



Case No.: UNDT/NY/2013/016
Order No.: 76 (NY/2013)
Date: 26 March 2013

Introduction

1. On 20 March 2013, the Applicant, a staff member in the Arabic Translation Service (“ATS”), Department for General Assembly and Conference Management (“DGACM”), filed an application for suspension of action of the decision to separate him from service following the decision not to grant him a permanent appointment upon the completion of his probationary employment period. The Applicant contends that this decision is illegal and in breach of his rights as he ha

5. Starting on 31 August 2012, the Applicant's contract was further extended on

not based in fact” and was therefore not receivable. Nevertheless, the MEU noted that on 18 March 2013 the Applicant had filed a new request for management evaluation and suspension of action of the 28 February 2013 decision and this latest request would be reviewed in due course.

11. On 20 March 2013, the Applicant filed an application with the Tribunal for suspension of action pending management evaluation of the contested decision. The Respondent filed a reply on 22 March 2013.

Consideration

12. In accordance with art. 2.2 of its Statute, the Tribunal has to consider whether the impugned decision appears to be *prima facie* unlawful, whether the matter is of particular urgency, and whether its implementation will cause the Applicant irreparable harm. The Tribunal must find that all three of these requirements have been met in order to suspend the action, meaning the implementation of the decision, in question.

Prima facie unlawfulness

13. For the *prima facie* unlawfulness test to be satisfied, it is enough for the Applicant to present a fairly arguable case that the contested decision was influenced by some improper considerations, was procedurally or substantively defective, or was contrary to the Administration’s obligation to ensure that its decisions are proper and made in good faith (*Jaen* Order No. 29 (NY/2011) and *Villamorán* UNDT/2011/126).

14. The CRC based part of its recommendation that the Applicant be separated from service on the fact that at the end of his initial probationary appointment on 24 June 2011 “his performance was deemed less than satisfactory”. However, from the documents before the Tribunal, it would appear that the Applicant’s e-PAS rating for the period June 2009 to March 2010 reflected that his performance was “fully successful” and that his next e-PAS rating for March 2010 through November 2010

concluded that he “Successfully meets performance expectation”. Finally, following the completion of the rebuttal of his next e-PAS report, his overall performance rating for the period 1 December 2010 to 28 February 2011 be raised from “Partially meets performance expectation” to “Successfully meets performance expectations”.

15. The recently completed rebuttal of the Applicant’s e-PAS report for the cycle March 2011 to March 2012 resulted in the determination that the Applicant’s appraisal of “Partially meets performance expectations” should be retained. However, it does not appear that his continued performance since the end of that cycle resulted in the creation of a new e-PAS report or was taken into account with regard as to whether or not to offer him a permanent appointment. Similarly, it is unclear as to the basis on which the CRC considered that the Applicant’s 2011 “performance was deemed less than satisfactory”.

16. This element of the statutory test is satisfied.

Urgency

17. The Applicant was informed of the contested decision on 28 February 2013. He submitted a request for management eval

Conclusion

24. The present application has all met the conditions for a suspension of action.

Order

25. The Tribunal orders the suspension, during the pendency of the management evaluation, of the decision by DGACM to separate the Applicant from service on 31 March 2013.

(Signed)

Judge Alessandra Greceanu

Dated this 26th day of March 2013