



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

RAFII

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON APPLICATION FOR
SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Introduction

1. By application received by the New York Registry of the United Tribunal on 29 May 2012, the Applicant, a staff member of the United Nations Assistance Mission in Afghanistan (“UNAMA”), sought suspension of action, pending management evaluation, of the decision UNAMA “refus[ing] to grant a lien on [her] post to enable [her] to work elsewhere in the United Nations system on a temporary basis”.

2. The Applicant initially filed her application Sunday, 27 May 2012. As Monday, 28 May 2012, was a holiday, the application was received by the Registry the following working day, Tuesday, 29 May 2012. On 29 May 2012, following receipt of the present application through the eFiling portal, the Tribunal’s web-based electronic filing portal, the New York Registry transmitted it to the Respondent, directing the Respondent to file a reply by 31 May 2012.

Background

3. The following background information is based on the parties’ written submissions and the record.

4. The Applicant commenced a fixed-term assignment with UNAMA as a Political Affairs Officer on 15 July 2011.

5. On 2 January 2012, she was placed on extended certified sick leave on full pay by the United Nations Medical Service, based upon the opinion of medical professionals that it was not advisable for her to work in Afghanistan, though she could work in a more suitable environment.

6. Her certified sick leave on full pay having been exhausted, the Applicant was placed on certified sick leave on half pay on 21 March 2012.

7. In or around April 2012, the Applicant was offered a temporary position with the Department of Economic and Social Affairs ("DESA") in New York. However, on 11 April 2012, the Executive Officer, ~~SEA~~, advised the Applicant that UNAMA had informed him that "they do not provide, as a matter of principle, non-reimbursable loans/liens to posts ~~staff~~ on temporary assignment".

8. On 23 April 2012, the United Nations ~~Medi~~ Service declared the Applicant fit for work, but not fit for duty in UNAMA and other similar stations. Her certified

would be placed on special leave without pay effective 5 June 2012. Also, the Applicant submitted that she has an opportunity for temporary employment in New York in connection with a conference to be held on 20–22 June 2012, and, therefore, time was of the essence. The Applicant submitted that the implementation of the decision would cause her irreparable damage as she would be denied the possibility of pursuing, on a temporary basis, an existing career opportunity with the United

without pay effective 5 June 2012 due to the exhaustion of her sick leave and annual leave entitlements.

20. Similarly, in her request for management evaluation, the Applicant identified the contested decision as “the decision by [UNAMA] not to release [her] on a temporary basis to work elsewhere”. She replied to the question “What remedy do you seek through management evaluation” follows: “I would like the Mission (UNAMA) to grant a lien on my post, so that I may work on a temporary basis elsewhere in the UN system”. Although the placement on administrative leave effective 5 June 2012 was mentioned in her request for management evaluation, it was not included as a separate administrative decision.

21. The decision not to approve a lien on the Applicant’s post having been set aside, there can no longer be any pending application for suspension of action of such decision. Any other claims by the Applicant are not a matter for interim relief under the current application.

22. However, the present Judgment does not preclude the Applicant from filing, in due course and in compliance with proper procedures, a separate application in relation to the decision to place her on special leave, should such placement indeed take place.

Conclusion

23. The decision contested by the Applicant in her management evaluation request and in her application for suspension of action being reversed, the Tribunal finds there can no longer be any pending litigation for suspension of action of such decision. Accordingly, the present application is dismissed.

(Signed)

Judge Ebrahim-Carstens

Dated this 1st of July 2012 (Dated this 1st of July 2012)