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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/076

Order No.: 114 (NBI/2018)

Date: 30 July 2018

Original: English

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**Before:** Judge

## **Introduction**

1. By application filed on 30 July 2018, the Applicant who is currently working as Head of Integrated Office (Head of Office, Political Affairs) in the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), requests suspension of action, pending management evaluation, of the decision not to renew his fixed-term appointment beyond 31 July 2018.
2. The application was served on the Respondent on the same day for his information and he was advised that no response was required.

## **Facts**

3. The Applicant works as D-1 Head of Office, Political Affairs in the Office of the Deputy Special Representative of the Secretary-General (D-SRSG)/Humanitarian Coordinator in Bangui, MINUSCA.
4. On 26 January 2018, the Applicant received a broadcast from MINUSCA explaining that there would be a forthcoming staffing structuring exercise with significant downsizing of staff. To that end, a comparative review process (CRP) was going to take place in March 2018.
5. On 24 February 2018, the Applicant received a letter entitled "Request for extension of appointment" which had been signed by his supervisor, the D-SRSG as well as by the Director of the Mission Support. The letter recommended the extension of the Applicant's appointment through 18 March 2019.
6. On 7 March 2018, the Secretary-General published a report on the Budget for MINUSCA for 2018-2019 (A/72/779). The report recommended the abolishment of the Applicant's post as well as three other D-1 Head of Office posts.
7. By letter dated 7 April 2018, the Applicant was informed that his post was among those proposed by the Secretary-General for abolition effective 1 July 2018. The letter further indicated that it did not constitute an official notice of the

termination of his appointment in line with Staff Rule 9.7 but an advance information in the interest of keeping him fully informed of the developments to enable him to prepare for that eventuality.

8. Meanwhile, the Applicant's appointment was extended through 31 May 2018.

9. According to the Applicant, around that time, he was informed that his D-1 post was not compared against other posts in the CRP process; instead the D-1 Head of Office post that he encumbered, and three others like it, were each proposed for abolition.

10. Upon the finalization of the Applicant's ePAS for 2016-2017 and 2017-2018 on 28 May 2018, his appointment was extended through 30 June 2018.

11. On 26 June 2018, the Applicant's appointment was extended until 31 July 2018.

12. By letter dated 18 July 2018, the Applicant was informed of the decision not to renew his fixed-term appointment beyond 31 July 2018.

13. On 24 July 2018, the Applicant filed a request for management evaluation of the contested decision.

### **Applicant's submissions**

14. It is the Applicant's case that the decision not to renew his appointment is *prima facie* unlawful. He was not compared during the CPR against the other D-1 Head of Office posts which were in fact reclassified to the P-5 level.

15. As all four D-1 Head of Office posts had similar functions, duties and

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a reply by the Respondent, the Tribunal must rule on an application for suspension of action within five working days.

20. Article 2.2 of the Statute is intended to provide an uncomplicated and cost-effective procedure for suspending, in appropriate cases, an administrative decision which may have been wrongly made, to give the Management Evaluation Unit sufficient time to consider the matter and to advise management. The process itself should not become unduly complex, time-consuming and costly for the Organization or its staff members.

21. The Tribunal reiterates its position in *Wilson*<sup>1</sup> that:

[A]pplications for suspension of action have to be dealt with on an urgent basis and the decision should, in most cases, be in summary form. There is no requirement to provide, and the parties should not expect to be provided with, an elaborately reasoned decision either on the facts or the law. To do so would defeat the underlying purpose of a speedy and cost-effective mechanism. Moreover, the time, effort and costs thereby saved by all those involved in the formal system of internal justice could be utilised to facilitate the disposal of other cases.

22. The impugned decision must be shown to be *prima facie* unlawful, that the matter must be particularly urgently and implementation of the decision would cause the applicant irreparable harm. All three elements must be satisfied for the Court to grant the injunction being sought, as the test is a cumulative one.

23. Additionally, a suspension of action application will only succeed where an applicant can establish a *prima facie* case on a claim of right, or where he or she can show that *prima facie*, the case he or she has made out is one which the opposing party would be called upon to answer and that it is just, convenient and urgent for the Tribunal to intervene and, without which intervention, the Respondent's action or decision would irreparably alter the *status quo*.<sup>2</sup>

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<sup>1</sup> Order No. 327 (NY/2014).

<sup>2</sup> See for example *Omondi* Order No. UNDT/NBI/O/2010/017; *Newland* Order No. 494 (NBI/2016).

*Prima Facie Unlawfulness*

24. At this stage, the Applicant needs only to show *prima facie* unlawfulness. The threshold required is that of “serious and reasonable doubts” about the lawfulness of the impugned decision.<sup>3</sup> Put another way, does it appear to the Tribunal that, unless it is satisfactorily rebutted by evidence, the claim of unlawfulness will succeed?<sup>4</sup>

25. With respect to the non-renewal of a fixed-term appointment, the Tribunal has regard to the established jurisprudence of the Appeals Tribunal according to which a fixed-term appointment does not bear any expectancy of renewal.<sup>5</sup> A non-renewal decision however, can be challenged on the grounds that it was arbitrary, procedurally deficient, or the result of prejudice or some other improper motivation.<sup>6</sup>

26. The staff member alleging that the decision was based on improper motives carries the burden of proof with respect to these allegations.<sup>7</sup> In *Obdeijn*<sup>8</sup>, the Appeals Tribunal further stressed that “a decision not to renew [a fixed-term appointment] can be challenged as the Administration has the duty to act fairly, justly and transparently in dealing with its staff members”.

27. On the facts before it, the Tribunal finds that the Applicant has made out a case of *prima facie* unlawfulness. The documentary evidence produced by the Applicant establishes on a *prima facie* basis that the Administration failed to conduct a CRP of the D-1 posts which deprived the Applicant of the chance to be

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<sup>3</sup> See for example *Hepworth* UNDT/2009/003, *Bchir* Order No. 77 (NBI/2013), *Kompass* Order No. 99 (GVA/2015).

<sup>4</sup> *Wilson* Order No. 327 (NY/2014).

<sup>5</sup> See for example *Syed* 2010-UNAT-061; *Appellee* 2013-UNAT-341.

<sup>6</sup> See for example *Morsy* 2013-UNAT-298; *Asaad* 2010-UNAT-021; *Said* 2015-UNAT-500; *Assale* 2015-UNAT-534.

<sup>7</sup> See for example *Asaad* 2010-UNAT-021; *Jennings* 2011-UNAT-184; *Nwuke* 2015-UNAT-506; *Hepworth* 2015-UNAT-503.

<sup>8</sup> 2012-UNAT-201.

properly considered for placement in one of the three reclassified P-5 Head of Office posts. Indeed, the evidence shows that unlike the other three D-1 staff members affected by the abolishment of their posts, the Applicant was not given full and fair consideration for placement on any of the reclassified P-

**ORDER**

33. The decision of 18 July 2018 not to extend the Applicant's appointment beyond 31 July 2018 is suspended pending the outcome of the management evaluation.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 30<sup>th</sup> day of July 2018

Entered in the Register on this 30<sup>th</sup>