



Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

KHALOUTA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Miles Hastie, OSLA

Counsel for Respondent:
ALS/OHRM, UN Secretariat

Introduction

1. On 10 June 2014, the Applicant, a P-4 level Administrative Officer in the United Nations Stabilization Mission in Haiti (“MINUSTAH”), filed an application for suspension of action, pending the outcome of management evaluation, of the implementation of the decision not to renew her appointment beyond 30 June 2014 due to unavailability of a vacant post.

2. The Applicant submits that no posts at her level have been marked for abolition in her office in the period of 2014 to 2015. She further states that, in the last two years, her position was reassigned by the Administration against various posts not commensurate with her actual title and functions and that, as a result of these reassignments, she was not afforded the opportunity to utilize the procedures that should ordinarily apply during a retrenchment exercise.

Background

3. The Applicant has been a United Nations staff member for approximately fifteen years. In December 2011, she joined MINUSTAH as an Administrative Officer, Office of the Director of Mission Support (post no. 79175).

4. However, in June 2012, post no. 79175 was abolished through a retrenchment exercise. In July 2012, the Applicant was retained against a vacant post of Budget and Finance Officer, Office of the Director of Mission Support (post no. 57043).

5. In October 2012, Mr. Guy Siri, the then Director of Mission Support asked the Applicant to perform additional P-5 level functions of the Chief of Administrative Services, in addition to her original functions and with no additional remuneration.

6. In July 2013, Mr. Siri decided to utilize the post the Applicant held at the time—post no. 57043—to retain another staff member in need of a post. Accordingly, in order to continue retaining the Applicant, her post assignment was shifted to the P-5 level post of Chief of Administrative Services (post no. 51793), although the Applicant was not paid at the P-5 level.

7. However, throughout this period of post reassignments (2012–2013), the Applicant retained her original Administrative Officer functions and salary level, and her official title remained that of “Administrative Officer”, as reflected in her letters of appointment.

8. At the Applicant’s request, in April 2014, Mr. Wallace Divine, the new Director of Mission Support, returned the Applicant to her original Administrative Officer functions.

9. Six weeks later, on 27 May 2014, the Applicant was informed by an email from Ms. Huda Hannina, Chief Human Resources Officer, MINUSTAH, that “due to unavailable vacant P-4 [Administrative Officer] post in the [Office of the Director of Mission Support,] [her] appointment is currently valid only through the end of June 2014” and that “the [Human Resources] focal point will send [her] the check-out email to initiate [her] check-out procedure”.

10. The Applicant submitted her request for management evaluation on 6 June 2014.

Consideration

11. In accordance with art. 2.2 of its Statute, the Tribunal has to consider whether the impugned decision *appears* to be *prima facie* unlawful, whether the matter is of particular urgency, and whether its implementation will cause the Applicant irreparable harm. The Tribunal must find that all three of these

requirements have been met in order to suspend the action (implementation of the decision) in question.

12. Applications for suspension of action are necessarily urgent requests for interim relief pending management evaluation. Under art. 13 of its Rules of Procedure, the Tribunal is required to consider such an application within five days. Although art. 13 of the Rules of Procedure requires that such an application be transmitted to the Respondent, there is no obligation to require a response from the Respondent before deciding the application (*Kananura* UNDT/2011/176).

13. Speed is of the essence in considering an application for a suspension of action. The order should be based on the contents of the application and should be formulated in a concise form. The Tribunal is not required to provide, and the parties should not expect to be provided with, an elaborately reasoned judgment either on the facts or the law. To do so would defeat the underlying purpose of a speedy and cost-effective mechanism. Moreover, the time, effort and costs thereby saved by all those involved with the formal system of internal justice could be utilised to enhance the disposal of other cases. The legislative scheme recognizes the need for urgent interim relief, where appropriate, in the form of an order which is not subject to appeal.

Prima facie unlawfulness

14. It is important for all concerned, including the Management Evaluation Unit of the Department of Management, to understand that, in essence, the Tribunal is expressing an opinion as to whether on the facts presented by the Applicant it appears that the decision is *prima facie* unlawful. The Tribunal is not required to make a finding that the impugned decision is, in fact, unlawful. For the *prima facie* unlawfulness test to be satisfied, it is enough for an applicant to present a fairly arguable case that the contested decision was influenced by

some improper considerations, was procedurally or substantively defective, or was contrary to the Administration's obligation to ensure that its decisions are proper and made in good faith.

15. Although the Applicant's letters of appointment clearly identify her position as that of an Administrative Officer at the P-4 level, in the two-and-a-half year period since she joined MINUSTAH in December 2011, her position has been assigned to three different posts:

- a. Initial post assignment: P-4 level post no. 79175 (Administrative Officer);
- b. First post reassignment: P-4 level post no. 57043 (Budget and Finance Officer);
- c. Second post reassignment: P-5 level post no. 51793 (Chief of Administrative Services).

16. It appears that the two post reassignments were made at the initiative of the Administration, and there is a fairly arguable case on the papers before the Tribunal that, but for these post reassignments and the ensuing confusion, she would not be facing the current situation. The Tribunal also finds that it is fairly arguable that, as a result of these post reassignments, the Applicant was not provided with a meaningful and timely opportunity to take advantage of the standard retrenchment procedures that were apparently utilized in MINUSTAH with regard to the staff affected by retrenchment.

17. Further, there are serious doubts as to the correctness of the reasons given to the Applicant for the contested decision, namely unavailability of a vacant P-4 level Administrative Officer post. MINUSTAH's budget for the period of 1 July 2014 to 30 June 2015 proposes no abolition or retrenchment of any P-4 or

P-5 level posts in any office in the Mission Support Division (see A/68/737 (Report of the Secretary-General on the Budget for the United Nations Stabilization Mission in Haiti for the period from 1 July 2014 to 30 June 2015), pp. 54–55). Given that the Applicant is presently employed and that no posts are being taken away from her office in 2014–2015, it would appear that the Administration does not have a sufficient basis in law to justify the position that no posts are or will be available for her.

18. The Tribunal concludes on the facts presented, accompanied by the relevant documents, that the Applicant has satisfied the test that the impugned decision appears *prima facie* to be unlawful. Whether this will be the final decision after a full exploration of the evidence and consideration of submissions, if an application on the merits is filed, does not affect the Tribunal's decision at this stage. Should the matter go to trial, the Respondent will have a full opportunity to challenge any application on the merits, and it may well be necessary to conduct a hearing in relation to the practices in place in MINUSTAH concerning the use of posts approved by the General Assembly for various other functions.

Urgency

19. The Applicant was informed of the contested decision on 27 May 2014 and requested management evaluation on 6 June 2014. One working day later, on 10 June 2014, she filed the present application for suspension of action. Unless the decision not to renew her contract is suspended, she will be separated in less than three weeks, on 30 June 2014.

20. The Tribunal finds that this is not a case of self-created urgency. The requirement of particular urgency is satisfied.

Irreparable damage

21. Loss of employment is to be seen not merely in terms of financial loss, for which compensation may be awarded, but also in terms of loss of career opportunities. This is particularly the case in employment within the United Nations which is highly valued. Once out of the system the prospect of returning to a comparable post within the United Nations is significantly reduced. The damage to career opportunities and the consequential effect on one's life chances cannot adequately be compensated by money. The Tribunal finds that the requirement of irreparable damage is satisfied.

Conclusion

22. The present application has met the conditions for a suspension of action.

Order

23. The Tribunal orders suspension, during the pendency of the management evaluation, of the implementation of the decision not to renew the Applicant's contract.

(Signed)

Judge Goolam Meeran

Dated this 11th day of June 2014