Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

BAIRAM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON AN APPLICATION
FOR SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
ALS/OHRM, UN Secretariat

Introduction

1.   On 12 November 2012, the Applicant, a staff member of the United Nations Assistance Mission for Iraq ("UNAMI"), wrote to the Management Evaluation Unit ("MEU") requesting management evaluation of the decision dated 1 November 2012

UNAMI. According to the 1 November 2012 letter, the purpose of the retrenchment was to reduce UNAMI's budget by rationalizing or abolishing numerous posts in the 2013 budget. The letter also indicated that the Applicant's post was one of those that had been earmarked to be abolished/rationalized as of 1 January 2013.

6.   According to the 26 December 2012 management evaluation response from the USG/DM ("MEU response"), p   p

9.   After a review of the submissions, the MEU concluded that the criteria was applied to all staff members in a uniform manner and based on the pre-approved criteria. MEU also concluded that there was no evidence to suggest that the Applicant had been selected for the retrenchment in an arbitrary or improper manner or that the contested decision was improperly motivated.

10.   In view of the above, MEU concluded that the Administration acted within its discretionary authority in the conduct of the comparative review/retrenchment exercise and that the Applicant had not met his burden of proving that the decision terminating his appointment on 31 December 2012 was based on improper motivation, bias or abuse of discretionary authority or was non-transparent or otherwise unfair.

11.   In light of the foregoing, USG/DM informed the Applicant that the Secretary-General had decided to uphold the decision "terminating" his appointment on 31 December 2012.

Considerations

12.   Applications for suspension of action are governed by art. 2.2 of the Tribunal's Statute and art. 13 of its Rules of Procedure.

13.   Article 2.2 of the Statute provides that:

> The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing 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 decision of the Dispute Tribunal on such an application shall not be subject to appeal.[4]

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[4] This language is echoed in art. 13 of the Rules of Procedure.

14.   The three statutory prerequisites contained in art. 2 of the Statute, namely, *prima facie* unlawfulness, urgency and irreparable damage, must all be satisfied for an application for suspension of action to be granted. It is important to note, however, that these prerequisites may only be applied where the administrative decision is the subject of an "ongoing management evaluation".

15.   In the present case, the Applicant requested management evaluation and suspension of the contested decisions on 12 November 2012. He received a response from the USG/DM to both of his requests in a communication dated 26 December 2012. Subsequently, he filed an application for suspension of action with the Tribunal of the same contested decisions.

16.   Consequently, management evaluation is no longer pending and as such, the Tribunal does not have jurisdiction, pursuant to its Statute and Rules of Procedure, over this matter. In view of the foregoing, the Tribunal will not consider whether or not the statutory prerequisites of *prima facie* unlawfulness, urgency and irreparable damage have been satisfied.

Decision

17.   In view of the foregoing, the application for suspension of action is hereby rejected.

(Signed)
Judge Vinod Boolell

Dated this 3rd day of December 2012

Entered in the Register on this 3rd day of December 2012

(Signed)

Jean-Pelé Fomété, Registrar, Nairobi