



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/100
Order No.: 181 (NY/2019)
Date: 19 December 2019
Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

ESPINOZA MADRID

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON SUSPENSION OF ACTION
PENDING MANAGEMENT
EVALUATION**

Counsel for Applicant:
Dorota Banaszewska, OSLA

Counsel for Respondent:
Yun Hwa Ko, UNFPA

Introduction

1. On 16 December 2019, the Applicant, a staff member at the P-5 level with the United Nations Population Fund (“UNFPA”) 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 to reassign her from New York to Panama to take up the position of Regional Programme Adviser at the P-5 level.

2. On the same day, the Tribunal granted the Applicant’s motion for interim suspension pending its final determination under the principles in *Villamorán* 2011-UNAT-160 and ordered the Respondent not to undertake any further steps regarding the contested decision until the determination of the present application for suspension of action.

3. On 18 December 2019, the Respondent filed a reply contending that the application is not receivable and has no merit.

Factual background

4. On 1 July 2018, the Applicant, a staff member at the P-5 level with UNFPA, joined the United Nations Secretariat as a Special Advisor for the 73rd Session of the United Nations General Assembly on a non-reimbursable loan basis. According to the loan agreement signed by the Applicant on 26 July 2018, UNFPA agreed to grant her a right of return against her post of External Relations Adviser at the P-5 level, Division for Governance and Multilateral Affairs, UNFPA in New York for one year only, from 1 July 2018 through 30 June 2019.

5. In May 2019, the Applicant contacted UNFPA to confirm that she was ready to resume her duties within UNFPA as of 1 July 2019 or earlier, if needed.

6. The Applicant took annual leave from 1 July 2019 through 4 September 2019, and on 19 August 2019, she wrote to UNFPA that she would exercise her right to return to her post as per the loan agreement and report to work at UNFPA on 5 September 2019.

7. In September and October 2019, the Applicant was in discussions with UNFPA regarding her return to UNFPA.

8. On 21 November 2019, the Applicant filed a management evaluation request to contest the decision “to prevent her from resuming her post as P-5 Multilateral Affairs Advisor ... following her return from a non-reimbursable loan at the United Nations Secretariat” and the decision “to reassign her to a new post, P-5 External Relations Advisor ... without permitting her to take up the role”.

9. On 13 December 2019, UNFPA informed the Applicant that given that her post would “be re-profiled in due course”, UNFPA took efforts to identify a suitable reassignment and that she was selected for the position of Regional Programme Adviser in Panama, Regional Office for Latin America and the Caribbean, at the P-5 level. In this notification letter, UNFPA wrote, “[a]fter we receive the confirmation of your interest and availability, a Personnel Action Form will be sent to you”.

10. On 16 December 2019, the Applicant filed a management evaluation request challenging the decision to “reassign her to the P-5 post of Regional Programme Adviser in Panama”.

Consideration

11. Under art. 2.2 of the Dispute Tribunal’s Statute and art. 13.1 of the Rules of Procedure, 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 have been met.

12. In the present case, the Respondent contends that the application is not receivable on the grounds that the selection notification letter of 13 December 2019 is simply a notice of selection that contained an express request to the Applicant to confirm her availability and interest and therefore it is not an administrative decision subject to judicial review in accordance with art. 2.1(a) of the Statute of the Dispute Tribunal.

13. From the outset, the Tribunal notes that the Applicant defines the contested decision as the decision to “reassign her to the P-5 post of Regional Programme Adviser in Panama”. While the Applicant raises various claims relating to her return to UNFPA from a non-reimbursable loan at the United Nations Secretariat, they are not before the Tribunal as part of the present application for suspension of action. Therefore, the receivability question before the Tribunal is whether the letter of 13 December 2019 which notified her of the selection for the P-5 post in Panama is an administrative decision subject to the Dispute Tribunal’s judicial review.

14. The Appeals Tribunal has “consistently held that the key characteristic of an administrative decision subject to judicial review is that the decision must ‘produce[] direct legal consequences’ affecting a staff member’s terms and conditions of appointment; the administrative decision must ‘have a direct impact on the terms of appointment or contract of employment of the individual staff member’” (see *Lee* 2014-UNAT-481).

15. The Tribunal agrees with the Respondent that the letter of 13 December 2019 is not an administrative decision subject to its judicial review. UNFPA clearly stated in the letter that the reassignment is conditioned on the Applicant’s confirmation of her interest and availability, which the Respondent also reiterates in his reply. Nothing in the case records indicates that this statement is not genuine, and rather than an administrative decision to reassign the Applicant to Panama, the letter therefore presents an offer for such reassignment. By itself, this notification produces no direct legal consequences for the Applicant unless she accepts the offer by confirming her interest and availability.

16. Therefore, the contested decision is not an administrative decision subject to judicial review.

Conclusion

17. In light of the foregoing, the present application for suspension of action is rejected as not receivable.

(Signed)

Judge Joelle Adda

Dated this 19th day of December 2019