
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/048
Order No.: 117 (NY/2024)
Date: 25 November 2024
Original: English

Before: Judge Francis Belle

Registry: New York

Registrar: Isaac Endeley

HERRERA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Francisco Navarro, UNHCR
Sandra Lando, UNHCR

Introduction

1. On 19 November 2024, the Applicant, a former staff member of the United Nations Refugee Agency (UNHCR), filed an application under art. 2.2 of the Tribunal's Rules of Procedure requesting the Tribunal to suspend, pending management evaluation, the decision of the Tribunal dated 19 November 2024.

2. On the same date (19 November 2024), the Registry acknowledged receipt of the application and served it on the Respondent, indicating that the Tribunal had set the deadline for submitting his reply on 21 November 2024.

3. On 21 November 2024, the Respondent filed his reply. He contends that the application for suspension of action is not receivable as the contested decision had already been implemented before the filing of the application and that, in any event, none of the criteria for granting an application for suspension of action are fulfilled. The Respondent also requests that the complainant and witnesses against the Applicant be granted anonymity in the present Order.

Background

4. On 3 April 2023, the Applicant was the subject of an ongoing investigation following a complaint of sexual abuse.

candidate screening application that is accessible to the entities of the [United Nations] System Chief Executives Board for Coordination, indicating that there is a
r gpf kpi "cmgi cvkqp"qh"UGC"cpf "ugzwcnlj" ctcuuo gpvö0 [The Applicant states that he only
received the ðCmgi cvkqp"qh'o kæqpf wewö"memorandum on 13 November 2023].

6. On 20 September 2024, the Applicant was notified of the UNHCR High
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Has the contested decision already been implemented?

11. The Applicant contends that the contested decision is already implemented. He adds that from the moment when the decision will be implemented, his employment prospects in the [United Nations] system and the international civil service will be eliminated.

12. The Respondent submits that the application is not receivable because the contested decision has already been implemented. According to the Respondent, the Applicant's determination that he had engaged in sexual abuse and sexual harassment. The Applicant was further informed that his name would be included in ClearCheck, a system used to determine if an individual is supported by an email and a screenshot tending to show that the Applicant had engaged in sexual abuse and sexual harassment. The Respondent's contention is supported by an email and a screenshot tending to show that the Applicant had engaged in sexual abuse and sexual harassment on 24 September 2024.

13. The Tribunal recalls that following the well-established jurisprudence of the Dispute Tribunal regarding the Rules of Procedure, if a contested decision has already been implemented, suspension of action cannot be granted. (See, for instance, *Daskalova* Order No. 104 (NY/2024); *Stockholder* Order No. 102 (NY/2024); *Wambugu* Order No. 80 (GVA/2024); *Jocondo* Order No. 71 (NBI/2024); *Koura* Order No. 55 (NBI/2022); *Di Mario* Order No. 92 (GVA/2019); *Beda* Order No. 113 (GVA/2018); *Quesada Rafarasoa* Order No. 20 (GVA/2013); *Neault* Order No. 6 (GVA/2011); and *Abdalla* Order No. 4 (GVA/2010)).

14. In the present case, the Tribunal notes that the contested decision was notified to the Applicant on 20 September 2024 and that it was implemented on 24 September 2024. Thus, the implementation of the contested decision was not a *fait accompli*, and the Applicant had four days during which he could have challenged it before it was implemented.

15. As the Applicant filed the application before the Dispute Tribunal on 19 November 2024, almost two months after the decision to include his name in the ClearCheck database was implemented, the application for suspension of action is therefore not receivable.

Conclusion

16. The application for suspension of action is rejected as not receivable.

(Signed)

Judge Francis Belle

Dated this 25th day of November 2024

Entered in the Register on this 25th day of November 2024

(Signed)

Isaac Endeley, Registrar, New York