



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Nerea Suero Fontecha

DYER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

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

Counsel for Applicant:
Self-represented

Counsel for Respondent:
UNICEF

Introduction

1. On Tuesday, 13 November 2018, at 2:17 p.m., the Applicant, a Senior Advisor to the Global Partnership to End Violence Against Children, at the P-5 level on permanent appointment, with the United Nations International Children's Emergency Fund ("UNICEF") in New York, filed an application requesting urgent relief 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 decision by UNICEF to place him on special leave without pay ("SLWOP") or, if he does not accept, separate him from service on 14 November 2018.

2. On the same day, the application was registered and assigned to the undersigned Judge.

Consideration

3. Article 13.3 (Suspension of action during a management evaluation) of the Tribunal's Rules of Procedure provides that the Tribunal "shall consider an application for interim measures within five working days of the service of the application on the respondent". Accordingly, the Tribunal has until Tuesday, 20 November 2018, to consider the application.

4. 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.

5. The Tribunal notes that the implementation of the administrative decision is imminent and will take effect on 14 November 2018, and thus the matter is urgent. In light thereof and on the facts before it the Tribunal accepts the Applicant's submission that the urgency is not self-created as after he was informed about the abolition of his post on 14 May 2018, he applied to several other posts both at the P-4 and P-5 levels, and took all such measures to find alternative placement. Furthermore, he states that he had been repeatedly assured that an alternative position would be found for him, but to his surprise on 9 November 2018, he received a draft memorandum of understanding giving him Hobson's Choice of either going on SLWOP or facing the alternative of termination. Furthermore, the Tribunal finds that not only the interests of justice, but the balance of convenience test dictate the grant of urgent relief in this case, pending the consideration of the application for suspension of action pending management evaluation.

6. The Tribunal finds it appropriate to order that, as from the time and date of service of the present Order on the parties, no further steps regarding the decision to place the Applicant on SLWOP or to terminate his appointment shall be undertaken until the determination of the suspension of action (*Nunez* Order No. 17 (GVA/2013); *Quesada-Rafaraso* Order No. 20 (GVA/2013); *Charles* Order No. 61 (NY/2013); *Kallon* Order No. 80 NY/2013); *Gandolfo* Order No. 97 (NY/2013)).

IT IS ORDERED THAT:

7. The Respondent shall not undertake, as from the date and time of service of the present Order, any further steps regarding the decision to place the Applicant on SLWOP or to terminate his appointment until the determination of the present application for suspension of action pending management evaluation.

8. By **12:00 p.m. on Thursday, 15 November 2018**, the Respondent shall file and serve a reply to the application for suspension of action pending management evaluation.

(Signed)

Judge Ebrahim-Carstens

Dated this 13th day of November 2018