



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

CASTILLO CABRERA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON APPLICATION FOR
SUSPENSION OF ACTION

Counsel for Applicant:
Alexandre Tavadian, OSLA
Louis-Philippe Lapicerella, OSLA

Counsel for Respondent:
Marcus Joyce, ALS/OHRM, UN Secretariat

Introduction

1. On 7 March 2012, the Applicant, a Training Officer with the United Nations Integrated Mission in Timor-Leste (“UNMIT” or “Mission”), sought suspension of action, pending management evaluation, of the decision not to renew her contract beyond 19 March 2012.

2. The Applicant received the final decision that her contract would not be renewed in writing on 1 March 2012. She requested management evaluation of the decision on 7 March 2012.

3. The Applicant contends that she has a legitimate expectation of renewal and that the decision not to renew her contract was motivated by extraneous considerations. The Respondent contends that the decision was taken as a result of UNMIT’s downsizing in view of its eventual closure.

4. The New York Registry of the United Nations Dispute Tribunal transmitted the application to the Respondent on 7 March 2012. The Respondent duly filed his reply, as directed, on 9 March 2012.

Background

5. On 20 March 2011, the Applicant commenced a one-year fixed-term appointment with UNMIT. The Applicant is currently employed in the UNMIT office in Dili. She is on loan from UNMIT office in Suai. Her responsibilities include training and coaching of national staff in order to facilitate their future career prospects after the expiration of the mandate of UNMIT.

6. By Security Council resolution 2037, the mandate of UNMIT was extended until 31 December 2012.¹

7. According to the Applicant, ever since the arrival of her new supervisor (Chief, Integrated Mission Training Center) on 30 July 2011, they have had a difficult working relationship and she often feels that she is treated unfairly and improperly. The Applicant raised the

(The Respondent submits that this alleged incident consisted merely of some office equipment being moved.) According to the Applicant, it was explained to her that staff needed office space, although the Applicant was aware that there were other vacant offices available. The Applicant immediately raised the matter with the Chief of the Conduct and Discipline Unit, who told her that he would follow-up on the matter with the Chief of Staff.

11. The Applicant was called to the office of the Chief Administrative Services on 6 February 2012, and informed that her contract would not be extended beyond 19 March 2012.

12. On 10 February 2012, the Applicant's supervisor signed the form provided to him on 6 January 2012, marking the box stating "No extension beyond expiry". According to the Applicant, on 10 February 2012, her supervisor asked her to also sign the form. According to the Applicant, she was given no explanation for the non-renewal of her appointment.

13. The Applicant sought the Ombudsman's intervention on 10 February 2012. Her attempt to resolve this dispute informally failed and, on 23 February 2012, the Ombudsman recommended that she contacts the Office of Staff Legal Assistance.

14. The Applicant submits that, on 22 February 2012, the Chief of Mission Support confirmed that her appointment would not be renewed and that the non-renewal was related to a restructuring exercise. The Applicant alleges that the Chief of Mission Support did not provide a clear or meaningful description of the restructuring effort but promised to explore the possibility of transferring the Applicant to another post and confirmed that the non-renewal was not related to the Applicant's work performance.

15. The Applicant received a formal notification of the decision not to renew her contract on 1 March 2012.

Applicant's submissions

16. The Applicant's principal contentions may be summarised as follows:

Urgency

- a. The matter is urgent as the Applicant's contract will expire on 19 March 2012. As the Applicant received a formal written notification of the contested decision on 1 March 2012, the urgency in this case was not created by the Applicant;

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d. The Applicant does not have any legitimate expectation of renewal. No promises were made to her regarding the renewal of her contract;

e. The Applicant made her complaint to the Conduct and Discipline Unit on 20 January 2012, two weeks after her supervisor had recommended that her appointment not be renewed, at which time she accepts she was on amicable terms with her supervisor. The Applicant's contention that her supervisor decided not to recommend the renewal of her appointment only after her complaint to the Conduct and Discipline Unit is incorrect, and this could not have impacted upon the contested decision;

Irreparable damage

f. The Applicant has not demonstrated how the implementation of the decision not to renew her appointment would cause her irreparable harm. The mere fact that the Applicant's appointment will not be renewed is insufficient to demonstrate irreparable harm. The reason for the non-renewal is UNMIT's downsizing and scheduled closure, not because of reasons of non-performance or bias towards the Applicant. Thus, the reasons for the non-renewal will not cause any harm to the Applicant's future career prospects. Consequently, there is no evidence that the contested decision will cause her irreparable harm. In addition, there cannot be any irreparable harm when, in any event, UNMIT is downsizing and scheduled to complete its mandate.

Preliminary matters

18. This is an application for a suspension of action pending management evaluation. It is discretionary relief of an interim nature, generally not appealable, and which, in accordance with the Rules of Procedure, requires consideration by the Tribunal within five days of the service of the application on the Respondent.

response to the Respondent's reply. However, Counsel for the Applicant is reminded that such motions should be made prior to filing the relevant pleading in question, although the Tribunal recognises that this is an urgent application and that time is of the essence. As regards the Applicant's motion to strike out, suffice to comment that pleadings in themselves do not constitute evidence; in light of the findings herein, the Tribunal makes no order.

24. In view of the documentation filed by the parties, the Tribunal did not consider it necessary to hold a hearing in this case. With regard to the Respondent's email request, the Tribunal considers that it has sufficient information to render a judgment on this urgent application.

Consideration

25. Article 2.2 of the Tribunal's Statute provides that 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. The Tribunal can suspend the contested decisions only if all three requirements of art. 2.2 of its Statute have been met.

beyond expiry”, on 10 February 2012—approximately three weeks after the Applicant contacted the Conduct and Discipline Unit. Secondly, the Applicant submits that she has had a difficult relationship with her supervisor since his arrival in July 2011—well before the decision not to renew her contract—and has sought various avenues for resolving the situation.

35. The Tribunal further finds that the Applicant may have an arguable case of legitimate expectation of renewal beyond 19 March 2012. Firstly, the documents referred to above indicate that UNMIT is continuing its training and capacity-building operations, which is the field in which the Applicant is employed, beyond 19 March 2012. Secondly, there are no issues with her performance and the budget and post appear to be available. Thirdly, the Applicant is currently employed in the UNMIT office in Dili on loan from the UNMIT office in Suai, and the form by which her loan arrangement was processed (it appears to be dated 4 August 2011) states that the effective period of her loan is from 1 July 2011 to 30 June 2012.

36. Accordingly, the Tribunal finds that no verifiable reasons have been provided by the Respondent regarding the decision not to renew the Applicant’s contract. The Applicant, on the other hand, has made allegations of extraneous reasons and procedural flaws, some of which appear to be supported by the available documentation. The Applicant also presented an arguable case of legitimate expectation of renewal beyond 19 March 2012.

37. In light of the documentary evidence in this case, and in view of the issues identified above, the Tribunal finds that the contested decision appears *prima facie* to be unlawful.

Irreparable damage

38. One of the requirements for a successful application for interim relief is that the Applicant must satisfy the Tribunal that the implementation of the decision would result in irreparable harm.

39. It is generally accepted that mere economic loss only 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.

40. The Applicant submits that “[t]he suspension of action is the only remedy available to the Applicant that can prevent the Administration from unlawfully redeploying his current post”.

41. The Tribunal finds that, in the circumstances of this case, the sudden deprivation of employment for no verifiable reason, when there is an arguable case that the Applicant has an expectation of renewal, would result in irreparable damage.

42. The Tribunal is satisfied that monetary compensation alone in the face of decision-making found to be *prima facie* unlawful would not do justice to the Applicant. Therefore, in view of the circumstances in this case, the Tribunal finds that the implementation of the contested decision would cause the Applicant irreparable damage.

Conclusion

43. The three conditions for a suspension of action, required under art. 2.2 of the Tribunal’s Statute, have been met in this case.

Order

44. The Tribunal orders suspension, during the pendency of the management evaluation, of the implementation of the decision not