



Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICATION FOR SUSPENSION
OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for Applicant:

Adjovi, Sètonджи Roland ADJOVI, *Etudes Vihodé*

Counsel for Respondent:

Alan Gutman, ALD/OHR, UN Secretariat

Introduction

1. On 30 December 2020, the Applicant a staff member with the United Nations Counter-Terrorism Office (“UNOCT”) 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 not to renew his temporary appointment on grounds of a negative performance evaluation.
2. On 30 December 2020, by email, the Tribunal ordered the Respondent not to undertake any further steps regarding the contested decision until the determination of the present suspension of action application, under *Villamorán* 2011-UNAT-160.
3. On 5 January 2021, the Respondent filed a reply.
4. On 6 January 2020, the Applicant filed a motion to respond to the Respondent’s reply, together with his additional submissions. The Tribunal accepted the additional submissions into the record.

Factual background

5. On 6 December 2018, the Applicant joined the Organization on a temporary appointment, which expired on 6 March 2019. Following the expiration of that appointment, the Applicant separated from service.
6. On 1 April 2019, twenty-seven days after his separation, the Applicant re-joined the Organization on a temporary appointment.
7. By letter dated 14 September 2020, the Applicant was informed that the Under-Secretary-General of UNOCT (“USG/UNOCT”) had “decided to place [him] on administrative leave with pay with immediate effect, pursuant to Staff Rule 10.4”. In the letter was further stated that it had been brought to the USG/UNOCT’s attention that the Applicant was “under investigation by the Office of Internal

Oversight Services into allegations of unsatisfactory conduct, including those of a racial nature”.

8. On 15 December 2020, the Applicant’s first reporting officer (“FRO”) provided the Applicant with a completed performance evaluation for his service on the temporary appointment. The Applicant’s overall performance was rated as “partially meets performance expectations”, and the performance evaluation form documented the Applicant’s deficiencies in the United Nations core value of “respect for diversity/gender”, and the managerial competencies of “leadership” and “judgment/decision-making”.

9. On 16 December 2020, a human resources partner sent an email to the Applicant “to confirm [his] separation from the Organisation upon expiration of temporary appointment effective 30 December 2020, close of business”.

10. On 19 December 2020, the Applicant provided an explanatory statement outlining his disagreement with his performance evaluation.

11. On 21 December 2020, the Chief, Strategic Planning & Programme Support sent an email to the Applicant stating that the reason for the non-renewal is that the Applicant’s performance was rated as only partially satisfactory.

12. On 30 December 2020, the Applicant reached the maximum 729 days allowed for temporary appointments.

Prima facie unlawfulness

13. In considering whether to suspend an administrative decision pending management evaluation, the Dispute Tribunal’s Statute does not require the Tribunal to make a definitive finding that the decision is unlawful. The test is not particularly onerous since all the Tribunal is to do at this stage is to decide as to whether it appears that, if not rebutted, the claim will stand proven on a *prima facie* basis. Any such determination is not binding should the Applicant subsequently file an

application on the merits and the matter would proceed to a full judicial review. It is merely an indication as to what appears to be the case at this preliminary stage.

14. The Applicant essentially argues that the contested decision is unlawful as it is a veiled sanction for allegations of misconduct that are yet to be established. He states that his FRO had given him a negative performance evaluation on the basis of the allegations of misconduct. The Applicant notes that any misconduct can only be sanctioned through a disciplinary procedure. The Applicant argues that it is unlawful to use a performance evaluation for such a purpose, especially when no finding has been made on the allegations of misconduct.

15. The Respondent on the other hand maintains that the decision not to renew the Applicant's temporary appointment was lawful on two grounds.

16. First, the Applicant had reached the maximum 729 days limit of service permissible on a temporary appointment on 30 December 2020. According to sec. 2.7 of ST/AI/2010/4/Rev.1 (Administration of temporary appointments), the Applicant was required to separate from the Organization on 30 December 2020.

17. Second, in the absence of satisfactory performance, it was lawful for USG/UNOCT not to renew the Applicant's appointment. The Respondent states that the assessment of the Applicant's performance was fair. The Applicant's FRO rated the Applicant objectively against the United Nations core values and competencies. It was within the competence of the FRO to consider that, among other factors, the Applicant's conduct had a negative impact on the harmonious work environment of the Applicant's section. The Respondent accepts that some of the Applicant's conduct resulted in formal complaints of prohibited conduct from staff members. The Respondent, however, maintains that the proceedings concerning the complaints did not deprive the FRO of the discretion to consider the undisputed facts in his managerial assessment of the Applicant's performance.

18. Having reviewed the submissions, the Tribunal finds that although the Applicant clearly disagrees with the negative performance evaluation, he does not

dispute that he had reached the maximum 729 days limit of service permissible on a temporary appointment on 30 December 2020. In this regard, the Tribunal notes that temporary appointments are subject to the following restrictive conditions.

19. Staff rule 4.12(a) and sec. 2.1 of ST/AI/2010/4/Rev.1 (Administration of temporary appointments), provide that a temporary appointment may be granted for a single or cumulative period of less than one year. Any extension beyond one year can only have been made exceptionally. Section 14 of ST/AI/2010/4/Rev.1 exceptionally permits a temporary appointment to be extended beyond 364 days, up to a maximum of 729 days.

20. Section 2.7 of ST/AI/2010/4/Rev.1 provides that “[u]pon reaching the limit of service under one or several successive temporary appointments as set out in the present section, or, exceptionally, 729 days as permitted under section 14 [...], the staff member shall be required to separate from the Organization”.

21. It is common ground that on 6 December 2018, the Applicant joined the Organization on a temporary appointment, which expired on 6 March 2019. Following the expiration of that appointment, the Applicant separated from service. On 1 April 2019, twenty-seven days after his separation, the Applicant re-joined the Organization on a temporary appointment. On 30 December 2020, the Applicant reached the maximum 729 days limit of service permissible on a temporary appointment. The Applicant was required to separate from the Organization on that date as per sec. 2.7 of ST/AI/2010/4/Rev.1. The Applicant has not shown that even in the event he had received a satisfactory performance review, his appointment could have been extended beyond 30 December 2020 given the relevant legal framework. Considering these circumstances, the Tribunal finds that the Applicant has not *prima facie* established that the non-renewal of his temporary appointment on 30 December 2020 was unlawful.

22. Consequently, the Applicant has not established that the contested administrative decision was *prima facie* unlawful.

Urgency and irreparable harm

23. As the Applicant has not satisfied the requirement of *prima facie* unlawfulness, it is not necessary for the Tribunal to examine the two other conditions, namely urgency and irreparable harm.

IT IS ORDERED THAT:

24. In light of the above, the application for suspension of action is rejected.

(Signed)

Judge Joelle Adda

Dated this 7th day of January 2021