
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/043
Order No.: 195 (NY/2018)
Date: 5 October 2018
Original: English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Nerea Suero Fontecha

CARTIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON SUSPENSION PENDING THE
CONSIDERATION OF AN
APPLICATION FOR SUSPENSION OF
ACTION UNDER ART. 2.2 OF THE
TATUTE**

Counsel for Applicant:
Mohamed Abdou, OSLA

Counsel for Respondent:
Thomas Jacob,

Introduction

1. On 4 October 2018, at 2:27 p.m., the Applicant, a Local Security Adviser, at the G-6 level, on a fixed-term appointment with the United Nations Development Programme filed an application for suspension of action

Procedure, requesting that the decision not to renew his fixed-term appointment beyond 6 October 2018, which was notified to him on 11 September 2018 and scheduled to be implemented on 6 October 2018, be suspended pending management evaluation. With the application, the Applicant filed a motion pursuant art. 19 and 36 of Rules of Procedure requesting the Tribunal to suspend the implementation of the contested decision pending the consideration of the application for suspension of action under art.

2. On 4 October 2018, the case was assigned to the undersigned Judge.

3. On 4 October 2017, at 3:46 p.m., the Registry acknowledged receipt of the application and transmitted it to the Respondent. The Tribunal instructed the Respondent to submit his reply by 4:00 p.m. on 8 October 2018.

4. The Tribunal further informed the parties that, due to the urgency of the matter (the deadline for the implementation of the contested decision being 6 October 2018) and pursuant to arts.

b. The Administration may therefore only resort to the Individual

the performance of duties that are not normally performed by a UNDP

t be

existing staff resources due to lack of internal specialized knowledge

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c.

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either within or outside of the UNDP premises,

within a defined

In any

directly

d. UNDP Policy includes detailed provisions guarding against the

;

e. The contested decision is based on a clear violation of the Policy on Individual Contract. The same functions performed by the Applicant since 2014 were converted and readvertised as a consultancy. The terms of reference for the new consultancy, now classified as ICS-6, bear the same job title. The duties and responsibilities, the minimum requirements and qualifications remain unchanged;

f. Moreover, contrary to the requirements set out in the Policy, the consultancy announcement does not identify any specific assignment for which an Individual Contract may be issued. Rather, the nature of the duties are similar to those performed by staff members. First, the Applicant has effectively been performing the advertised functions as a staff member since 2014. Second, the very existence of the

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terms of reference for the consultancy do not include any quantifiable

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time and definitive once it is delivered/completed, there is no
foreseen further need for such

r
time or event. Fourth, an Individual Contract does not require daily
presence in the office while the advertised vacancy appears to require

incidents affecting UN staff, offices and asse

Failure to provide specific reasons for non-renewal

- g. While the Applicant recognizes that a fixed-term appointment does not carry any expectancy of renewal, it is well established that a non-renewal decision can beire

- i. The consequences of a non-
and the related financial and personal implications are so significant as
to require formal communication of the detailed reasons for non-
renewal. The International Labour O

required. There is therefore no proper reasons for not renewing the

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Ulterior motives

n. -renewal decision is vitiated by ulterior motives, particularly in view of the following: a. the failure to disclose the specific reasons for non-renewal; b. the attempt to circumvent relevant rules by converting a staff position into a consultancy; and c. the non-selection of the Applicant for the advertised consultancy, notwithstanding the fact that he already

performed the same or similar duties in the past (the 7304-17431631004) (BT4)

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the competence to order a preliminary suspension of a contested administrative decision for up to five days pending its consideration of a suspension request under art. 13 of the Rules of Procedure in cases where the following cumulative conditions are fulfilled:

- a. The implementation of the contested administrative decision is imminent, that is, it will take place before the five days provided for under art. 13 of the Rules of Procedure have elapsed;
- b. The contested administrative decision is subject to the management evaluation review, which is ongoing; and
- c. The contested administrative decision subject to a preliminary suspension is the same administrative decision that is the subject of the application for suspension of action pending management evaluation.

12. Regarding the first condition, the Tribunal notes that, in accordance with art. 13 of the Rules of Procedure, the Tribunal has five working days from the date of service of the application for suspension of action on the Respondent, namely on 11 October 2018, to consider the request for suspension of action pending management evaluation of the contested decision. In the present case, the effective date of the separation is Saturday, 6 October 2018, before the deadline provided for the Tribunal to consider the application for suspension of action and therefore the implementation is imminent.

13. Regarding the second and the third conditions, the Tribunal notes that, in the present case, the Applicant submitted a request for management evaluation on 4 October 2018, which is still ongoing.

14.

[t]he decision not to
-term appointment beyond 6 October 2018 . In the
application for suspension of action, the Applicant requested the suspension of the

implementation pending management evaluation of the same decision: the decision not to renew his fixed term contract beyond 6 October 2018.

15. It results that the contested administration decision subject to management evaluation is the same administrative decision as the one that is subject of the present application for suspension of action.

16. The Applicant indicated that, if the implementation of contested administrative decision is not be suspended, his contract is to be terminated and he is to be separated from the Organization on Saturday, 6 October 2018 and the urgency appears not to be