



Before: Judge Francis Belle

Registry: New York

Registrar: Isaac Endeley

HERRERA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Francisco Navarro, UNHCR
Sandra Lando, UNHCR

Introduction

1. On 19 November 2024, the Applicant, a former staff member of the United Nations Refugee Agency (“UNHCR”), filed an application under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure requesting the Tribunal to suspend, pending management evaluation, the decision “to include [his] name in the ‘Clear Check Database’ for the misconduct of ‘sexual abuse and sexual harassment’”.

2. On the same date (19 November 2024), the Registry acknowledged receipt of the application and served it on the Respondent, indicating that the Tribunal had set the deadline for submitting his reply on 21 November 2024.

3. On 21 November 2024, the Respondent filed his reply. He contends that the application for suspension of action is not receivable as the contested decision had already been implemented before the filing of the application and that, in any event, none of the criteria for granting an application for suspension of action are fulfilled. The Respondent also requests that the complainant and witnesses against the Applicant be granted anonymity in the present Order.

Background

4. On 3 April 2023, the Inspector General’s Office informed the Applicant that he was the subject of an ongoing investigation following a complaint of sexual abuse filed against him on 22 November 2022 by a complainant.

5. On 2 November 2023, the “Allegations of misconduct” memorandum was issued against the Applicant, and he was invited to respond to specific allegations of “sexual exploitation and sexual abuse (SEA), and sexual harassment”. The Applicant was informed that had he not resigned from UNHCR before the conclusion of investigation, a disciplinary process would have been instituted against him. He was also notified, among other things, that “should [he] fail to provide a response within the deadline, [his] name [would] be included in ‘Clear Check’, a centralized job

candidate screening application that is accessible to the entities of the [United Nations] System Chief Executives Board for Coordination, indicating that there is a pending allegation of SEA and sexual harassment”. [The Applicant states that he only received the “Allegations of misconduct” memorandum on 13 November 2023].

6. On 20 September 2024, the Applicant was notified of the UNHCR High Commissioner’s decision to include the Applicant’s name in the ClearCheck database. This was based on a finding that it had been established by clear and convincing evidence that the Applicant committed sexual abuse and sexual harassment. Since the Applicant had already separated from service effective on 7 September 2023, no disciplinary sanction was imposed on him.

7. On 24 September 2024, the High Commissioner’s decision was implemented, and the Applicant’s name was included in the ClearCheck database.

8. On 18 November 2024, the Applicant filed his request for management evaluation of the decision to include his name in the ClearCheck database and on 19 November 2024, he filed the present application for suspension of action pending management evaluation.

Legal framework

9. 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 cases of particular urgency, and where its implementation would cause irreparable damage.

10. The Dispute Tribunal can therefore only suspend a contested decision if it has not already been implemented. Otherwise, the Tribunal has no jurisdiction to do so, and the application would therefore not be receivable.

Has the contested decision already been implemented?

11. The Applicant contends that “[t]he letter informing [him] of the High Commissioner’s decision does not specify when [his] name will be added to the Clear Check database”. He adds that from the moment when the decision will be implemented, “[his] employment prospects in the [United Nations] system and the international civil service will be eliminated”.

12. The Respondent submits that the application is not receivable “because the contested decision has already been implemented”. According to the Respondent, the Applicant was notified on 20 September 2024 of the High Commissioner’s determination that he had engaged in sexual abuse and sexual harassment. “The Applicant was further informed that his name would be included in ClearCheck” and, “[o]n 24 September 2024, the Applicant’s name was included in ClearCheck”. The Respondent’s submission is supported by an email and a screenshot tending to show that the Applicant’s name was indeed entered into the ClearCheck database on 24 September 2024.

13. The Tribunal recalls that following the well-established jurisprudence of the Dispute Tribunal regarding art. 2.2 of the Dispute Tribunal’s Statute and art. 13.1 of the Rules of Procedure, if a contested decision has already been implemented, suspension of action cannot be granted. (See, for instance, *Daskalova* Order No. 104 (NY/2024); *Stockholder* Order No. 102 (NY/2024); *Wambugu* Order No. 80 (GVA/2024); *Jocondo* Order No. 71 (NBI/2024); *Koura* Order No. 55 (NBI/2022); *Di Mario* Order No. 92 (GVA/2019); *Beda* Order No. 113 (GVA/2018); *Quesada Rafarasoa* Order No. 20 (GVA/2013); *Neault* Order No. 6 (GVA/2011); and *Abdalla* Order No. 4 (GVA/2010)).

14. In the present case, the Tribunal notes that the contested decision was notified to the Applicant on 20 September 2024 and that it was implemented on 24 September 2024. Thus, the implementation of the contested decision was not a *fait accompli*, and the Applicant had four days during which he could have challenged it before it was implemented.

15. As the Applicant filed the application before the Dispute Tribunal on 19 November 2024, almost two months after the decision to include his name in the ClearCheck database was implemented, the application for suspension of action is therefore not receivable.

Conclusion

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

(Signed)

Judge Francis Belle

Dated this 25th day of November 2024

Entered in the Register on this 25th day of November 2024

(Signed)

Isaac Endeley, Registrar, New York