
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2020/040
Order No.: 143

Introduction

1. On 28 September 2020, the Applicant, a team manager in the United Nations Counter-Terrorism Office, filed an application requesting, under art. 2.2, suspension of action pending management evaluation of the decision to put him on administrative leave with pay (ALWP) pursuant to staff rule 10.4.

2. Upon the instructions of the Tribunal, the Respondent duly filed his reply on 30 September 2020 in which he contends that the application for suspension action is without merit.

Factual background

3. By letter dated 14 September 2020, the Executive Officer of UNOCT informed the Applicant that the Under-Secretary- decided to place [him] on administrative leave with pay with immediate effect, pursuant to Staff Rule 10.4

4. under investigation by the Office of Internal Oversight Services into allegations of unsatisfactory conduct, including those of a racial nature

5. As reasons for placement on administrative leave it was indicated that:

- a. T continued performance of duties is highly likely to have a negative impact on the preservation of a harmonious work environment, given [his] level as section chief and [his] management responsibilities; and

Consideration

9.

Procedure, the Tribunal may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. The Dispute Tribunal can suspend the contested decision only if all three requirements have been met.

Prima facie unlawfulness

10. In considering whether to suspend an administrative decision pending to make a definitive finding that the decision is unlawful. The test is not particularly onerous since all the Tribunal is to do at this stage is to decide as to whether it appears that, if not rebutted, the claim will stand proven on a *prima facie* basis. Any such determination is not binding should the Applicant subsequently file an application on the merits and the matter would proceed to a full judicial review. It is merely an indication as to what appears to be the case at this preliminary stage.

Was the contested decision taken by someone with appropriate authority?

11. The Applicant submits that it appears that the contested decision was not taken by the USG/UNOCT the decision was only signed by the

12. In response, the Respondent, in essence, contends that whereas the letter dated 14 September 2020 was authored and signed by the Executive Officer, the contested decision was indeed taken by the USG, as also stated in the letter.

13. The Tribunal notes that under ST/SGB/2019/2 (Delegation of authority), decisions administrative leave with pay pending investi under staff

not all that will fulfil [his] life on a daily basis . In addition, his contract is coming to an end in late December and [he is] worried that this hidden agenda might also encompass not renewing [his] contract a constructive dismissal and cannot wait until it happens before [he raises his] voice for protection and due process of the .

19. The Applicant contends that staff rule 10.4(b) requires that the reasons are provided while, in the present case, the Secretary-General has provided elliptical reasons which do not comply with [this] requirement reasons need to be specific and substantial no indication what incident(s) the decision is based on .

20. The Respondent, essentially, submits that the USG lawfully exercised his discretion when placing the Applicant on ALWP in the given circumstances.

21. The Tribunal notes that in accordance with staff rule 10.4(a), may be placed on administrative leave, subject to conditions specified by the Secretary-General, at any time after an allegation of misconduct and0 g0pT 1v 792 reo 704975d 0 1 117

in its seminal judgment in *Sanwidi* 2010-UNAT-

if the decision is legal, r

irrelevant matters considered, and also examine whether the decision is absurd or

24. The Appeals Tribunal,
Tribunal to consider the correctness of the choice made by the Secretary-General
decision for that of the Secretary- *Sanwidi*, para. 40).

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decision-maker reached the impugned decision and not the merits of the

