



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/007
Order No.: 021 (NY/2024)
Date: 22 February 2024
Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

HANNINA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Shubha Suresh Naik, OSLA

Counsel for Respondent:
Halil Göksan, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is the Chief of Mission Support (“CMS”) at the United Nations Support Mission in Libya (“UNSMIL”). On 15 February 2024, she filed an application for suspension of action contesting the Administration’s decision to extend the duration of her placement on administrative leave with pay (“ALWP”).

2. On 20 February 2024, at the Tribunal’s direction, the Respondent filed his reply stating that the application is “meritless” because the Applicant “has not met the three conditions for granting an order for suspension of action”.

Factual background

3. On 22 April 2022, the Office of Internal Oversight Services (“OIOS”) received a complaint from a former staff member with UNSMIL implicating the Applicant in prohibited conduct.

4. On 26 May 2022, OIOS referred the matter to UNSMIL for appropriate action in accordance with the provisions of ST/AI/2017/1, the Administrative Instruction on Unsatisfactory conduct, investigations and the disciplinary process.

5. On 5 January 2023, the Special Representative of the Secretary-General for Libya and Head of Mission, UNSMIL (“the SRSG”) established a fact-finding panel to investigate the matter.

6. On 23 January 2023, the SRSG informed the Applicant of the establishment of the fact-finding panel and requested her to cooperate fully with the investigation.

7. By letter dated 19 April 2023, the SRSG notified the Applicant of his decision to place her on ALWP, for an initial period of three months. The SRSG determined that “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”, it was best to place the Applicant on administrative leave.

8. On 23 April 2023, the Applicant sought to contest the decision to place her on ALWP by simultaneously filing a management evaluation request (“MER”) and an application for suspension of action (“SOA”) before the Dispute Tribunal. Both the MER and the SOA were rejected.

9. On 12 July 2023, the SRSG extended the Applicant’s placement on ALWP by three months to 19 October 2023.

10. On 1 September 2023, the Applicant filed an application on the merits before the Dispute Tribunal contesting the decision to place her on ALWP. That application remains pending before the Tribunal.

11. On 13 October 2023, the Applicant’s ALWP was extended for another three months until 18 January 2024.

12. On 27 October 2023, UNSMIL advertised a temporary job opening (“TJO”) for the position of CMS with an application period of 27 October 2023 to 2 November 2023. The TJO announcement stated that the post would be temporarily available until 18 January 2024.

13. On 30 October 2023, the Applicant simultaneously filed a MER as well as an SOA application before the Dispute Tribunal. Both the MER and the SOA application were rejected.

14. On 11 January 2024, the Applicant’s ALWP was further extended for another three months until 19 April 2024.

15. In a letter dated 5 February 2024, the SRSG notified the Applicant of the findings of the fact-finding panel. He informed her that based on the panel's findings substantiating the allegations of possible misconduct, he had decided to refer the matter to the Office of Human Resources ("OHR") at United Nations Headquarters in New York.

16. On 14 February 2024, the Applicant filed a MER challenging the latest extension of her placement on ALWP.

17. On 15 February 2024, she filed the present application for SOA.

Considerations

Receivability of the application for suspension of action

18. Under art. 2.2 of the Dispute Tribunal's Statute and art. 13.1 of its 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.

19. In the present case, the Applicant is seeking suspension of the decision, dated 11 January 2024, to further extend the duration of her placement on administrative leave with pay ("ALWP"). She was first notified of her placement on ALWP, for an initial period of three months ending in July 2023, through the SRSG's letter dated 19 April 2023. The ALWP was subsequently extended in July and October 2023 for further periods of three months.

20. The Tribunal notes that in the letter of 11 January 2024, the SRSG states that his decision to extend the Applicant's placement on ALWP for an additional three months, or

until the completion of a disciplinary process, is “pursuant to Staff Rule 10.4(a) and sections 11.3(b) and 11.3(c) of ST/AI/2017/1”.

21. Staff rule 10.4(a) provides as follows (emphasis in the original):

Administrative leave pending investigation and the disciplinary process

(a) A staff member may be placed on administrative leave, under conditions established by the Secretary-General, at any time after an allegation of misconduct and pending the completion of a disciplinary process. Administrative leave may continue until the completion of the disciplinary process.

22. Sections 11.3(b) and (c) of ST/AI/2017/1 stipulate (emphasis in the original):

Administrative leave with pay

11.3 The decision to place a staff member on administrative leave with pay may be made by the authorized official at any time following a report of suspected unsatisfactory conduct and following the authorized official’s determination that at least one of the following circumstances is met:

(b) Continued service by the staff member would create a risk that the staff member could destroy, conceal or otherwise tamper with potential evidence, or interfere in any way with the investigation or disciplinary process, including by retaliating against individuals protected under ST/SGB/2017/2 or intimidating a witness;

(c) The continued presence of the staff member on the Organization’s premises or at the duty station could constitute a security or financial risk to the Organization and/or its personnel, or could otherwise prejudice the interests or reputation of the Organization;

Irreparable damage

23. The Tribunal recalls that irreparable damage is a loss that cannot be adequately compensated through a monetary award (*Khalouta* Order No. 138 (NY/2014)). It is generally accepted that mere financial loss is not enough to satisfy the requirement of irreparable damage (*Evangelista* UNDT/2011/212). Depending on the circumstances of the case, sudden loss of employment, harm to health, or harm to professional reputation and

career prospects may constitute irreparable damage. The onus is, however, on the Applicant to demonstrate, with specificity, that irreparable damage will occur and must not be speculative (*Nwuke* UNDT/2011/107).

24. In terms of the claim of irreparable damage caused to her, the Applicant submits that her continued placement on ALWP “is badly affecting the public/staff perception of her position as a CMS” and that the recent recruitment of a temporary CMS at UNSMIL “will definitely lead to speculation that the Applicant is not coming back”. She adds that even when she returns to her post, “she will have to painstakingly re-establish her credibility and authority among her superiors, peers and subordinates and rehabilitate her professional image and career”.

25. The Applicant also states that in addition to the “professional impact of the SRSG’s decision” to extend her placement on ALWP, “the decision has also had a physiological and mental impact” on her health. She asserts that her “ongoing medical conditions have been [exacerbated] requiring adjustments to her medications and she is presently under the care of a mental health professional”.

26. The Tribunal notes that the contested decision concerns the decision to extend the Applicant’s placement on ALWP for an additional three months while allegations of possible misconduct brought against her, substantiated by the conclusions of the fact-finding panel, are under review by OHR in New York. It is not about a non-renewal of contract or a non-selection as is normally the case for applications for suspension of action submitted to the Tribunal (see, for example, *Chocobar* UNDT/GVA/2015/128, *Torkonoo* Order No. 168 (NBI/2014), *Baldini* Order No. 103 (NY/2013), *Zhuang* Order No. 165 (GVA/2013)), and in which the damage caused to the staff member might indeed be considered as irreparable since he or she loses employment with the United Nations or a career opportunity.

27. In the circumstances of the present case, the Tribunal considers that the Applicant has not established such irreparable damage. First, the Tribunal notes that the Applicant does not submit that she faces loss of employment or income, but rather that her placement on ALWP “is detrimental and harmful to her professional work and reputation”. Second, by arguing that “she will have to painstakingly re-establish her credibility and authority” and “rehabilitate” her professional image, she is, in fact, arguing that these aspects can be repaired. Third, the Applicant has not provided any supporting documentation, such as a medical report or the assessment of a medical expert, to substantiate her claims regarding the “physiological and mental impact” of the contested decision on her health. Under the particular circumstances of this case, however, any damage cannot be considered “irreparable”.

28. For an application for suspension of action to be successful, there must be at least an averment of irreparable harm to the Applicant, which the present application does not contain. The reasons proffered by the Applicant do not constitute grounds for a finding of irreparable damage to the Applicant. The Applicant has not shown that the implementation of the contested decision would cause her any harm that could not be compensated by an appropriate award of damages in the event the Applicant decides to file an application on the merits under art. 2.1 of the Tribunal’s Statute (*Evangelista* UNDT/2011/212).

29. Accordingly, the Tribunal finds that the Applicant has failed to demonstrate that the implementation of the contested decision would cause her irreparable damage, and the present application stands to be dismissed.

Prima facie unlawfulness and particular urgency

30. As the Applicant has not satisfied the requirement of proving that she will suffer irreparable damage if the contested decision is implemented, the application fails and there is no need to examine the conditions of *prima facie* unlawfulness and particular urgency.

In light of the above,

IT IS ORDERED THAT:

31. The application for suspension of action is rejected.

(Signed)

Judge Joelle Adda

Dated this 22nd day of February 2024

Entered in the Register on this 22nd day of February 2024

(Signed)

Isaac Endeley, Registrar, New York