UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/054
Order No.: 233 (NY/2018)
Date: 20 November 2018
Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Nerea Suero Fontecha

DYER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Bart Willemsen, UNICEF
Zarqaa Chohan, 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. The Applicant submits that the decision is *prima facie* unlawful because UNICEF failed to discharge its obligation under staff rule 9.6(e) to find a suitable post for a staff member on permanent appointment whose post was abolished.

2. On the same day, the application was registered and assigned to the undersigned Judge, and by Order No. 230 (NY/2018), the Tribunal ordered the Respondent not to undertake any further steps regarding the challenged decision until the determination of the present suspension of action application and directed the Respondent to file a reply by 12:00 p.m. on Thursday, 15 November 2018.

3. On 15 November 2018, the Respondent duly filed a reply contending that the present application is not receivable, *inter alia,* as the Applicant failed to identify any specific contestable administrative decision. The Respondent further submits that the Applicant failed to show that the contested decision is *prima facie* unlawful because the Administration has no obligation to simply place a staff member with a permanent appointment whose post is being abolished on an alternative post.

Background

4. The Applicant joined UNICEF in 1996, and on 3 January 2016, the Applicant was appointed as a Senior Advisor to the Global Partnership to End Violence Against

Children, at the P-5 level. The letter of appointment provided that he would retain his permanent contract and the normal tour of duty for New York is 5 years.

5. On 14 May 2018, the Applicant was notified that his post would be abolished on 14 November 2018. The letter provided that in the period between the date of this letter and the date of the abolition of the post ("the period of notice"), he was expected to apply for all available posts within UNICEF for which he believed he has the required skills and competences, and the Division of Human Resources would assist him in identifying and applying for these posts and make every effort to keep him informed of the posts for which he was being reviewed. It further provided that if he was not selected for another post within UNICEF at the conclusion of the period of notice, his appointment would be terminated, and he would be separated from service with immediate effect.

6. Since receiving this notification, the Applicant applied for several posts at the P-4 and P-5 level. According to the Applicant, he also engaged in discussions with the Division of Human Resources, including its Deputy Director, who assured him that an alternative position would be identified for him.

7. On 9 November 2018, the Applicant received a draft memorandum of understanding regarding being placed on SLWOP until 31 August 2019. The Respondent claims that this was provided to the Applicant as he initiated and requested to be placed on SLWOP. The terms of SLWOP were not agreeable to the Applicant as he understood that he would not be given any priority consideration with respect to any applications for other UNICEF positions. He also understood that if he did not accept the terms of SLWOP as set forth in the memorandum of understanding, his permanent appointment would be terminated and he would be separated on 14 November 2018.

8. On 13 November 2018, the Applicant submitted a management evaluation request challenging this decision.

Applicant's Submissions

9. The Applicant's principal contentions may be summarized as follows:

Prima facie *unlawfulness*

a. It is well established that administrative decisions must be made on proper reasons and the Administration has a duty to act fairly, justly and transparently in dealing with its staff members, including in matters of appointments, separation and renewals (*Obdeijn* 2012-UNAT-201);

b. Pursuant to established jurisprudence and staff rule 9.6(a), (c), (d) and (e), staff members on permanent appointments who are affected by post abolitions must be retained on a priority basis as compared to fixed-term staff members. This requirement mandates the Organization to transfer and assign affected staff members to suitable positions outside the normal selection process;

c. As the Appeals Tribunal stated in *Timothy* 2018-UNAT-847 (footnotes omitted),

> 31. Staff Rule 9.6(e) specifically sets forth a policy of preference for retaining a staff member with a continuing appointment who is faced with the abolition of a post or reduction of staff, and creates an obligation on the Administration to make reasonable efforts to find suitable placements for the redundant staff members whose posts have been abolished. As such, a decision to abolish a post triggers the mechanism and procedures intended to protect the rights of a staff member holding a continuing post, under the Staff Rules and the Comparative Review Policy, to proper, reasonable and good faith efforts to find an alternative post for him or her who would otherwise be without a job. Failure to accord to the displaced staff members the rights conferred under the said provisions will constitute a material irregularity.
>
> 32. Therefore, the Administration is bound to demonstrate that all reasonable efforts have been made to consider the staff member concerned for available suitable posts. Where there is doubt that a staff member has been afforded reasonable

consideration, it is incumbent on the Administration to prove that such consideration was given;

d. As a permanent appointment holder whose post was being abolished, the onus is on the Administration and not simply on him to make good faith efforts to find him a suitable available post;

e. Whilst the Applicant has taken all steps to apply for vacancies within UNICEF, including those below his current P-5 level, it appears that no effort has been taken by the Administration to fulfil their obligations towards him as a permanent appointment holder. Instead, at the end of the search period, the Applicant has been offered a stark choice between going on SLWOP or being terminated. Both options are not merely unsatisfactory to the Applicant, as he will be left without a source of income, but moreover, fundamentally, it is a violation of his rights as a permanent appointee;

f. The Applicant is a permanent appointment holder who has worked for UNICEF for 22 years with extensive experience in the field and an excellent history of good performance. Considering these circumstances, it seems unreasonable that no suitable alternative positions can be identified for the Applicant;

g. The Administration failed to perform any of the steps outlined by the Appeals Tribunal in *Timothy*. The Administration's efforts to find him a suitable available post is an obligation that has not been discharged;

h. Upon being informed of the abolition of his post, the Applicant has applied to six suitable posts at the P-5 level, two at the P-4 level, and two at the D-1/P-6 level. He has been interviewed for two positions but has not yet been informed of the outcome of those interviews. He has not been informed of the status of his other applications;

i. It appears that the Applicant has not been given any preferential treatment in the selection process. According to *Zachariah* 2017-UNAT-764, at para. 35,

> … the Appeals Tribunal is of the view that the Administration is required by Staff Rule 13.1(d) to consider the permanent staff member on a preferred or non-competitive basis for the position, in an effort to retain the permanent staff member. This requires determining the suitability of the staff member for the post, considering the staff member's competence, integrity and length of service, as well as other factors such as nationality and gender. Only if there is no permanent staff member who is suitable, may the Administration then consider the other, non-permanent staff members who applied for the post;

j. Pursuant to *Zachariah*, the Applicant having been shortlisted, the Administration should have placed him on one of these vacant posts, pursuant to its obligation to retain permanent staff members on a non-competitive basis. This inaction reinforces the Administration's manifest failure to meet its contractual obligations of retention vis-à-vis the Applicant as a permanent staff member;

Urgency

k. The matter is urgent because the abolition of his post will take effect on 14 November 2018;

l. Since the Applicant was informed about the abolition of his post, he has taken all steps available to him to seek alternative positions by applying to those he deems himself suitable for. He also kept the Administration updated about his efforts. Throughout his discussions with the Administration, he has been repeatedly assured that an alternative position will be found for him. Instead, with just three working days before his post being abolished, he was given this choice between SLWOP or termination. It became evident then that no genuine efforts were being made to assist him in finding a suitable

available post. Immediately, the Applicant took steps to file a management evaluation request and suspension of action. This is not a case of self-created urgency in that legitimate steps were taken by him to try to resolve the matter informally;

Irreparable damage

m. This Tribunal has found that harm to professional reputation and career prospects or sudden loss of employment may constitute irreparable damage (*Corcoran* UNDT/2009/071, *Calvani* UNDT/2009/092). The Tribunal also found that separation from service will cause irreparable harm in that a staff member will lose the prospect of applying for positions within the United Nations as an internal candidate (see *Igunda* UNDT/2011/143);

n. In the present case, the Applicant will be adversely affected by either of the options provided to him. If he is placed on SLWOP, he will be left without an income and will have to bear the burden of the total contributions for his medical and dental insurance. Furthermore, the Organization's pension contributions for him will cease. If he is terminated, the Applicant will be left without a position in the United Nations, which will render him ineligible to apply for other United Nations positions as an internal candidate. Moreover, the sudden separation will result in a loss of his personal integrity and economy, his reputation and his career prospects, which cannot be compensated for by a monetary award.

Respondent's submissions

10. The Respondent's principal contentions may be summarized as follows:

Receivibility

a. The Respondent maintains that the application is not receivable since the Applicant fails to identify any contested decision. The Respondent

submits that whilst the Applicant contests the decision "to place him on special leave without pay, or, if he does not accept, separate him from service on 14 November 2018", there has been no decision or insistence to place him on SLWOP. Rather, there were discussions instigated by the Applicant regarding his potential placement on SLWOP in order to find a suitable solution, whilst he applied for several positions, and that this was all in the context of discussions toward a mutually agreed separation package or a memorandum of understanding between the parties. Furthermore, the Respondent submits that there is no contestable decision regarding the allegation that the Applicant would be separated from service if he did not accept being placed on leave without pay, as he would have been separated anyway due to the abolition of his post;

b. Regarding the Applicant's submission that "the administration failed to meet its well-established obligations regarding staff members with permanent appointments", specifically that "no effort was made to assist him in retaining an alternative position after his post was abolished", the Respondent states the Applicant has failed to identify a specific contestable administrative decision concerning any of the posts he applied for nor has he challenged any non-selections. The Respondent submits that the Applicant was assisted in career advice and support by the Department of Human Resources; however, seeing as he had not been selected for any position he was therefore to be separated. Furthermore, if he wished to contest the abolition of his post, he should have done so within 60 days of the formal notification thereof, that is by 14 July 2018 which he failed to do;

Prima facie *unlawfulness*

c. The decision is not *prima facie* unlawful. Under staff rule 5.3, special leave with or without pay may be granted at the request of a staff member for important reasons and in the interests of the Organization. In this case, the Applicant requested SLWOP which would give him the advantage of

retaining his UNICEF staff member status while looking for another position, and UNICEF was willing to grant him SLWOP even though he made the request only a few weeks prior to a scheduled separation date. In practice, it is unusual for a request for SLWOP to be approved when the post encumbered by a staff member is abolished as there is no post for a staff member to be placed against. UNICEF was willing to grant SLWOP on an exceptional basis and there was no compulsion on him to accept the draft memorandum of understanding;

d. Furthermore, even though the Applicant was on a permanent appointment, his post could be abolished and he could be terminated in accordance with the proper procedures. There is no obligation on the Administration to simply place the Applicant on an alternative post and it is not sufficient to only be shortlisted to be found suitable for a post. A staff member is required to apply for a post and be found suitable. The Applicant was also never guaranteed or assured by the Department of Human Resources that he would be placed on another position without proper selection, but rather that he would be assisted in finding a suitable post with the priority accorded to him as a permanent appointment holder;

Urgency

e. The matter is not urgent as the Applicant has known about the abolition of his post and separation of service since 14 May 2018, for six months. His placement on SLWOP would have enabled his continued status as an internal staff member and would have resulted in the delay of his separation from service;

Irreparable damage

f. Given the six months' notice of separation, it was not a sudden loss of employment or sudden separation. The Applicant's potential placement on

SLWOP would have enabled him to search for alternative opportunities as an internal candidate.

Consideration

Legal framework

11. Article 2.2 of the Statute of the Dispute Tribunal provides:

> … 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.

12. 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.

13. In accordance with art. 2.2 of the Dispute Tribunal's Statute, the Tribunal may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. The Dispute Tribunal can suspend the contested decision only if all three requirements of art. 2.2 of its Statute have been met.

14. Under art. 2.2 of the Statute, a suspension of action order is a temporary order made with the purpose of providing an applicant temporary relief by maintaining the

status quo between the parties to an application pending a management evaluation of the contested decision.

15. Parties approaching the Tribunal for a suspension of action order must do so on a genuinely urgent basis, and with sufficient information for the Tribunal to preferably decide the matter on the papers before it. An application may well stand or fall on its founding papers. Likewise, a Respondent's reply should be complete to the extent possible in all relevant respects, and be succinctly and precisely pleaded on all relevant aspects. Parties should bear in mind that the matter is not at the merits stage at this point of the proceedings, that the relief requested is temporary, and that the luxury of time is unavailable. Urgent applications disrupt the normal day-to-day business of the Tribunal, thus delaying the disposal of other older outstanding cases, and specious pleadings and the taking of untenable positions should be avoided by the parties.

16. In the instant case the Respondent has taken the preliminary point that the matter is not receivable because, *inter alia*, the Applicant has not identified any administrative decision capable of review. The Tribunal will therefore consider this preliminary point first before addressing the requirements for sustaining an application for suspension of action pending management evaluation.

Scope of the case and the definition of the impugned administrative decisions identified by the Applicant

17. It is the Appeals Tribunal's consistent jurisprudence that an applicant must identify, or define, a specific administrative decision capable of being reviewed (see, for instance, *Planas* 2010-UNAT-049, *Chriclow* 2010-UNAT-035, *Appellant* 2011-UNAT-143 and *Reid* 2014-UNAT-419).

18. The Tribunal notes that, in his application dated 15 November 2018, the Applicant identifies the contested administrative decision as "the decision to place him on special leave without pay or, if he does not accept, separate him from service on 14 November 2018" and that "no effort was made to assist him in retaining an

alternative position after his post was abolished". In his request for management evaluation dated 13 November 2018, the Applicant identified the contested decision in precisely the same manner using the same wording. Furthermore, in both his application and the management evaluation request, the Applicant contends "that the Administration failed to meet its well-established obligations regarding staff members on permanent appointments".

19. When deciding on the scope of the case, the Tribunal is not limited to the parties' own identification and definition of the contested administrative decision(s) and may, based on the submissions, seek to identify the subject(s) of judicial review by itself. See, for instance, the Appeals Tribunal in *Fasanella* 2017-UNAT-765, para. 20, where it stated:

> ... Thus, the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review. As such, the Dispute Tribunal may consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed.

20. Furthermore, in the case of *Zakaria* 2017-UNAT-764, para. 22, the Appeals Tribunal stated:

> ... The role of the Dispute Tribunal in characterizing the claims a staff member raises in an application necessarily encompasses the scope of the parties' contentions (footnote omitted):
>
> > … The duties of [the Dispute Tribunal] prior to taking a decision include adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content, as the judgment must necessarily refer to the scope of the parties' contentions. Otherwise, the decision-maker would not be able to follow the correct process to accomplish his or her task. …
> >
> > … Thus, the authority to render a judgment gives the [Dispute Tribunal] an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and so, subject to judicial review.

21. It is clear that the Applicant both in his management evaluation request and the application is challenging the decision to place him on special leave without pay or to separate him from service as a result of the abolition of his post, and the "administration's failure to meet its obligations regarding staff members on permanent appointments". Specifically, the Applicant submits that no effort was made to assist him in retaining an alternative position after his post was abolished, rather than separating him.

22. Based thereon, the Tribunal finds that the contested administrative decision may be defined as the Administration's alleged failure/omission to comply with its obligations vis-à-vis the Applicant who was a permanent appointee to find another suitable post in compliance with the prevailing law. The sole and central question is therefore whether the Organization complied with its obligations vis-à-vis the Applicant who has served the Organization for 22 years, having a good performance record with vast experience in the field, and who holds a permanent appointment, to find another suitable post, pursuant to staff rule 9.6 and the established jurisprudence of the tribunals (see also *El-Kholy* 2017-UNAT-730).

23. The Tribunal finds that the Respondent is splitting hairs in taking the receivability points regarding the various stages and processes, when it is quite clear that the decision to separate a staff member howsoever, on the basis of abolition of post, entails efforts on the part of both the staff member and the Organization in finding an alternative suitable post, with the possible eventuality of separation. Indeed, in *Cardwell* UNDT/2018/030, the Respondent argued to the contrary that only final decisions are challengeable, and not the processes leading up to the final decision. In any event, the Applicant states that he has not been informed of the outcome of the two interviews he attended nor informed of the status of his other applications. The Tribunal finds that the Applicant filed for management evaluation soon after he was advised of the finality of the process or processes with the final eventuality of separation, and the application is therefore receivable.

Prima facie *unlawfulness*

24. For the *prima facie* unlawfulness test to be satisfied, the Applicant must show a fairly arguable case that the contested decision is unlawful. It would be sufficient for an applicant to present a fairly arguable case that the contested decision was procedurally or substantively defective, was influenced by some improper considerations, or was contrary to the Administration's obligation to ensure that its decisions are proper and made in good faith (see, for instance, *Jaen* Order No. 29 (NY/2011) and *Villamoran* UNDT/2011/126).

25. In the present case, the Applicant claims that the decision to terminate his permanent appointment is unlawful since UNICEF failed to discharge its obligation under staff rule 9.6(e) to find a suitable post for him following the notification of abolition of his post.

26. Under staff rule 9.6(c)(i), the Administration may terminate the appointment of a staff member on a number of grounds, including abolition of posts or reduction of staff. In such cases, the Administration must follow the requirements set out in the Staff Regulations and Rules (*Timothy* 2018-UNAT-847, para. 26). Staff rule 9.6(e) specifically provides as follows:

> Termination for abolition of posts and reduction of staff
>
> (e) Except as otherwise expressly provided in paragraph (f) below and staff rule 13.1, if the necessities of service require that appointments of staff members be terminated as a result of the abolition of a post or the reduction of staff, and subject to the availability of suitable posts in which their services can be effectively utilized, provided that due regard shall be given in all cases to relative competence, integrity and length of service, staff members shall be retained in the following order of preference:
>
> (i) Staff members holding continuing appointments;
>
> (ii) Staff members recruited through competitive examinations for a career appointment serving on a two-year fixed-term appointment;
>
> (iii) Staff members holding fixed-term appointments.
>
> When the suitable posts available are subject to the principle of geographical distribution, due regard shall also be given to nationality

> in the case of staff members with less than five years of service and in the case of staff members who have changed their nationality within the preceding five years.

27. The Appeals Tribunal in *Timothy* 2018-UNAT-847 found that staff rule 9.6(e) "creates an obligation on the Administration to make reasonable efforts to find suitable placements for the redundant staff members whose posts have been abolished" and "skills and length of service are paramount criteria in any contemplated selection for retrenchment" (paras. 31, 33). Further, "[f]ailure to accord the displaced staff members the rights conferred under the said provisions will constitute a material irregularity" and "[w]here there is doubt that a staff member has been afforded reasonable consideration, it is incumbent on the Administration to prove that such consideration was given" (paras. 31, 32).

28. In the present case, the Applicant submits that UNICEF failed to discharge its obligation under staff rule 9.6(e) to find a suitable post for him as a staff member on permanent appointment whose post was abolished, a claim which the Respondent disputes.

29. As the Appeals Tribunal held in *Timothy*, where there is doubt that a displaced staff member has been afforded reasonable consideration, the Administration needs to prove that such consideration was given. While the Applicant lists all the positions at P-5 and P-4 level for which he applied and submits that he has worked for UNICEF for 22 years with extensive experience in the field and an excellent history of good performance, the Respondent has not shown, even on a *prima facie* basis, that it gave reasonable consideration to the Applicant, especially taking into account the Applicant's skills and length of service. Furthermore, the Tribunal notes that the letter of appointment dated 3 January 2016 expressly states that "[a]t present, the normal tour of duty for New York, United States is 5 years".

30. Considering that there is a dispute as to whether the Applicant has been afforded reasonable consideration as a displaced staff member and that the Respondent has to prove that such consideration was given, in the circumstances and

on the papers before it, the Tribunal finds that the Applicant has made out a fairly arguable case that the contested decision is unlawful and the requirement of *prima facie* unlawfulness to be satisfied.

31. In the matter of the placement of the Applicant on SLWOP, the Tribunal notes that the contested draft memorandum of understanding has not been produced for the Tribunal's review and thus the Tribunal has no information on the terms and conditions of such agreement. There is also dispute as to whether the Applicant requested to be placed on SLWOP, a factual dispute which cannot be reconciled on the papers. Due to limited information provided to this Tribunal, the Tribunal cannot make any ruling on the *prima facie* unlawfulness of such decision, on its conditions, or indeed on the propriety of an exception to grant SLWOP where there is no post encumbered.

Urgency

32. According to art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure, a suspension of action application is only to be granted in cases of particular urgency.

33. Urgency is relative and each case will turn on its own facts, given the exceptional and extraordinary nature of such relief. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the applicant (see, for instance, *Villamoran* UNDT/2011/126, *Dougherty* UNDT/2011/133 and *Jitsamruay* UNDT/2011/206).

34. In the present case, the Tribunal notes that the implementation of the administrative decision is imminent and was to 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 discharged his obligations and 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 was only recently

advised of the finality of the process and 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.

35. In the circumstances and on the papers before it, the Tribunal finds the requirement of particular urgency to be satisfied.

Irreparable damage

36. It is generally accepted that mere economic loss only is not enough to satisfy the requirement of irreparable damage. Depending on the circumstances of the case, harm to professional reputation and career prospects, harm to health, or sudden loss of employment may constitute irreparable damage (see, for instance, *Adundo et al.* UNDT/2012/077 and *Gallieny* Order No. 60 (NY/2014)). In each case, the Tribunal has to look at the particular factual circumstances.

37. It is established law that loss of a career opportunity with the United Nations may constitute irreparable harm for the affected individual (see, for instance, *Saffir* Order No. 49 (NY/2013) and *Finniss* Order No. 116 (GVA/2016)).

38. The Applicant submits that he has served the Organization with an excellent performance record for some 22 years. The Applicant further submits he will be adversely affected by either of the options provided to him. If he is placed on SLWOP, he will be left without an income and will have to bear the burden of the total contributions for his medical and dental insurance. Furthermore, the Organization's pension contributions for him will cease. If he is terminated, the Applicant will be left without a position in the United Nations, which will render him ineligible to apply for other United Nations positions as an internal candidate. Moreover, the sudden separation will result in a loss of his personal integrity and economy, his reputation and his career prospects, which cannot be compensated for by a monetary award.

39. The Tribunal accepts that the Applicant would suffer much more than mere economic loss as pleaded. In the circumstances and on the papers before it, the Tribunal finds the requirement of irreparable damage to be satisfied.

Conclusion

40. In light of the foregoing, the Tribunal ORDERS:

The application for suspension of action is granted and the contested decision is suspended pending management evaluation.

(Signed)

Judge Ebrahim-Carstens

Dated this 20th day of November 2018