



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2013/118
Order No.: 354 (NY/2013)
Date: 26 December 2013
Original: English

Introduction

1. On 23 December 2013, the Applicant, a P-4 level Global Income Growth Fund Officer with the United Nations High Commissioner for Refugees, filed an application for suspension of action, pending management evaluation, of the decision “not to renew [his temporary appointment] that was approved by the Joint Review Board”. The Applicant submits that, *inter alia*, the decision is unlawful as he was not provided with any written notice or explanation regarding his performance prior to, and since, the decision was taken. The Applicant asserts that his request is urgent as his contract terminates on 31 December 2013 and that upon its expiry his visa will also expire. Finally, the Applicant states that he would suffer irreparable harm as he would have to separate from his partner and would also lose his only source of income.

2. The application was transmitted to the Respondent on the date of receipt and the Respondent duly filed his reply on 26 December 2013, as instructed. The Respondent submitted, *inter alia*, that the request for management evaluation having been completed on 24 December 2013, the application for a suspension of action is not receivable due to the absence of any pending request for management evaluation. The Respondent further submitted that, should the Tribunal consider the application receivable, it has no merits and should be rejected by the Tribunal.

Consideration

3. Pursuant to art. 2.2 of its Statute, the Dispute Tribunal

shall be competent to hear and pass judgment on an application filed by an individual requesting the Dispute Tribunal to suspend during the pendency of the management evaluation, the implementation of a contested administrative decision that is subject of an ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particularly urgency, and, where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

4. The Tribunal considers that for an application for suspension of action to be successful, it must satisfy the following cumulative conditions:

- a. The application is receivable because it concerns an administrative decision that may properly be suspended by the Tribunal;
- b. The contested decision has not yet been implemented;
- c. The Applicant has submitted a request for management evaluation of the contested decision, which evaluation is currently pending;
- d. The impugned administrative decision appears *prima facie* to be unlawful;
- e. The case is of particular urgency; and
- f. Its implementation would cause irreparable damage.

5. The Tribunal notes that the Applicant is requesting the suspension of a decision not to renew his temporary appointment which is set to expire on 31 December 2013. It is an administrative decision that may properly be suspended by the Tribunal and which will not be implemented until 31 December 2013.

6. It follows from art. 2.2 of the Statute of Tribunal that the suspension of a challenged decision may only be ordered when the management evaluation of that decision is ongoing (*Igbinedion* 2011-UNAT-159 and *Benchebbak* 2012-UNAT-256).

7. The evidence before the Tribunal shows on 24 December 2013 the Respondent determined that the contested decision was lawful and rejected the Applicant's request for management evaluation. The request for management evaluation having been completed, it is no longer pending and the Tribunal therefore considers that one of the cumulative conditions required for the purpose of suspending an administrative decision pending management evaluation is not

fulfilled. It is therefore not necessary for the Tribunal to further examine the remaining requirements, namely the *prima facie* unlawfulness, urgency and the irreparable damage caused by the decision.

Conclusion

8. The application for suspension of action is dismissed.

(Signed)

Judge Alessandra Greceanu

Dated this 26th day of December 2013