



Before: Judge Alessandra Greceanu
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge

ELBAGHIR OSMAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON WITHDRAWAL OF AN
APPLICATION FOR SUSPENSION OF
ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alister Cumming, ALS/OHRM, UN Secretariat

Introduction

1. On 16 May 2018, the Applicant, a Senior Reviser at the P-5 level on a permanent appointment, working at the Department for General Assembly and Conference Management, Documentation Division, Translation Services (“DGACM/DD/ATS”), filed an application for suspension of action pursuant to art. 13 of the Dispute Tribunal’s Rules of Procedure. The Applicant requested the Dispute Tribunal to order the suspension, pending management evaluation, of the implementation of the proposal made to the Central Review Body (“CRB”) to terminate his permanent appointment with DGACM/DD/ATS on the ground of unsatisfactory services.

Procedural background

2. On 16 May 2018, the case was assigned to the undersigned Judge.

3. On 16 May 2018, the New York Registry acknowledged receipt of the application and transmitted it to the Respondent, requesting him to provide a response by 18 May 2018.

4. On 18 May 2018 at 11:43 a.m., the undersigned Judge instructed via email the Applicant and the Respondent to attend a Case Management Discussion (“CMD”) at the court room of the Tribunal on 21 May 2018, at 10:30 a.m.

5. On 18 May 2018, the Respondent provided his response to the application for suspension of action, together with a copy of the applicable law (ST/SGB/2011/7, ST/AI/222 of 1974 and ST/AI/2010/5), and all the relevant documentation filed by DGACM in support of the proposal of termination of the Applicant’s permanent

appointment. In his response, the Respondent indicated that the management evaluation has been completed on 17 May 2018 when the Management Evaluation Unit (“MEU”) rendered its decision that the Applicant’s request for management evaluation dated 15 May 2018 was not receivable since, as confirmed by the CRB on 17 May 2018, the review process of the DGACM’s proposal to terminate the Applicant’s permanent appointment is ongoing and there has been no final decision to terminate his appointment. The Respondent concluded that there is no longer any basis for the Applicant’s request for suspension of action and requested that the application be rejected.

6. At the CMD on 21 May 2018, the Applicant, who was present in person, was self-represented. The Respondent was represented by his Counsel, Mr. Alister Cumming.

7. At the CMD, the Tribunal noted that the Applicant filed a management evaluation request to the MEU in a timely manner and that the MEU rendered its decision on 17 May 2018 rejecting the request as not receivable because “[...] there has been no final decision in the present matter”. The Tribunal underlined that, pursuant to art. 13 of the Rules of Procedure, the Tribunal may suspend the implementation of an administrative decision only pending management evaluation and that the cumulative and mandatory requirements are not fulfilled in case a final administrative decision is yet to be taken and/or the MEU has finalized its review. The Tribunal recommended the Applicant to reflect on this and to inform the Tribunal by Wednesday, 23 May 2018, at 1:00 p.m., if he would wish to withdraw the present application; such an action being without prejudice to his right to file a suspension of action in relation to the final administrative decision, if any.

8. The Tribunal further observed that the procedure to be followed in case of a proposal for termination of a permanent contract for unsatisfactory service, which is initiated by a proposal for termination and is finalized through the Secretary-General's decision, is established by sec. 4.10 of ST/SGB/2011/7 (Central Review Bodies) and arts. 2-11 of ST/AI/222 (Procedure to be followed in cases of termination of permanent appointment for unsatisfactory services) adopted on 10 December 1974. ST/AI/222 indicates the required composition of the joint review body to be established and its competence, namely: to request comments regarding the proposal for termination from the staff member within a reasonable period of time, to hear the staff member in person whenever considered necessary, and to prepare a report which is to be sent to the Secretary-General through the successor of the "Appointment and Promotion Board". In case the successor of the Appointment and Promotion Board endorses it, the report is sent to the Secretary-General for him to take the decision.

9. Further, noting the content of the email the Central Review Bodies Secretariat sent to the Applicant on 25 April 2018, which states as follows,

Dear [Applicant],

In accordance with Staff Rule 13.1 and ST/AI/222, the Department of General Assembly and Conference Services (DGACM) has submitted to the Central Review [B]odies secretariat, a request for the termination of your permanent appointment, on the ground of unsatisfactory service.

In line with the section 4.10 of ST/SGB/2011/17 - Central review [B]odies, the Central Review Board will review the case.

Under the procedures for such termination, you are given 30 days from receipt of this email, which will constitute a reasonable opportunity for you to comment on the case, or any matter relating to the case, should you wish to do so.

You may also request that information, which you consider relevant to the case, be obtained from specified staff members.

Should you not respond within the allotted 30 days from the receipt of this official correspondence, this case will proceed under the established mechanism for termination of permanent appointment for unsatisfactory services.

Any communication should be sent to crbodiessecretariatnv@un.org by no later than [close of business] 25 May 2018.

the Tribunal observed during the CMD the following:

a. The current applicable procedure is established by art. 4.10 of ST/SGB/2011/7 and arts. 3-10 of ST/AI/222 (which was not abolished by ST/SGB/2011/7 or declared obsolete by ST/AI/2017/2);

b. The corresponding bodies and their members involved in the procedure at the level of the joint review body and of the successor of the Appointment and Promotion Board are to be established before the DGACM's proposal is to be further considered by the CRB in New York; and

c. The Applicant is to be further informed of the composition of the special joint review body invested to consider the proposal of termination of the Applicant's contract and of the deadline established by this joint review body for him to file his comments to the proposal for termination, since the deadline of thirty (30) days notified to the Applicant on 25 April 2018, which expires on 25 May 2018, was established by the Central Review Bodies Secretariat and not by the CRB in New York.

10. By submission of 22 May 2018, the Applicant requested the withdrawal of his application for suspension of action, indicating *inter alia* that "[...] [he] managed to finalize [his] [Performance Improvement Plan, ("PIP")] with success and [his] 2017-2018 [e-PAS] has not been finalized as of yet" and that he withdraws

his application without prejudice to his right to file another suspension of action if needed.

11. Since the Applicant has requested the withdrawal of his application for suspension of action, there is no longer any determination for the Tribunal to make on the application.

12. In light of the foregoing,

IT IS ORDERED THAT:

13. The Applicant's request to withdraw the application for suspension of action is noted by the Tribunal and Case No. UNDT/NY/2018/023 is hereby closed.

Observation

14. The Tribunal observes that it is unclear at this moment if the CRB is to be considered the joint review body (who has the role/competence to consider the proposal for termination and prepare a report which is to include the considerations, conclusions and recommendations to the Secretary-General on whether or not, in its opinion, there is sufficient ground for the termination of the permanent appointment—arts. 3-9 of ST/AI/222) or is to be considered the successor of the Appointment and Promotion Board (who has the role/competence to verify if the required procedure was followed by the joint review body and to transmit the report to the Secretary-General—art. 10 of ST/AI/222).

15. The Tribunal recommends for a legal review of the current applicable provisions—art. 4.10 of ST/SGB/2011/7 and arts. 3-10 of ST/AI/222—to be conducted as soon as possible in order to harmonize their content and for additional

provisions to be issued in order to ensure that all the procedural requirements are fulfilled.

(Signed)

Judge Alessandra Greceanu

Dated this 23rd day of May 2018