 she was directed to report to the UNDP Headquarters, where she was placed on special assignment without a post.

9. The Applicant states that, on 3 July 2013, she received her 2012 RC/RR performance evaluation, which is now under rebuttal. She states that this was the first time she was advised that she was being excluded from consideration for RC/RR posts despite the fact that she remained a qualified roster candidate.

10. The Applicant submitted a separated application challenging the decision to exclude her from RC/RR posts to which she applied in 2013. That case was registered by the New York Registry under Case No. UNDT/NY/2014/021.

11. On 26 February 2014, the Applicant was placed on certified sick leave, which was extended to the end of May 2014.

12. The Applicant states that, on 13 May 2014, she inquired with the Office of Human Resources, Bureau of Management, UNDP, about the status of her G-4 visa, which expires at the end of May 2014 and about her United Nations Laissez Passer, which had already expired. She was advised that the Office of Human Resources had received no requests for further contract extension, without which her G-4 visa would not be extended. She was told to contact the Bureau of Management in New York, which she did, but received no reply.

13. On 22 May 2014, the Applicant requested management evaluation of the decision “not to renew [her] fixed-term appointment which expires on May 31, 2014”. The following day, on 23 May 2014, she filed the present application with the Tribunal.

14. On 27 May 2014, the Office of Human Resources, Bureau of Management, UNDP, sent an email to the Applicant, stating that, “upon its current expiration, and as of 1 June 2014, [her] contract will be extended for three months, i.e. until 31 August 2014”. The email was received by the Applicant at 4:51 p.m. on 27 May 2014.

Parties’ submissions

15. The Applicant’s principal contentions may be summarized as follows:

Prima facie unlawfulness

a. The Applicant has excellent performance record both outside and within UNDP. She received no formal notice of non-renewal and was not provided with a three-month search period prior to her contract expiration date, contrary to the UNDP practice. UNDP’s failure to extend her contract

was in breach of her due process since she is entitled to notice and to know the reason for the decision. Furthermore, she received assurances in a meeting with the Director of Human Resources in February 2014 that her contract would not be terminated. The Applicant is presently on sick leave and has the right to use her sick leave entitlements as provided for in the Staff Rules, during which period her contract cannot be terminated.

Urgency

b. The Applicant's contract expires on 31 May 2014, following which she will be required to leave New York despite her personal and financial commitments that have to be addressed.

Irreparable damage

c. The Applicant's professional reputation has been damaged by the Respondent's actions, which also caused her continuing emotional stress harm and distress. The Applicant is only three years away from retirement, and her early separation from service will preclude her completing her career with the Organization, thus rendering her ineligible to benefit from full retirement entitlements. This will force her to use up her savings inflicting on her additional severed financial disadvantage and losses.

16. The Respondent's submits that, the Applicant's contract having been extended until 31 August 2014, her application is moot and should be dismissed.

Consideration

17. Pursuant to art. 2.2 of the Tribunal's Statute, the Tribunal is

competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during

the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

18. Therefore, for an application for suspension of action to be successful it must satisfy the following cumulative conditions:

- a. The application is receivable because it concerns an administrative decision that may properly be suspended by the Tribunal;
- b. The contested decision has not yet been implemented;
- c. The Applicant has submitted a request for management evaluation of the contested decision, which evaluation is currently pending;
- d. The impugned administrative decision appears *prima facie* to be unlawful;
- e. The case is of particular urgency; and
- f. Its implementation would cause irreparable damage.

19. The Applicant's contract has been extended until 31 August 2014. Although the Applicant submits that she is yet to receive a new contract or notice of extension, the records submitted by the Respondent and received by the Applicant demonstrate that her contract expiration date is now 31 August 2014.

20. Thus, there is no pending administrative decision to separate her on 31 May 2014 that could be suspended pending the currently ongoing management evaluation. Therefore, the present application stands to be dismissed.

Conclusion

21. In view of the foregoing, the Tribunal hereby ORDERS:

The application for suspension of action is rejected.

(Signed)

Judge Alessandra Greceanu

Dated this 29th day of May 2014