UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NY/2024/035
Order No.:	089 (NY/2024)
Date:	23 August 2024
Original:	English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

HOUSSAINI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON APPLICATION FOR SUSPENSION OF ACTION PENDING MANAGEMENT EVALUATION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alhagi Marong, UNECA

Introduction

1. On 16 August 2024, the Applicant, a staff member of the Economic Commission for Africa ("ECA) based in the Sub-Regional Office for North Africa ("SRO-NA") in Rabat, Morocco, filed an application seeking the suspension, pending management evaluation, of the decision to laterally reassign her to the ECA's Sub-Regional Office for Central Africa ("SRO-CA") in Yaoundé, Cameroon.

2. On 21 August 2024, the Respondent filed a reply stating that the contested decision was "a legitimate exercise of the Executive Secretary's discretion, made in good faith and did not violate any mandatory procedures".

Considerations

Requirements for an application for suspension of action

3. 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. These requirements are cumulative and the Dispute Tribunal can suspend the contested decision only if all three have been met.

4. The Tribunal recalls that under the consistent jurisprudence of the Appeals Tribunal, it is well established that while the Secretary-General has broad discretionary authority in administrative matters, such authority is not unfettered and is subject to judicial review. (See, for instance, *Farhadi* 2022-UNAT-1203 and *Samamdarov* 2018-UNAT-859.) Moreover, "[w]hen judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate". The Dispute Tribunal "can consider whether relevant matters have

been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse". (*Sanwidi* 2010-UNAT-084, para. 40.) As the Appeals Tribunal has also stated, "[t]he Administration has an obligation to act in good faith and comply with applicable laws. Mutual trust and confidence between the employer and the employee are implied in every contract of employment. Both parties must act reasonably and in good faith". (*Mancinelli* 2023-UNAT-1339, para. 60.)

5. Specifically regarding transfers, as the Appeals Tribunal has stated (see, *Chemingui* 2019-UNAT-930, paras. 39 and 40, as also affirmed in *Dieng* 2021-UNAT-1118 and *Silva* 2022-UNAT-1223):

> … It is undeniable that the Secretary-General … has broad discretion in staff management, including reassignment or transfer. However, such discretion is not unfettered. The principle of good faith and fair dealings still applies. A reassignment decision must be properly motivated, and not tainted by improper motive, or taken in violation of mandatory procedures. It can then be impugned if it is found to be arbitrary or capricious, motivated by prejudice or extraneous factors, or was flawed by procedural irregularity or error of law. [Reference to footnote omitted.]
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> 40. As settled in our jurisprudence, an accepted method for determining whether the reassignment of a staff member to another position was proper is to assess whether the new post was at the staff member's grade; whether the responsibilities involved corresponded to his or her level; whether the functions to be performed were commensurate with the staff member's competence and skills; and, whether he or she had substantial experience in the field.

6. In *Silva* 2022-UNAT-1223, the Appeals Tribunal further explained that "[i]t cannot be concluded [from *Chemingui*] that the Appeals Tribunal established a need for prior consultation as a procedural prerequisite in every reassignment case" (see para. 74). Also, "[c]onsultation means the provision of information about the intended administrative decision and an opportunity for the staff member to comment thereon" (see, para. 75). In *Leboeuf* et al. 2015-UNAT-568, the Appeals Tribunal affirmed that consultations are not negotiations and consent or agreement is, as such, not necessary (see. para. 91).

7. At the same time, the Appeals Tribunal has established that the Administration owes a duty of care to staff members to ensure their safety and

security. In *AAG* 2022-UNAT-1308, for instance, the Appeals Tribunal held that "Staff Regulation 1.2(c) establishes a duty of care of the Organization towards its staff members. It stipulates the authority of the Secretary-General to assign staff members to any of the activities or offices of the United Nations. In exercising this authority, the Secretary-General should seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them. [Reference to footnote omitted.] The duty of care must be exercised with reasonable discretion, necessary for the managerial process to run, manage and operate the Organization" (see para. 69).

8. The Tribunal notes that in making the contested decision, the Executive Secretary of the ECA relied on the Secretary-General's bulletin ST/SGB/2019/2 (Delegation of authority in the administration of the Staff Regulations and Rules and the Financial Regulations and Rules) and specifically on staff regulation 1.2(c) of the Staff Regulations and Rules of the United Nations, which provides (emphasis in the original):

> **Regulation 1.2**
> **Basic rights and obligations**
> **Core values**
>
> …
>
> (c) Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations. In exercising this authority, the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them;

9. In the present case, the Applicant is seeking suspension of the decision, dated 1 August 2024, to laterally reassign her from her current position in the SRO-NA to another position, at the same level, in the SRO-CA. The Tribunal will consider whether the three criteria to order a suspension of action have been satisfied.

Prima facie *unlawfulness*

10. The Applicant submits that on 31 July 2024, while she was on annual leave, she "was informed of the transfer by phone". Despite expressing concerns "due to health and family issues", the contested decision was finalized and sent to her the next day, on 1 August 2024. She alleges a lack of consultation by the ECA Administration and asserts that her health concerns were not taken into account. She also states that the Organization failed in its duty of care by not considering her family responsibilities, including the fact that she is "a single parent and the primary caregiver for [her] elderly parents, both of whom require ongoing medical care". Moreover, she submits that the classification of the proposed new duty station, Yaoundé, "as a hardship zone could worsen [her] health and complicate [her] family responsibilities". Her mother, a "[secondary] dependent" presumably officially recognized as such by the Organization, "is scheduled for surgery". She further asserts that "[m]edical professionals advise against the move due to the need for specialized care" for herself and her family members.

11. The Respondent contends that the Secretary-General has broad discretion to reassign staff members and that a reassignment is proper "if the new post is at the staff member's grade; the responsibilities involved correspond to his/her level; the functions to be performed are commensurate with the staff member's competencies and skills; and she/he has substantial experience in the field". According to the Respondent, the decision to reassign the Applicant from the SRO-NA to the SRO-CA "met all these criteria" and "the Applicant has not discharged the burden of proof incumbent upon her".

12. The Respondent also asserts that as part of the Organization's duty of care, it seeks to ensure that all necessary safety and security arrangements are made for staff to perform their duties. In this particular case, the Respondent states that in the July 2024 hardship classification prepared by the International Civil Service Commission, "Yaoundé is a category B duty station", which places it "on the same level as Addis Ababa, the Headquarters of the ECA". The Respondent maintains that "the Applicant was sufficiently consulted" as the ECA "telephoned the

Applicant and informed her" of the reassignment on 31 July 2024 before issuing the contested decision on 1 August 2024.

13. Having examined the facts of this case, the Tribunal is not satisfied that the contested decision is lawful, rational or was arrived at in a procedurally correct manner. The Tribunal is also of the view that the decision is both absurd and perverse.

14. The Respondent does not dispute the fact that it was while the Applicant was on annual leave that she was first informed by telephone, on 31 July 2024, of the decision to laterally reassign her to another duty station in a different country. Despite the fact that she expressed concerns about her health situation and her family responsibilities, these relevant factors do not appear to have been taken into consideration by the ECA Administration. Instead, barely 24 hours later, on 1 August 2024, the contested decision was formalized in a memorandum and sent to the Applicant.

15. The Respondent argues that "it is not required to seek the staff member's consent to a reassignment decision". Although the Tribunal is aware that the agreement of the staff member is not necessary, it observes that the Administration has an obligation to act reasonably and in good faith towards staff members. The relationship between employer and employee must be based on mutual trust and confidence. These values are undermined when the Administration acts unilaterally, without adequate consultation, and merely presents the staff member with a *fait accompli*. A 24-hour notice period for such an important career and life event can hardly be considered adequate.

16. Further, there is also no indication from the Respondent's submissions that before finalizing the transfer decision, the ECA Administration made any effort to review the Applicant's family responsibilities, her health situation or the medical records of her elderly parents for whom she is the primary caregiver. The Administration appears not to have given any serious consideration to the Applicant's concerns.

17. Furthermore, in support of the claim that the Secretary-General usually ensures that all necessary safety and security arrangements are made for staff members to perform the duties assigned to them, the Respondent provides a copy of information circular ST/IC/2000/70 (Medical evacuation) dated 21 September 2000. Presumably, the reason for producing this document is to show that Cameroon has adequate medical facilities comparable to Morocco's.

18. The Tribunal observes that not only is the document almost 24 years old—and therefore completely outdated—but it does not even list Morocco among the countries with recognized medical facilities. Given the constantly evolving situation in many developing countries, and the seriousness of the Applicant's health and medical concerns as expressed in her application, it is patently absurd to base such an important, life-changing decision on an information circular from the year 2000.

19. For the above reasons, the Tribunal finds that the contested decision is *prima facie* unlawful.

Particular urgency

20. The Respondent submits that since the decision to transfer the Applicant was made on 1 August 2024 and it is to take effect on 1 October 2024, this "provides sufficient time for the Applicant to organize her personal affairs in Rabat and relocate to Yaoundé to take up her new position". Therefore, according to the Respondent, the Applicant has failed to demonstrate urgency.

21. The Tribunal is of a different view. Such a momentous decision that would require the Applicant, as a single mother, to uproot her family, including her children and her ailing parents, and relocate to a foreign country surely requires considerable amounts of time, thought and effort. Among other things, the Applicant would need to pack and move out of her current residence, arrange for the shipment of her household belongings, find adequate accommodations for her family in the new duty station, enrol her children in appropriate schools in the middle of the academic year, and find qualified physicians locally to continue monitoring not only her own health but also the health of her elderly parents, "both

of whom require ongoing medical care". This not a case of self-inflicted urgency and even in the best of circumstances, these are difficult, time-consuming activities.

22. Accordingly, the Tribunal finds that the Applicant has satisfied the requirement of particular urgency.

Irreparable damage

23. The Respondent submits that the Applicant has failed to show that implementation of the contested decision would result in "harm that could not be remedied through ordinary legal processes". In the Respondent's view, since the Applicant is being transferred to another position "at the same professional level", this would "neither lead to financial disadvantage nor would it negatively impact her managerial responsibilities or career prospects".

24. The Tribunal notes that despite the Applicant's expression of concern regarding her health condition as well as the health of her elderly parents for whom she is the primary caregiver, the Administration does not appear to have made any efforts to request or review the relevant medical records before making the contested decision. The Applicant's assertion that medical professionals have advised her against the move to Yaoundé remains undisputed. Instead, the Administration seems to have considered only the financial or career aspects of the Applicant's claims.

25. As this Tribunal has stated in the past, "[i]t is generally accepted that mere financial loss is not enough to satisfy the requirement of irreparable damage. Depending on the circumstances of the case, harm to professional reputation and career prospects, harm to health, or sudden loss of employment may constitute irreparable damage" (*Evangelista* UNDT/2011/212, para. 26; *Hannina* Order No. 021 (NY/2024)).

26. In the present case, without disclosing details of the Applicant's medical history in this public order, the Tribunal finds that she has demonstrated that implementation of the contested decision would result in irreparable harm to her health.

27. In conclusion, the Tribunal is satisfied that the Applicant has met all the requirements for a suspension of action by showing that the contested decision appears *prima facie* to be unlawful, that this is a case of particular urgency, and that implementation of the decision would cause irreparable damage.

28. In light of the above,

IT IS ORDERED THAT:

29. The application for suspension of action is granted.

(*Signed*)

Judge Joelle Adda

Dated this 23rd day of August 2024

Entered in the Register on this 23rd day of August 2024

(*Signed*)

Isaac Endeley, Registrar, New York