



Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

BEN MADI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON SUSPENSION OF ACTION
PENDING MANAGEMENT
EVALUATION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
André Luiz Pereira de Oliveira, UNFPA
Elizabeth Ann Interlandi, UNFPA

Introduction

1. On 11 December 2023, the Applicant, a local Security Associate, in Tripoli, Libya with the United Nations Population Fund (“UNFPA”), filed an application 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 fixed-term appointment beyond its expiry on 31 December 2023.

2. By email of 12 December 2023, the Registry acknowledged receipt of the application and served it on the Respondent and, on behalf of the Tribunal, instructed him to file a reply by 15 December 2023.

3. On 14 December 2023, after close of business, the Respondent filed a reply contending that the application is without merit.

Factual background

4. On 4 December 2023, the Applicant received a letter from a UNFPA Director for Human Resources informing him that his fixed-term appointment would not be renewed beyond its expiry date of 31 December 2023 due to “lack of funds in the Libya Country Office of [his]post; Grade/Level: GS-7, Title: Local Security Associate, Position Number: 136314”.

Consideration

5. 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.

The Applicant's submissions on the merits of the case and the scope of the case

6. In the application, the Applicant sets out his submissions on why he believes that the contested decision regarding the non-renewal of his fixed-term appointment was unlawful as follows:

Suspension of Action During an Investigation at UNFPA

When misconduct allegations are made against a UNFPA staff member, the organization may take several steps to ensure a fair and impartial investigation, including the temporary suspension of the staff member from their duties. This suspension aims to:

Protect the integrity of the investigation: By removing the staff member from their regular duties, UNFPA can prevent them from influencing witnesses, tampering with evidence, or otherwise impeding the investigation.

Protect the interests of the complainant and the staff member: The suspension can help to ensure that both parties are treated fairly and that the investigation is free from bias or intimidation.

Maintain the reputation of UNFPA: By taking action to address misconduct allegations, UNFPA can demonstrate its commitment to upholding its values and ethical standards.

The decision to suspend a staff member is taken on a case-by-case basis, considering factors such as:

UNFPA Policies and Procedures Manual Disciplinary Framework:
https://www.unfpa.org/sites/default/files/admin-resource/OAIS_Disciplinary_Framework.

7. The Appeals Tribunal has consistently held that “the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review”. When defining the issues of a case, the Appeals Tribunal further held that “the Dispute Tribunal may consider the application as a whole”. See *Fasanella* 2017-UNAT-765, para. 20, as affirmed in *Cardwell* 2018-UNAT-876, para. 23.

8. In the present case, in the application under the heading, “Details of the decision you seek to suspend”, the Applicant explicitly only contests the non-renewal of his fixed-term appointment. No reference is made to any UNFPA investigation to

which he is otherwise referring in his submissions. Also, when closely perusing the casefile, the Tribunal cannot identify any other actual administrative decision(s), which the Applicant might reasonably wish to challenge.

9. The Tribunal therefore finds that the only administrative decision under review is the decision not to renew his fixed-term appointment as per the letter of 4 December 2023.

Prima facie unlawfulness

10. 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 in fact unlawful. The test is not particularly onerous since all the Tribunal is required to do at this stage is to examine the material in the application and to form an opinion as to whether it appears that, if not rebutted, the claim will stand proven. Any such opinion is not a finding by the Tribunal and is certainly not binding should the matter go to trial on the merits. It is merely an indication as to what appears to be the case at the suspension of action stage. Whether or not this initial impression is well-founded or not is a matter for determination after a full examination of the evidence in the event that a substantive claim is filed.

11. The Respondent submits that the Applicant's fixed-term appointment is not renewed due to loss of funding. He submits as evidence an Excel spreadsheet from which follows that the Applicant's post, with position no. 13631(last number is not readable), is 50 percent financed through a "fund code" labelled "JPD56". From another document of 13 December 2023, it follows that whereas an "[a]greement" regarding fund code JPD56 began on 13 December 2022, it ended on 31 December 2023. Under the heading "Current Extension", the relevant field is thereafter left blank and not indicating any extension.

12. The Tribunal notes that the Appeal Tribunal has held that lack of funding is a valid reason for not renewing a staff member's appointment (see, for instance, *Nouinou* 2019-UNAT-902, *Abdeljalil* 2019-UNAT-960, *Abu Ouda et al.* 2020-UNAT-1018, and *El Najjar* 2020-UNAT-1028). Also, as follows from the evidence produced by the Respondent, the fund code, or budget line, from which the Applicant's post received 50 percent of its financing, namely JPD56, will end on 31 December 2023, which appears to indicate that this funding is no longer available.

13. Accordingly, the Tribunal finds that since the Respondent has adequately established that the Applicant's post has lost its funding, the reason for the non-renewal of the Applicant's fixed-term appointment would also appear to be proper and correct. At the same time, the Tribunal notes that the onus is on the Applicant to prove any ulterior motives (see, for instance, the Appeals Tribunal in *Kisia* 2020-UNAT-1049 and *Najjar* 2021-UNAT-1084) but finds that he has not provided any evidence to show any ill-motivation. On a *prima facie* basis, the contested decision therefore seems to be lawful.

14. Since one of the three cumulative conditions to grant a suspension of action is not met, it is not necessary to address the two other conditions, namely, urgency and irreparable harm.

15. In light of the above

IT IS ORDERED THAT:

16. The application for suspension of action is rejected.

(Signed)

Judge Joelle Adda

Dated this 15th day of December 2023

Entered in the Register on this 15th day of December 2023

(Signed)

Isaac Endeley, Registrar, New York