



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

KINGLOW

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Steven Dietrich, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, a staff member of the Economic Commission for Latin America and the Caribbean (“ECLAC”), seeks suspension, pending completion of management evaluation, of the non-renewal of her fixed-term appointment beyond 30 June 2016.

2. The Applicant initially filed her request by email on 27 June 2016. She re-submitted it via the eFiling portal on 28 June 2016, on instructions of the New York Registry. The Registry transmitted the application to the Respondent on 28 June 2016. The Respondent was instructed to file his reply to the application by 2 p.m. on Wednesday, 29 June 2016. The Respondent’s reply to the application was duly filed on 29 June 2016.

3. The Applicant submits, with regard to the requirement of *prima facie unlawfulness*, that, although she was told that the non-renewal of her contract was due to reclassification and restructuring, no such process was afoot. There have been no changes in the organization charts and no official announcements regarding reclassification or restructuring, and no other posts appear to be affected by this alleged process. No other usual reasons for non-renewal (performance, lack of funds, redundancy, etc.) could apply in her case. For these reasons, the contested decision was arbitrary and unlawful. The Applicant alleges that the contested decision may have been made to punish her for exercising “a universal right: being a mother of [her] first son, and being absent from November [2016]” on maternity leave and post-maternity annual leave. With regard to the requirement of *particular urgency*, the Applicant submits that she was informed of the non-renewal of her contract by letter of 13 June 2016 and timeously sought management evaluation and filed an application with the Tribunal. With regard to the requirement of

irreparable damage

reminders on 23 March and 3 June 2016, the Applicant received no response to her queries.

9. On 13 June 2016, the Applicant returned to the office from her maternity leave and post-maternity annual leave. On the same day, she was provided with a letter signed by her supervisor, informing her that her contract would not be extended beyond its expiration date of 30 June 2016. No reasons for the non-renewal were included in this letter.

10. On 29 June 2016, following the Applicant's request for management evaluation and application with the Tribunal, the Chief of the Human Resources Section, ECLAC, sent an email to the Applicant, copying the Applicant's first and second reporting officers. The email notified the Applicant of ECLAC's decision to suspend the implementation of the

Consideration

Legal framework

12. Article 2.2 of the Statute of the Dispute Tribunal provides:
 2. The Dispute Tribunal shall be competent to hear and pass judgement 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 the subject of an

made with the purpose of providing an applicant temporary relief by maintaining the *status quo* between the parties to an application pending a management evaluation of its impugned decision or a full determination of the case on the merits.

16. Under arts. 13 and 14 of its Rules of Procedure, the Tribunal is required to conclude proceedings for suspension of action and interim measures within five working days due to their urgent nature. Accordingly, when dealing with interdict proceedings, often there is no time for the Tribunal or parties to entertain extensive production requests as it may delay the proceedings well beyond the statutory five-day period. Therefore, when appearing before the Tribunal, parties should bear in mind that an application or reply may well stand or fall on the initial papers filed. It is only in particular cases that the Tribunal will find it necessary to order the parties to make further submissions or document productions in the context of urgent proceedings. Therefore, the parties' submissions should be complete to the extent possible in all relevant respects, but also bearing in mind that the matter is not at the merits stage at this point of the proceedings.

Suspension of the contested decision

17. On 29 June 2016, the Applicant was notified in writing, by email copied to her first and second reporting officers, that ECLAC had agreed to suspend the contested decision not to renew her contract beyond 30 June 2016, pending completion of management evaluation.

18. Therefore, the Applicant has obtained, in full, the relief she sought in the context of the present proceedings. It is therefore not necessary for the Tribunal to consider the requirements for the granting of suspension of action under art. 2.2 of the Tribunal's Statute.

Observations

19. The Tribunal notes that the circumstances of this case, as presented by the Applicant, appear unusual and require careful consideration by the Administration. The Applicant is a dedicated staff member with a good performance record, who has just returned from her maternity leave and subsequent post-maternity annual leave. A range of international human rights and labour standards protect female

bearing in mind the relevant case law of the Dispute Tribunal and Appeals Tribunals (including *Obdeijn* UNDT/2011/032, *Obdeijn* 2012-UNAT-201 and other pronouncements).

IT IS ORDERED THAT:

22. The contested decision not to renew the Applicant's contract beyond 30 June 2016 having been suspended during the pendency of management evaluation, Case No. UNDT/NY/2016/030 is hereby closed.

(Signed)

Judge Ebrahim-Carstens

Dated this 29th day of June 2016