



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

SERA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. On 23 May 2016, the Applicant, a G-4 level staff member of the United Nations Joint Staff Pension Fund (“UNJSPF”), filed an application for suspension of action, requesting the suspension pending management evaluation of the implementation of the decision not to renew her temporary appointment beyond 12 June 2016. She submits that, as her contract is set to expire on Sunday, 12 June 2016, her last workday would be Friday, 10 June 2016.

Factual and procedural background

2. The following outline of relevant background is based on the parties’ submissions as well as the documentation on file.

3. The Applicant submits that, on 18 May 2016, she was called into an unscheduled meeting with her supervisors. During the meeting, she was verbally informed of the decision not to renew her contract beyond 12 June 2016.

4. With regard to the requirement of *prima facie unlawfulness*, the Applicant submits that she has been subjected to systematic discrimination, harassment, and abuse of authority since the beginning of her appointment which included denial of her right to have her performance evaluated pursuant to ST/AI/2010/4/Rev.1 (Administration of temporary appointments); denial of training, overtime, annual and family leave; creation of a hostile work environment; and denial of her contract renewal. The Applicant mentioned that on 23 May 2016 she filed a complaint pursuant to ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) to the Chief Executive Officer, UNJSPF, the Assistant Secretary-General for Human Resources, and the Director of the Ethics Office.

5. With regard to the requirement of *particular urgency*, she submits that she was informed of the contested decision on 18 May 2016 and that it will take effect on 10 June 2016.

6. With regard to the requirement of *irreparable damage*, the Applicant submits that the implementation of the contested decision would result in a loss of wages and medical benefits, cause irreparable harm to her career prospects, and cause her emotional distress and harm.

7. On 23 May 2016, the Applicant requested management evaluation of the contested administrative decision.

8. On 23 May 2016, the Applicant also filed the present application for suspension of action before the Tribunal and, after being registered, the case was assigned to the undersigned Judge. On the same day, 23 May 2016, the New York Registry transmitted the application to the Respondent, who was instructed to file a reply by 5 p.m. on Wednesday, 25 May 2016.

9. On 24 May 2016, the UNJSPF informed the Applicant by email that it would not implement the contested decision pending completion of management evaluation. The email sent to the Applicant stated:

In connection with your application for suspension of action filed with the United Nations Dispute Tribunal dated 23 May 2016, please be advised that the United Nations Joint Staff Pension Fund agrees not to implement the decision of non-renewal of your appointment pending completion of management evaluation, which you had filed the same day, 23 May 2016.

10. On 25 May 2016, the Respondent filed his reply to the application, requesting the Tribunal to dismiss it in view of the notification of 24 May 2016. The Respondent submits that, since the Applicant has been provided with the relief she sought, there is no matter before the Dispute Tribunal requiring its

adjudication. Accordingly, the application for suspension of action should be rejected.

11. On 27 May 2016, the Tribunal instructed the Respondent to confirm by 12 p.m. on the same day, that, on 24 May 2016, the UNJSPF had suspended, pending management evaluation, the implementation of the contested decision in the present case.

12. At 10:39 a.m. on 27 May 2016, the Respondent duly filed a brief submission stating that “[t]he Respondent hereby confirms that the UNJSPF has suspended, pending management evaluation, the implementation of the contested decision in the present case”.

Consideration

13. Article 2.2 of the Tribunal’s Statute states:

The Dispute Tribunal shall be 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.

14. Article 13.1 of the Tribunal’s Rules of Procedure states:

The Dispute Tribunal shall order a suspension of action 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.

15. The Tribunal considers that, for an application for suspension of action to be successful, it must satisfy the following mandatory and cumulative conditions:

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

16. As the Dispute Tribunal stated in *Wilkinson et al.* UNDT/2009/089 (not appealed) and *Ishak* UNDT/2010/085 (affirmed in *Ishak* 2011-UNAT-152), in order for the Tribunal to suspend an administrative decision, the contested decision must be a unilateral decision taken by the Administration in a precise individual case and which produces direct legal consequences to the legal order, including the Applicant's rights. The Tribunal has the competence to determine whether the contested decision is an administrative decision.

17. The Tribunal notes that in the present case it is uncontested that the administrative decision not to renew the Applicant contract beyond its expiration on 12 June 2016 is an administrative decision which may be properly suspended by the Tribunal.

18. The Tribunal further notes that it is also uncontested that, on 23 May 2016, the Applicant requested management evaluation of the contested decision. The management evaluation is ongoing, the deadline for the management

evaluation response being 22 June 2016. The contested administrative decision is not yet implemented.

19. As results from the email sent to the Applicant on 24 May 2016, she was informed that the UNJSPF had agreed not to implement the decision not to renew her appointment pending completion of management evaluation filed on 23 May 2016.

20. The Tribunal therefore finds that the UNJSPF agreed with Applicant's request to suspend the implementation of the contested administrative decision pending management evaluation and decided not to implement it "pending completion of management evaluation".

21. The Tribunal further concludes that, in the present case, the implementation of the decision not to renew the Applicant's appointment has been already suspended during the pendency of the management evaluation by UNJSPF on 24 May 2016, as confirmed by the Respondent on 27 May 2016, and an order by the Tribunal in this sense is no longer required.

22. Since the present application remained without object there is no need to further analyze the remaining cumulative conditions, namely whether the administrative decision appears *prima facie* to be unlawful, whether its implementation would cause irreparable damage and whether the case is of particular urgency which were implicitly agreed by UNJSPF.

Conclusion

23. Considering that the implementation of the contested administrative decision was suspended by the UNJSPF pending management evaluation, as confirmed by the Respondent, the Tribunal ORDERS:

The application for suspension of action is dismissed.

Observation

24. The Tribunal observes that the deadline for completion of the management evaluation in this case is 22 June 2016, whereas the Applicant's current temporary contract expires on 12 June 2016, before the deadline for management evaluation review. The Tribunal expresses its trust that the UNJSPF will continue to act in good faith in preserving the Applicant's contractual rights during the suspension of the implementation of the contested decision pending management evaluation.

(Signed)

Judge Alessandra Greceanu

Dated this 27th day of May 2016