



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/012
Order No.: 035 (NY/2023)
Date: 28 April 2023
Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

HANNINA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

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

Counsel for Applicant:

Manuel Calzada

Counsel for Respondent:

Halil Göksan, DAS/ALD/OHR, UN Secretariat

Introduction

1. On 23 April 2023, the Applicant, a staff member with the United Nations Support Mission in Libya (“UNSMIL”), 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 put her on administrative leave with pay (“ALWP”) pursuant to staff rule 10.4.

2. Upon the instructions of the Tribunal, the Respondent filed his reply on 27 April 2023.

3. On 28 April 2023, the Applicant filed a response to the Respondent's reply.

Factual background

4. On 22 April 2022, the Office of Internal Oversight Services (“OIOS”) received a complaint implicating the Applicant in prohibited conduct.

5. On 26 May 2022, OIOS referred the matter to UNSMIL for appropriate action in accordance with the provisions of ST/AI/2017/1. On 5 January 2023, the Special Representative of the Secretary-General for Libya and Head of Mission (“SRSG”) UNSMIL established a panel for a fact-finding investigation (“Panel”).

6. On 5 January 2023, the SRSG/UNSMIL informed the Applicant about the establishment of the Panel and requested her to cooperate fully with the investigation.

7. By email dated 11 April 2023, the Chief, Regional Conduct and Discipline Section (“C/RCDS”) wrote to the SRSG/UNSMIL *inter alia* recommending placing the Applicant’s on ALWP.

8. By letter dated 19 April 2023, the SRSG/UNSMIL placed the Applicant on ALWP for an initial period of three months *inter alia* “in order to protect the work of

the fact-finding panel as well as to avoid any prejudice to the interests or reputation of the Organization.”

9. By email dated 20 April 2023, the Chief Human Resources Officer, (“CHRO”) transmitted the contested decision to the Applicant.

10. On 23 April 2023, the Applicant filed a request for management evaluation and the present application.

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.

Urgency

12. 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. The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions.

13. The Applicant argues that this case is urgent on the grounds that “[t]he placing of the Applicant on administrative leave with pay, possibly extending to the end of theoretical disciplinary proceedings constitutes constructive dismissal of the Applicant, which is the intended malicious purpose of the placement in the first instance”.

14. The Respondent states that the Applicant has failed to demonstrate any case of particular urgency with respect to her placement on ALWP. The Respondent submits that the Applicant invokes in her reasoning on urgency a mere allegation without any supporting evidence, and it does not make any reference to why this renders the matter as urgent.

15. Upon review of the submissions, the Tribunal finds that the Applicant has failed to demonstrate the particular urgency of this case. The Applicant has been placed on ALWP for a three-month period and the contested decision will be regularly reviewed. The Tribunal notes that the contested decision is a temporary administrative measure intended to ensure the prompt completion of the work of the Panel. There is no indication that the decision adversely impacts the Applicant's terms or conditions of appointment. The Applicant's allegation of malice intent or assertion that the contested decision amounts to constructive dismissal is not supported by any evidence. At this stage, the outcome of the investigation cannot be foretold, and the process may end with a closure of the matter with no action, or it may be closed with managerial, administrative or disciplinary action.

16. Accordingly, the Tribunal finds that the Applicant has not established that there is a case of particular urgency in this case.

Prima facie unlawfulness and irreparable harm

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

Conclusion

18. In light of the above, the Tribunal orders that the application for suspension of action is rejected.

(Signed)

Judge Joelle Adda

Dated this 28th day of April 2023