



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2021/066
Order No.: 169 (NBI/2021)
Date: 20 August 2021
Original: English

Before: Judge Rachel Sophie Sikwese
Registry: Nairobi
Registrar: Abena Kwakye-Berko

CAUCCI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

AND

**ON A MOTION FILED PURSUANT TO
ARTICLES 19 AND 36 OF THE UNDT
RULES OF PROCEDURE**

(VILLAMORAN)

AND

**ORDER ON THE
REQUEST FOR ANONYMITY**

Counsel for the Applicant:
Dorota Banaszewska, OSLA

Counsel for the Respondent:

Introduction

1. The Applicant is a former staff member of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA

13. On 29 June 2021, the Applicant submitted a management evaluation request challenging the decision not to pay her salary and emoluments.¹⁰

14. On 16 July 2021, the Administration appealed Judgment No. UNDT/2021/055.¹¹

15. On 4 August 2021, the Applicant requested suspension of the implementation of the decision not to pay her salary and emoluments.¹²

16.

¹³ According to the Applicant, it was only from this reply that she learnt that the Administration retroactively separated her as of 31 March 2021.

17. On 10 August 2021, the Dispute Tribunal issued Order No. 160 (NBI/2021), dismissing the SOA request of 4 August 2021 as irreceivable.¹⁴

18. On 12 August 2021, the Applicant submitted a management evaluation request of the contested decision.

Submissions

Receivability

Respondent's submissions

19. The Respondent submits that the SOA application is not receivable *ratione materiae*. The Respondent further submits that the Applicant has not met her burden to establish the existence of a decision to terminate her appointment as she has not

¹⁰ Application, -2.

¹¹ Application, annex -3.

¹² Application, a 2.

¹³ Application, a .

¹⁴ Application, annex .

at least 5 September 2021. In support of this claim, the Applicant describes conversations and email exchanges between her and the CHRO/MINUSMA.¹⁵

b. The information she received on her appointment extension on Human Resources who had the mandate to inform her about her contractual status. Thus, she had also no reasonable grounds to assume that the CHRO

retroactive change of an administrative decision to her detriment months after it was taken is unacceptable and would entail unbearable consequences for her.

f. T
of simple errors. The Administr

What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision.

29. In the present case, the Applicant has cited a 6 August 2021 document as the decision which in essence is a reply to an application in proceedings brought by the Applicant in this Tribunal in case number UNDT/NBI/2021/064. In the reply, the Respondent challenged the application citing events that happened in March 2021 and after that date, specifically April 2021 onwards. To put matters into context the relevant record in that case is as follows:

On 5 August 2021, the Applicant filed an application for suspension of action before the United Nations Dispute Tribunal in Nairobi contesting **decision to not pay her salary and emoluments starting from April 2021** (emphasis added).¹⁶

30. The Respondent filed a reply in that case on 7 August 2021 submitting that:

...r suspension of action is not receivable *ratione materiae*. The jurisdiction of the Tribunal is limited to preserving the *status quo*. The *status quo* MINUSMA expired on 31 March 2021. As a result, MINUSMA stopped remunerating the Applicant. By seeking the suspension of the non-payment of salaries and emoluments from April 2021 onwards, the Applicant is requesting the Dispute Tribunal to change the *status quo*, as such an order would require the Organization to appoint the Applicant for the contested period. Further, such an order would also result in final relief to the Applicant in the form of payment of the contested amounts. The Tribunal may not grant an interlocutory order which will result in the final disposition of the application.¹⁷

31. This Tribunal dismissed that application agreeing with the Respondent that,

The decision impugned here is to refuse payment of the salary and not formally seeking to change the *status quo* claim is based on an assumption that she remains in employment with the Organization. Notwithstanding the question whether or not the Applicant can demonstrate such a legal relation throughout the period since April 2021, the legally relevant fact is that the present

¹⁶ Paragraph 2 of Order No. 160 (NBI/2021).

¹⁷ Ibid., para. 15.

constituted an administrative decision would be stretching the definition of an administrative decision too far, not contemplated by the Staff Rules and Regulations and certainly not supported by jurisprudence.

constituted an administrative

humanitarian grounds. The Applicant has submitted a trail of emails between her and the CHRO/MINUSMA, on the status of her request for extension of her contract on humanitarian grounds. Of particular interest to the question whether the Applicant had notice that her contract was not renewed after 31 March is the email attached as annex + 1 dated 17

can you please
the CHRO had
[Applicant]

This was also after the Applicant had not been provided with work nor been paid remuneration in the month of April 2021.

38. Arguably, the Applicant states that her contract was extended through 31 May 2021. The Respondent states that the extension was an error (citing the recall message email).²⁰

confirmation about the status of her contract through May. These factors are consistent with a finding that the Applicant knew or ought to have known by, at the latest, 17 May 2021, that her contract had not been ()-69(c)24(o)-19(n)20(t)F1 12 Tf1 0 0 1 478.49 675.5

its jurisdiction to suspend action pending management evaluation. The application is dismissed in its entirety.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 20th day of August 2021

Entered in the Register on this 20th day of August 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi