



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/025
Order No.: 028 (NBI/2015)
Date: 23 January 2015
Original: English

Introduction

1. The Applicant holds a permanent appointment with the United Nations. She is currently the Chief of Mission Support at the United Nations Assistance Mission in Iraq (UNAMI). She serves at the D1 level and is based in Baghdad.

2. On 19 January 2015, the Applicant filed the subject Application of this Order seeking an injunction against the decision of the Under-Secretary-General of the United Nations Department of Field Support (USG/DFS), Ms Ammerah Haq, to terminate her mission assignment with UNAMI as of 20 January 2015.

3. The Applicant submits that her appointment with UNAMI was up for renewal on 9 February 2015, and that the decision to terminate her appointment with the Mission was not communicated to her. She came to know of the impugned decision from the Administrative Assistant assigned to check her out of the Mission.

4. Given the urgency of the matter, the Tribunal issued Order No. 003 (NBI/2015) suspending the impugned decision up to Friday, 23 January 2015. The Tribunal also set the matter down for hearing on 21 January 2015 and advised the Applicant to seek the assistance of counsel for the conduct of her case.

5. The Respondent filed his Reply on 20 January 2015.

6. The matter was heard on 21 January 2015. The Applicant represented herself, and the Respondent called the Mr Rudy Sanchez, Assistant Secretary-General for DFS as a witness.

7. At the conclusion of the hearing, the Tribunal directed a number of questions to the Respondent and directed that a response to those be filed by the morning of 22 January 2015.

8. On 22 January 2015, the Applicant filed a Motion for Leave to Respond to the Respondent's Arguments and Reply. The Respondent also filed his response to the Tribunal's questions.

Submissions

Applicant

9. The impugned decision is tainted. The USG/DFS told the Applicant that she needed to place Mr Maqbool before she retired at the end of January 2015. The Applicant had made clear that if a D1 position was not available for her to return to in Headquarters, she would be seeking to have her assignment with UNAMI extended.

10. There is no good faith basis for not renewing her assignment with UNAMI – the post continues to exist and has been budgeted for, and she has “effectively and efficiently” performed the functions of Chief of Mission Support for the last two years.

11. Returning to New York at the P5 level and in the manner currently being orchestrated would irreparably harm her professional reputation and career progression.

Respondent

12. The Application is without merit and should be dismissed because the Applicant has failed to demonstrate that the decision not to renew her appointment is *prima facie* unlawful or that it may cause her irreparable damage.

13. Contrary to the Applicant's assertion, her appointment has not been terminated. The Applicant is currently serving on mission assignment to UNAMI. This assignment was due to end on 9 February 2015. The Applicant retains a lien on a post at Headquarters.

case to be made out by the Applicant to show that there is a triable issue before the court.⁴

25. The Tribunal is concerned at the manner in which the Respondent has conducted itself in respect of this Applicant.

26. The Respondent has not rebutted the Applicant's submission that she is being returned to her parent office at Headquarters to make way for the appointment of another staff member whom the USG/DFS needed to place before she retired at the

“was repeatedly asked” if she would like to carry on as CMS has not provided as evidence to that effect. Likewise, Mr Sanchez testified that the Applicant was happy to return to Headquarters but only if there was a position at the D1 level available for her, and that this was not possible. Most importantly, the Respondent did not dispute or challenge the Applicant’s submission that

[I]t should not be allowed to continue simply because the wrongdoer is able and willing to compensate for the damage he may inflict. Monetary compensation should not be allowed to be used as a cloak to shield what may appear to be a blatant and unfair procedure in a decision-making process.

37. The fact of holding a permanent appointment does not inure the Applicant from the loss of the invaluable experience of continuing as the Chief of Mission Support with UNAMI.

38. The Applicant would still have had the opportunity, an option that she alone could have exercised, to opt for a surrender of her *lien* and use all the options open to her under section 6.5 of ST/AI/2010/3 (Staff Selection System) and section 7 of ST/AI/404 (Assignment to and return from mission detail). Removing her from the assignment prematurely to place someone else denies the Applicant the choice of exercising any of the options embodied in section 6.5, referenced above. To that extent the Tribunal finds that irreparable harm is present. To simply give the Applicant monetary relief until 9 February 2015 does not lessen or remove that irreparable harm.

Observations

39. Given the facts of this case, the Tri

40. In the interest of efficient use of the Tribunal's resources and the expeditious conduct of these (and potentially future) proceedings, the Tribunal pursuant to articles 10.3 of the Statute and 15.1 of the Rules of Procedure, strongly urges the Parties in this matter to consult and deliberate, in good faith, on having this matter informally resolved.

41. A conducive and productive working re