



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/077
Order No.: 144 (NY/2017)
Date: 28 July 2017
Original: English

Before: Judge Ebrahim-Carstens
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge

SERRARIS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER OF SUSPENSION PENDING
THE CONSIDERATION OF AN
APPLICATION FOR SUSPENSION OF
ACTION UNDER ART. 2.2 OF THE
DISPUTE TRIBUNAL'S STATUTE**

Counsel for Applicant:
Daniel Trup, OSLA

Counsel for Respondent:
Nicole Wynn, ALS/OHRM

Introduction

1. On 28 July 2017, the Applicant, a Political Affairs Officer at the P-3 level with the United Nations Mission for the Referendum in Western Sahara (“MINURSO”) filed an application under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure seeking to suspend the decision, pending management evaluation, not to renew her appointment with the MINURSO. The Applicant alleges that the decision fails to adhere to any standard of review in that the notification that she received fails to identify any specific reason which would justify separation.

2. In her application, referring to arts. 19 and 36 of the Dispute Tribunal’s Rules of Procedure and the Appeals Tribunal’s judgment in *Villamoran* UNAT/2011/160, the Applicant also filed a motion requesting that the contested decision be suspended pending the Tribunal’s consideration of the suspension of action proceedings. She submits that she will be separated on 31 July 2017. If the Administration is allowed to proceed, the Applicant will be separated from her post and suffer the harm described in her application.

Consideration

3. Applications for suspension of action pending management evaluation are governed by art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of the Rules of Procedure. The three statutory requisites of *prima facie* unlawfulness, urgency and irreparable harm must be satisfied for an application for suspension of action to be granted. Where an administrative decision has been implemented, a suspension of action may not be granted (*Gandolfo* Order No. 101 (NY/2013)), save where the implementation of the decision is of an ongoing nature (see, for example, *Calvani* UNDT/2009/092; *Hassanin* Order No. 83 (NY/2011); *Adundo et al* Order No. 8 (NY/2013); *Galliény* Order No. 60 (NY/2014)).

4. Pursuant to art. 19 of the Rules of Procedure of the Dispute Tribunal,

The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

5. Article 36.1 of the Rules of Procedure provides that:

All matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Dispute Tribunal on the particular case, by virtue of the powers conferred on it by article 7 of its statute.

6. Pursuant to art. 13.3 of the Rules of Procedure,

The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

7. In *Villamoran* 2011-UNAT-160, the Appeals Tribunal upheld this Tribunal's *Villamoran* Order No. 171 (NY/2011) finding that that the Dispute Tribunal was within its competence to order a suspension of the contested decision pending a determination of the application for suspension of action on the basis of the aforesaid Rules of Procedure and without having to make a finding as to whether the requirements of a suspension of action under art 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure had been met. The Appeals Tribunal, *inter alia*, found that:

43. Where the implementation of an administrative decision is imminent, through no fault or delay on the part of the staff member, and takes place before the five days provided for under Article 13 of [the Dispute Tribunal's, "UNDT"] Rules have elapsed, and where the UNDT is not in a position to take a decision under Article 2(2) of the UNDT Statute, i.e. because it requires further information or time to reflect on the matter, it must have the discretion to grant a suspension of action for these five days. To find otherwise would render Article 2(2) of the UNDT Statute and Article 13 of the UNDT Rules meaningless in cases where the implementation of the contested administrative decision is imminent.

8. The Tribunal notes that, although the Applicant states that she was notified of the decision on 22 June 2017 over a month ago, she maintains that she sought a suspension of action through the Management Evaluation Unit. By 28 July 2017, no response was forthcoming. At the same time, steps were taken to try to resolve this matter through mediation, however, again no result was forthcoming. As a consequence of the imminent deadline, the Applicant now seeks an urgent suspension of the decision to suspend her separation.

9. The Tribunal is satisfied that the requirements for an interim order pending the Tribunal's determination of a suspension of action as set out in *Villamorán* by the Appeals Tribunal have been satisfied. The Tribunal notes that this matter is not at the merits stage, and that the Respondent has not had an opportunity to reply, and it does not have all the information before it. The Tribunal is satisfied that the urgency was not self-created and that the Applicant attempted to informally exhaust internal procedures available to her. According to the information before the Tribunal, the contested decision has not been implemented.

10. In accordance with arts. 19 and 36.1 of the Dispute Tribunal's Rules of Procedure therefore,

IT IS ORDERED THAT:

11. Without prejudice to the Tribunal's determination of the application for suspension of action under art. 2.2 of the Tribunal's Statute, the implementation of the contested decision shall be suspended until the Tribunal has rendered its decision on this application, or until further order.

(Signed)

Judge Ebrahim-Carstens

Dated this 28th day of July 2017