



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

DEBELKJOVIC

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alister Cumming, ALS/OHRM

Introduction

1. On Thursday, 12 October 2017, the Applicant, a Claims and Property Survey Assistant, at FS-5 level, step 8, in the Property Management Section, Property Survey Unit, with the United Nations Stabilization Mission in Haiti, filed an application under art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure seeking to suspend, pending management evaluation, the termination of her continuing appointment. The Applicant states that, in 2014, she was converted from a fixed-term to a continuing appointment expiring in 2039, but that on 10 October 2017, she received short notice of her termination effective 15 October 2017.

2. In her application for suspension of the contested decision pending management evaluation, the Applicant also requested that the decision be suspended pending the Tribunal's consideration of the suspension of action proceedings as the decision was to be implemented on Sunday, 15 October 2017.

3. The application for suspension of action was served on the Respondent on 12 October 2017, and upon noting the dire urgency of the matter, the Tribunal directed the filing of the Respondent's reply by 9:00 a.m. on Friday, 13 October 2017.

4. At 4:45 p.m., on 12 October 2017, the Respondent filed his reply, submitting that the application was moot because the Administration had granted the Applicant the requested suspension of action.

Consideration

5. 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); *Gallieny* Order No. 60 (NY/2014)).

6. 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.

7. 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.

8. 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.

9. In *Villamorán* 2011-UNAT-160, the Appeals Tribunal upheld this Tribunal's *Villamorán* Order No. 171 (NY/2011) finding 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.

10. Upon perusing the application, noting the urgency, which is not self-created, and the fact that once the decision is implemented on Sunday, 15 October 2017 the Applicant will have no recourse, the Tribunal was satisfied that the requirements for an interim order pending the Tribunal's determination of a suspension of action as set out in *Villamoran* by the Appeals Tribunal had been satisfied in this case. The Tribunal was therefore prepared to grant the interim order pending the Tribunal's determination of the suspension of action.

11. However, at 4:45 p.m. on 12 September 2017, the Respondent in his reply submitted that the matter is moot as,

The contested decision will not be implemented pending management evaluation. Notification of this will be sent to the Applicant prior to the close of business on 13 October 2017. The Applicant has been provided with the relief she is seeking. There is therefore no matter for the dispute Tribunal to adjudicate.

12. The Tribunal understands the Respondent's concession to mean that the Administration has suspended the contested decision pending management evaluation, thus the relief requested by the Applicant has already been granted. Respondent Counsel's undertaking on behalf of the Secretary General is a confirmation that the *status quo* will be preserved pending the management evaluation. Accordingly, there is no need for the Tribunal to issue an order suspending implementation of the contested decision pending management as this suspension has already been granted by the Administration.

IT IS ORDERED THAT:

13. The contested decision having been suspended, there is no further determination to be made by the Tribunal, the application having been rendered moot.

(Signed)

Judge Ebrahim-Carstens

Dated this 12th October 2017