



Before: Judge Joelle Adda
Registry: New York
Registrar: Pallavi Sekhri, Officer-in-Charge

SIMILOWSKI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Jenny Kim, ALD/AS/OHR/UN Secretariat

Introduction

1. On 21 November 2022, the Applicant, a staff member with the United Nations Integrated Office in Haiti (“BINUH”), filed a second application seeking suspension of the implementation of the decision not to renew her temporary appointment beyond its expiration (“the contested decision”), pending management evaluation.

2. Together with the application for suspension of action, the Applicant also filed a motion for suspension of the contested decision during the pendency of the Tribunal’s consideration of this application (a so-called Villamoran-type request).

3. By regular email of 21 November 2022, the Registry acknowledged receipt of the application and ordered the Respondent to file his reply by 12:00 p.m. on 23 November 2022, including submissions on the Respondent’s confirmation to the Tribunal that the Administration had decided to suspend the contested non-renewal decision during the pendency of the management evaluation process, as noted in Order No. 094 (NY/2022). The undersigned Judge further informed the parties that the motion for interim suspension was granted, and the present Order is issued, in part, to reaffirm this instruction.

Background

4. The Applicant had filed her first application in respect of the contested decision on 10 October 2022. Following the Respondent’s confirmation to the Tribunal that the Administration had decided to suspend the contested non-renewal decision during the pendency of the management evaluation process, and extend her appointment until 23 November 2022, the Tribunal issued Order No. 094 (NY/2022) noting the matter had become moot in light of the Respondent’s decision.

5. In her second 21 November 2022 application, the Applicant states that on 17 November 2022, she contacted the Chief of Mission Support, asking for the BINUH to extend her contract further “by a couple of weeks, to allow for the outcome of the Management Evaluation Request to be communicated”. The Applicant states that the

Chief replied that the Applicant's contract had been extended until 23 November 2022. The Applicant states that later on 17 November 2022, she received a check-out memo dated for 23 November 2022, to which she expressed her surprise. At this time, the Applicant had not received the outcome of her pending management evaluation.

6. On 22 November 2022, the Respondent filed his reply in which he, *inter alia*, states that,

...

The Application is moot. The Applicant's request for management evaluation is no longer pending.

...

On 21 November 2022, the Under-Secretary-General for Management Strategy, Policy and Compliance upheld the contested decision [...]. Pursuant to Article 2(2) of the Statute, the Dispute Tribunal may only suspend the implementation of an administrative decision during the pendency of the management evaluation. Since the management evaluation has been completed, there is no longer any basis for the Applicant's request for suspension of the implementation of the contested decision and the Dispute Tribunal does not have jurisdiction to hear the Application.

...

Consideration

Request for Villamoran type Order

7. 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".

8. In *Villamoran* 2011-UNAT-160, the Appeals Tribunal upheld this Tribunal's *Villamoran* 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 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.

9. In her application, the Applicant submitted that on 17 November 2022 she received a check-out memo dated for 23 November 2022. At this time, she had not received a response to her request for management evaluation.

10. On 21 November 2022, when the Applicant filed her second application contesting the decision indicated in the check-out memo to not renew her temporary appointment past 23 November 2022. In order for the Tribunal to seek and consider the Respondent's reply to the suspension of action application, the Tribunal ordered the Respondent to not undertake, as from 21 November 2022, any further steps regarding the contested decision.

Request for Order on Suspension of Action

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. For an application for suspension of action to be receivable, a response to a request for management evaluation must therefore be pending.

12. The Respondent informs the Administration that the Applicant's request for management evaluation is no longer pending and appends a response from the Management Evaluation Unit dated 21 November 2022.

13. The Tribunal therefore concludes that no management evaluation is any longer pending regarding any decision, which the Applicant challenges in the present application for suspension of action.

Conclusion

14. The application for suspension of action is rejected as not receivable.

(Signed)

Judge Joelle Adda

Dated this 23rd day of November 2022