



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**

AND

ON REQUEST FOR ANONYMITY

Counsel for Applicant:
Marcos Zunino, OSLA

Counsel for Respondent:
Marcus Joyce, UN Women
Prue Smith, UN Women

Introduction

1. On 23 March 2021, the Applicant, a staff member with the United Nations Entity for Gender Equality and the Empowerment of Women (“UN Women”), filed an application requesting, under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure, suspension of action pending management evaluation of the decision to temporarily reassign the Applicant pending investigation.

Factual background

2. The Applicant works in the UN Women’s country office.

3. In April 2020, the Office of Internal Oversight Services (“OIOS”) opened an investigation into the allegations made against the Applicant.

4. Between July and September 2020, UN Women received four memoranda from the Ethics Office recommending that UN Women take measures to protect four of its personnel from possible retaliation. The recommended measures included the recusal of the Applicant from exercising any role in the contract renewal exercise for the four personnel.

5. On 20 October 2020, following a phone conversation, the Applicant’s supervisor informed the Applicant in writing that she was temporarily reassigned to the Regional Office “in the context of the ongoing investigation” and “to mitigate the risk of retaliatory action occurring”. The Applicant’s supervisor further informed the Applicant that a “reassignment is an administrative measure and does not constitute a disciplinary measure” and it “does not prejudice the outcome of any investigation or any disciplinary process”.

6. On the same day, the Applicant received terms of reference for her temporary position.

7. On 30 October 2020, the Applicant went on sick leave.

8. On 23 March 2021, the Applicant filed a request for management evaluation of the contested decision.

9. On 23 March 2021, the Applicant filed the present application for suspension of action.

10. On 25 March 2021, the Respondent filed the reply.

11. On 26 March 2021, the Applicant filed a motion for leave to file a rejoinder to the reply along with a proposed rejoinder.

Consideration

12. 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.

13. Having reviewed the papers before it, the Tribunal finds that the Applicant has failed to establish a case of particular urgency for the reasons below.

Urgency

14. Urgency is relative and each case will turn on its own facts, given the exceptional and extraordinary nature of such relief. If an applicant seeks the Tribunal's assistance on an urgent basis, she or he must come to the Tribunal at the first available opportunity, taking the particular circumstances of her or his case into account (*Evangelista* UNDT/2011/212). The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the applicant (*Villamorán* UNDT/2011/126; *Dougherty* UNDT/2011/133; *Jitsamruay* UNDT/2011/206).

15. The Applicant submits that the case is particularly urgent as the continuous effect of the contested decision means that everyday the Applicant remains away from her post she suffers additional damage to her reputation and health. In the rejoinder, the Applicant adds that since the contested decision is continuous, the urgency is sustained throughout its implementation. The Applicant further argues that the situation is now particularly urgent since the investigation is still ongoing, the contested decision is still continuing, and her sick leave is expected to end.

16. In response, the Respondent submits that the prerequisite of urgency is not met since the Applicant was notified of the contested decision on 20 October 2020 and yet she waited until 23 March 2021, that is over five months, before filing the present application for suspension of action.

17. The Tribunal notes that the Applicant was indeed notified of the contested decision on 20 October 2020 and yet she only filed the present application on 23 March 2021. The Applicant does not offer any explanation as to why she waited over five months before filing the present application. While the Applicant mentions that she has been on sick leave, the Tribunal notes that she went on sick leave 10 days after she was notified of the contested decision. Therefore, the Tribunal finds that any urgency in this case was created by the Applicant.

18. The Tribunal notes that the Applicant argues that the matter continues to be urgent due to the continuous nature of the contested decision. However, the fact that the contested decision is continuing and thus is not fully implemented would only be a relevant argument with respect to the question of the receivability which is not in dispute in this case. The alleged continuing nature of the contested decision is therefore not relevant with respect to the question of particular urgency. It does not change the fact that the Applicant was notified of the decision in October 2020 and yet failed to come to the Tribunal at the first available opportunity.

19. Accordingly, the Tribunal finds that the requirement of particular urgency is not satisfied.

Prima facie unlawfulness and irreparable harm

20. As the Applicant has not satisfied the requirement of urgency, the application fails and there is no need to examine the other two conditions, namely *prima facie* unlawfulness and irreparable harm.

Request for anonymity

21. The Applicant requests that her name, the country where she serves, and her country of residence be anonymized in published court orders due to the utmost sensitivity of her medical information referenced in the application.

22. Article 11.6 of the Dispute Tribunal’s Statute and art. 26 of its Rules of Procedure provide that the judgments of the Dispute Tribunal shall protect personal data and shall be made available by the Registry of the Dispute Tribunal. The Appeals Tribunal has held in this regard that “the names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and, indeed, accountability” (*Lee* 2014-UNAT-481). The Appeals Tribunal’s practice establishes that the principle of publicity can only be departed from where the applicant shows “greater need than any other litigant for confidentiality” (*Pirnea* 2014-UNAT-456) and that it is for the party making the claim of confidentiality to establish the grounds upon which the claim is based (*Bertucci* 2011-UNAT-121).

23. The Tribunal has not referred to any of her medical information in the present order. However, considering that investigations on allegations of misconduct are confidential, the Applicant’s request for anonymity is granted.

IT IS ORDERED THAT:

24. In light of the above, the Tribunal orders that:

- a. The application for suspension of action is rejected; and

- b. The Applicant's request for anonymity is granted.

(Signed)

Judge Joelle Adda

Dated this 26th day of March 2021