



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Abena Kwakye-Berko, Acting Registrar

OKUDA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

REASONED RULING ON A
SUSPENSION OF ACTION
APPLICATION

Counsel for the Applicant:
George G. Irving

Counsel for the Respondent:
Steven Dietrich, ALS/OHRM
Elizabeth Gall, ALS/OHRM

Introduction

1. The Applicant is a permanent staff member with the United Nations Economic and Social Commission for Western Asia (“ESCWA”) in Beirut, Lebanon. She has occupied the post of Chief Programme Planning and Coordination Section (“Post”) since 27 December 2012.¹

2. The Applicant is contesting a decision made by the Executive Secretary of ESCWA, Ms. Rima Khalaf, to reassign her to an unidentified position within the Organization (“Contested Decision”). The Applicant sought a suspension of action to prevent the Contested Decision being implemented pending the outcome of management evaluation.

3. By Order No. 202 (NBI/2013) dated 5 September 2013, the Tribunal granted the Applicant’s request for suspension of action ordering that:

The suspension of the implementation of the Contested Decision shall remain in force until the Applicant has received a response to her request for management evaluation or, if no response is received, until the expiry of the relevant response period for the

of the Executive Secretary is in accordance with ST/AI/2013/3, paragraph 2.5 whereby Heads of Department/offices retain the authority to transfer staff members within their departments or offices.” Mr. Iyamah subsequently confirmed the Contested Decision to the Applicant in a meeting with the Applicant held on the same day.

5. The reason for the reassignment of th

- a. The Contested Decision violates a mutual contractual obligation undertaken in good faith; had the Applicant known that the assignment to the Post would be for the duration of one year and that she would then have to move to another position she would have re-considered taking up the Post.
- b. She was appointed to the Post through a normal recruitment process and there was no lien on the Post. She received no notification when applying for the Post that the duration of post occupancy was in any way limited or conditional.
- c. The Contested Decision is not in the best interests of the Organization: her immediate supervisor contests the programmatic justification for the Contested Decision and, at least at the time when she was notified of the reassignment on 26 August 2013, there was no decision as to whether she would be reassigned, thus effectively rendering her unassigned. No reasons were provided to the Applicant as to why the reassignment was in the best interests of the Organization.
- d. Mr. Iyamah and Ms. Khalaf failed to consider other more suitable vacancies in the Organization which the returning staff member could fill.
- e. Neither the Applicant nor her supervisor, Mr. Laurenti, was consulted about the Contested Decision.
- f. There is a link between the Contested Decision and a formal complaint she made to the Office of Internal Oversight Services about a possible conflict of interest within the Organization.
- g. She would suffer irreparable harm because:
 - i. She moved to Beirut from New York only eight months ago and another move in such a short period of time would have

a negative impact on her career and personal life, which she did not anticipate.

- ii. There is a lack of current vacant posts which fit her profile so the post is retaliatory in nature and designed to penalise her for having challenged management authority.

Respondent's submissions

12. The Respondent submits as follows:

- a.

Is the Contested Decision prima facie unlawful?

15. The test of prima facieunlawfulness requires that an applicant establish

Reason for Contested Decision

22. The Respondent submits that the reason for the Contested Decision was the facilitation of the return from SLWOP of the staff member who had previously occupied the Post. The Tribunal considers that there are serious and reasonable doubts that this is a lawful reason for the Contested Decision, in particular because it does not appear to be in the best interests of the Organization and may be inconsistent with the terms of the Applicant's employment contract.

23. The Respondent possesses broad discretion to reassign staff members to different functions and locations but this discretion is not unfettered. It must, among other requirements, be exercised in the best interests of the Organization (see *Rees* UNDT/2012/078). The "best interests" requirement corresponds to staff regulation 4.2 which provides "[t]he paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity." Staff regulation 4.2 reflects

- instead of a double disruption & domino effect (placing 1SM to replace an incumbent one who in turn has to be placed) wouldn't it be more practical to simply replace the returning SM directly into a vacant position?
- ...
- [The Applicant's] performance has...been outstanding in managing what used to be the work of two sections headed by two P5s... Indeed, replacing her would pose a serious challenge to the impressive achievements made so far in terms of staff cohesiveness, team spirit, productivity...

25. No programmatic reasons were provided for the Contested Decision by the Respondent. Whilst the Respondent retains broad discretion to determine what actions are in the best interest of the Organization, this discretion is not absolute. Based on the information available to the Tribunal, there are serious doubts as to whether the Contested Decision would secure the "highest standards of efficiency, competence and integrity". Indeed, on the face of it, the Contested Decision would cause considerable disruption and inefficiency in at least one Division of ESCWA and there are also doubts about whether it would result in the most competent staff member occupying the Post.

26. In the light of the provisions of the Staff Regulations, , and the available evidence, the Tribunal finds that the Applicant was reassigned not so much in the interest of the Organization, or in the g5(b)-5(gaebb6.4(e).).4(s, fnizati(b)-5(us7.1()5.3(O)-b(e)1(e). it w

31. The Applicant moved to Beirut from New York only eight months ago. While her employment is not being terminated, the Tribunal considers that another move in such a short period of time would have a negative impact on her career, the more so because, as the Applicant submits, there are no vacant posts suited to her profile.

32. As noted above, sec. 9.1 of ST/AI/2010/3 (Staff selection system) recognises the value of staff members occupying a position for at least one year. It takes time for a staff member to settle into a new position and become familiar with the functions of that position and develop the skills suited to the particular role. To require a staff member to move after only a few months to an unnamed or allegedly unsuitable post is disruptive to the staff member's career in terms of skill development, productivity and reputation. Questions may be raised by other supervisors or employers in the future as to why the staff member remained in the post for such a short period of time and it is not unlikely that negative inferences about the staff member's performance may be drawn as a result. Such negative impressions are often difficult, if not impossible, to avoid and the impact they may have on the staff member's career cannot be rectified by monetary compensation.

33. The Applicant has submitted evidence, in the form of an email from her supervisor, Mr. Laurenti, in which he states:

be

ar

as

Pe

32

pi

pi

of

C

32

E