
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2017/035
Order No.: 080 (NBI/2017)/Corr. 1
Date: 10 April 2017
Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ABDALLAH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PURSUANT
TO ARTICLE 13 OF THE RULES OF
PROCEDURE**

Counsel for the Applicant:

Introduction

1. The Applicant holds a permanent appointment with the United Nations. He encumbers the post of a P-3 Finance Officer at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO/the Mission), but is at present temporarily deployed at the P-4 level to the United Nations Operation in ~~WHGTYR~~ire (UNOCI) as the Chief Budget and Finance Officer.

2. On 13 March 2017, the Applicant was informed that he was being placed on Administrative Leave Without Pay (ALWOP) with immediate effect for an initial period of three months. The Office of Internal Oversight Services (OIOS) had, at the same time, commenced an investigation into allegations of sexual abuse.

3. On 31 March 2017, the Applicant sought management evaluation of the decision to place him on ALWOP.

Facts

4. The Applicant entered into the service of the United Nations on 5 December 2005 having successfully competed in the National Competition Recruitment Examination. He was given a Permanent Appointment in December 2007.

5. The Applicant began work in Kinshasa in September 2015. He was installed at the duty station with his wife and three sons.

6. The family hired Ms. L. as their housekeeper in November 2015. Ms. L. and ~~WKHSSOLFQYDPLOGLGQWHQRDJRRGKUNLQUHODWLBQZS~~ February 2016, Ms. L.

7. On 19 January 2017, Ms. L filed a complaint against him with the national police and the United Nations. She alleged that the Applicant was engaging in sexual misconduct. According to Ms. L's allegations, she began having sexual relations with the Applicant in December 2015, every time his wife was away and he would pay her between USD25 and USD30 on each occasion. She fell pregnant by him as a result of one incident where the Applicant had rendered her drunk and had sex with her without protection.

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appears **prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.**

27. All three elements of the test must be satisfied before the impugned decision can be stayed. Accordingly, an application for the suspension of action must be adjudicated against the stipulated cumulative test, in that an applicant must establish that the impugned decision is *prima facie* unlawful, calls for urgent adjudication and that implementation of the impugned decision would cause him/her irreparable harm.

28. § 7 U L E X Q D O ¶ V R U G H U J U D Q W L Q J V X V S H Q V L R Q R I D F cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented.

29. The Tribunal is not required at this stage to resolve any complex issues of disputed fact or law. All that is required is for a *prima facie* case to be made out by an applicant to show that there is a judicable issue before the court.⁶

Receivability

30. The Respondent has taken the position that this matter is not receivable before the Tribunal because the decision has already been implemented, as of notification to the Applicant about his placement on ALOWP.

31. The Tribunal recalls that it is established by jurisprudence of the UNDT across its seats⁷, that a decision having continuous legal effect, such as to place a staff member on administrative leave, is only deemed to have been implemented when it has been implemented in its entirety, that is - at the end of the administrative leave.

due periodically takes effect in relation to each installment that is due. As dictated by
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are not yet due.

32. The record shows that the Applicant was placed on ALWOP with immediate

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- b. Continued service by the staff member could pose a security risk to the Organization or a threat to the property of the Organization;
- c. The staff member is unable to continue performing his or her functions effectively, in view of (i) an ongoing investigation, or (ii) the nature of those functions; or
- d. Continued service by the staff member would create an unacceptable risk that he or she could destroy, conceal or otherwise tamper with evidence, or interfere in any way with an investigation, including by retaliating against individuals protected under 676%3URWHFWLRQDJDLW UHWDOLDWLRQIRU UHSRUWLQ misconduct and for cooperating with duly authorized audits or LQHWLJDWLRQ

36.

KHOG WKDW H[FHSWLRQO FLUFXPWDEHVUHHUWR WKHf circumstances
which are H[FHSWLRQORUHJUHLRXDQKLFKXUURXQWKHIDFWLQXHLQKH
SDUWLFXODUFDM´

42. In respect of grounds for AL determined in the applicable rules, the Tribunal notes that there

surprised by a sudden loss of income before she or he could make provisions for sustaining him/herself and family during the investigation. Neither should placement on ALWOP serve to encourage resigning of expeditiousness in investigation. It follows that ALWOP should be applied in a phased approach and that leave with partial pay should be given consideration.

46. By the same token, the Tribunal considers that placement on ALWOP requires more than a reasonable suspicion of misconduct and that the appropriate standard here is a probable cause.¹⁰ It follows that, for the measure to be applied before an investigation has yet taken place, the misconduct must be flagrant or readily probable upon available evidence.

47. Pursuant to staff rule 10.4(b), decisions on AL with or without pay must be reasoned. Accordingly, the Organization must show that there is a probable cause of a grave misconduct; that the measure to be applied serves a legitimate objective; and that it is proportional.

Whether the impugned decision is prima facie unlawful

48. With respect to the arguments that the Respondent failed to establish the pending investigation in Kinshasa and any of the basis for the placement on AL, the Tribunal notes that indeed the Respondent does not even attempt to demonstrate how justifications put forth by him relate to grounds expressed in section 4 of ST/AI/371 and even the

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(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 10th day of April 2017

Entered in the Register on this 10th day of April 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi