



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/004
Order No.: 011 (NY/2024)
Date: 2 February 2024
Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

CHAUDHARY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION PENDING MANAGEMENT EVALUATION

Counsel for Applicant:

Martine Lamothe, OSLA

Counsel for Respondent:

Lucienne Pierre, AAS/ALD/OHR/UN Secretariat

Introduction

1. The Applicant is an Economic Affairs Officer at the P-3 level with the United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (“OHRLLC”) in New York. On 29 January 2024, he filed an application requesting, under art. 2.2 of the Dispute Tribunal’s Statute and art. 13.1 of its Rules of Procedure, the suspension, pending management evaluation, of “the decision to curtail his temporary appointment at the P-4 level and request him to immediately report to his previous P-3 post”.
2. On 31 January 2024, the Respondent filed a reply contending that the application is without merit.

Factual background

3. The Applicant commenced his employment as an Economic Affairs Officer at the P-3 level with OHRLLS in 2021. He holds a continuing appointment.
4. From 31 October 2022 to 29 November 2022, the Department of Economic and Social Affairs (“DESA”) advertised a temporary job opening (“TJO”) for an Economic Affairs Officer at the P-4 level. The Applicant applied and was selected for the position. The temporary assignment started on 13 March 2023 and was initially set to conclude on 15 October 2023 but was extended to 31 December 2023. At the Applicant’s request, OHRLLS and DESA subsequently agreed to further extend the temporary assignment to 24 July 2024.

5. On 17 January 2024, the Applicant was notified that his parent office, OHRLLS, had decided to ask for his return by 5 February 2024. In a letter dated 9 January 2024, the Under-Secretary-General for OHRLLS (“USG/OHRLLS”) requested the Executive Officer of DESA to “arrange to have [the Applicant] recalled”, stating that efforts to recruit a temporary replacement for him were

unsuccessful. She further explained that in preparation for the upcoming Third United Nations Conference on Landlocked Developing Countries, (“LLDC3”), the next session of the inter-governmental preparatory committee would take place in New York from 5 to 8 February 2024. Therefore, it was “critically important” to have the Applicant back in OHRLLS “as soon as possible, and no later than 5 February 2024”.

6. On 22 January 2024, the Applicant filed a management evaluation request (“MER”) seeking a review of the decision to recall him to his parent office and he now requests the Tribunal to suspend the implementation of the OHRLSS decision pending the outcome of the MER.

The parties’ submissions

7. The Applicant’s main contentions can be summarized as follows:

a. He “faces a difficult situation, as the sudden curtailment of the duration of the temporary appointment to 5th February affects his planning and long-term career prospects”. Among other issues, he “has embarked on conducting various research projects and papers on critical issues”, including “for a key flagship report”. These efforts would be wasted if he were to return to his parent office before 24 July 2024.

b. Agreements, such as the one authorizing the Applicant’s temporary assignment to DESA, “serve as a lawful and binding means for parties to formalize their commitments” and, thus, “impose corresponding responsibilities and obligations on the parties involved”. By breaching the agreement, OHRLLS has “failed to comply with its contractual obligations” and this has resulted in “a violation of the Applicant’s rights”, including his “rights to career progression”.

c. The temporary assignment at the P-4 level “entails a substantial salary increase” for the Applicant and, based on the additional remuneration, “he has formulated financial plans and commitments that extend up to July 2024”.

d. It is incumbent on the Administration to find a replacement to temporarily fill the Applicant's vacant P-3 post, and OHRLLS's "inability to plan and effectuate the hiring of a replacement should not constitute a justification for violating the agreement or the Applicant's rights".

8. The Respondent's principal submissions are the following:

a. The Applicant has not met the three statutory conditions under art. 2.2 of the Dispute Tribunal's Statute. The Secretary-General has a broad discretion in matters relating to organization of work, including assigning staff members to different functions. The contested decision was lawful and was a reasonable exercise of the USG/OHRLLS's managerial discretion in light of the exigencies of service.

b. The claim that the decision to curtail the temporary assignment represented a breach of the Applicant's contractual rights is meritless. A Personnel Action form reflecting a temporary assignment is not a new contract nor a new Letter of Appointment.

c. The argument that the Applicant should be allowed to continue his temporary assignment because he has embarked on various research projects on critical issues is inapposite. The discretion for determining organizational needs, including staffing requirements, lies with the Secretary-General and not with the Applicant.

d. The Applicant has not shown any particular urgency in this case. He was first notified of the contested decision on 17 January 2024 but waited until 29 January 2024 to seek a suspension of action. "A delay of ten days or more without explanation is self-created urgency".

e. The Applicant has not provided evidence that he will suffer irreparable damage as a result of the contested decision. Irreparable damage means "a loss that cannot be adequately compensated through a monetary award". Thus,

the Applicant's assertion that the contested decision would deny him the opportunity to complete research projects or would be a waste of the time and effort he has invested in the projects cannot be sustained. Similarly, the financial losses the Applicant will incur on returning to his P-3 salary do not amount to irreparable damage.

Considerations

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 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.

Irreparable damage

10. The Applicant states that he was notified on 17 January 2024 that his temporary assignment at the P-4 level with DESA was being curtailed and that he was required to return by 5 February 2024 to his parent office, OHRLLS, where he holds a continuing appointment at the P-3 level. He argues that if the contested decision is implemented, he will suffer significant harm in terms of his "rights to career progression" since the projects on which he is working in DESA "are closely aligned with his background and interests". He claims that the time and efforts he has invested in those projects will be wasted and this will be "detrimental for his career growth prospects". He also asserts that he had refrained from applying for the First Central Mobility Exercise announced in 2023 because he wanted to "accrue experience at the P-4 level with his temporary assignment", presumably before applying for the next edition of the exercise.

11. The Applicant further submits that his temporary position at the P-4 level “entails a substantial salary increase” and that he has “formulated financial plans and commitments” based on the additional remuneration. Thus, “the abrupt decision to recall him and revoke this agreement will have an unanticipated financial impact on his earnings and his ability to meet his financial needs”.

12. The Tribunal notes that the contested decision concerns the precipitated return of a staff member to his original post and grade level following a temporary assignment at a higher level. 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.

13. 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).

14. 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 he faces loss of employment, but rather that his temporary assignment has been curtailed and he is required to return to his original post. Second, if the alleged breach of the temporary assignment agreement were indeed deemed unlawful following a review of the merits of his case, an order could

be made to adequately redress the Applicant. Under these particular circumstances, any damage cannot be considered “irreparable”.

15. 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 him 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).

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

Prima facie unlawfulness and particular urgency

17. As the Applicant has not satisfied the requirement of proving that he 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:

18. The application for suspension of action is rejected.

(Signed)

Judge Joelle Adda

Dated this 2nd day of February 2024

Entered in the Register on this 2nd day of February 2024

(Signed)

Isaac Endeley, Registrar, New York