
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/009
Order No.: 30 (NY/2021)

Introduction

1. On 23 March 2021, the Applicant, a staff member with the United Nations Entity for Gender Equality and the Empowerment of Women (“UN Women”), filed an application requesting, under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure, suspension of action pending management evaluation of the decision to temporarily reassign the Applicant pending investigation.

Factual background

2. The Applicant works in the UN Women’s country office.

3. In April 2020, the Office of Internal Oversight Services (“OIOS”) opened an investigation into the allegations made against the Applicant.

4. Between July and September 2020, UN Women received four memoranda from the Ethics Office recommending that UN Women take measures to protect four of its personnel from possible retaliation. The recommended measures included the recusal of the Applicant from exercising any role in the contract renewal exercise for the four personnel.

5. On 20 October 2020, following a phone conversation, the Applicant’s supervisor informed the Applicant in writing that she was temporarily reassigned to the Regional Office “in the context of the ongoing investigation” and “to mitigate the risk of retaliation from [redacted]”.

8. On 23 March 2021, the Applicant filed a request for management evaluation of

15. The Applicant submits that the case is particularly urgent as the continuous effect of the contested decision means that everyday the Applicant remains away from her post she suffers additional damage to her reputation and health. In the rejoinder, the Applicant adds that since the contested decision is continuous, the urgency is sustained throughout its implementation. The Applicant further argues that the situation is now particularly urgent since the investigation is still ongoing, the contested decision is still continuing, and her sick leave is expected to end.

16. In response, the Respondent submits that the prerequisite of urgency is not met since the Applicant was notified of the contested decision on 20 October 2020 and yet she waited until 23 March 2021, that is over five months, before filing the present application for suspension of action.

17. The Tribunal notes that the Applicant was indeed notified of the contested decision on 20 October 2020 and yet she only filed the present application on 23 March 2021. The Applicant does not offer any explanation as to why she waited over five months before filing the present application. While the Applicant mentions that she has been on sick leave, the Tribunal notes that she went on sick leave 10 days after she was notified of the contested decision. Therefore, the Tribunal finds that any urgency in this case was created by the Applicant.

18. The Tribunal notes that the Applicant argues that the matter continues to be urgent due to the continuous nature of the contested decision. However, the fact that the contested decision is continuing and thus is not fully implemented would only be a relevant argument with respect to the question of the receivability which is not in dispute in this case. The alleged continuing nature of the contested decision is therefore not relevant with respect to the question of particular urgency. It does not change the fact that the Applicant was notified of the decision in October 2020 and yet failed to come to the Tribunal at the first available opportunity.

19. Accordingly, the Tribunal finds that the requirement of particular urgency is not satisfied.

Prima facie

20. As the Applicant has not satisfied the requirement of urgency, the application fails and there is no need to examine the other two conditions, namely unlawfulness and irreparable harm.

21. The Applicant requests that her name, the country where she serves, and her country of residence be anonymized in published court orders due to the utmost sensitivity of her medical information referenced in the application.

22. Article 11.6 of the Dispute Tribunal's Statute and art. 26 of its Rules of Procedure provide that the judgments of the Dispute Tribunal shall protect personal data and shall be made available by the Registry of the Dispute Tribunal. The Appeals Tribunal has held in this regard that "the names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and, indeed, accountability" (2014-UNAT-481). The Appeals Tribunal's practice establishes that the principle of publicity can only be departed from where the applicant shows "greater need than any other litigant for confidentiality" (2014-UNAT-456) and that it is for the party making the claim of confidentiality to establish the grounds upon which the claim is based (2011-UNAT-121).

23. The Tribunal has not referred to

