



UNITED NATIONS DISPUTE TRIBUNAL

Case No. UNDT/NY/2012/027

Judgment No. UNDT/2012/058

27 April 2010. (A revised version of this administrative instruction (ST/AI/2010/4/Rev.1) was issued in October 2011.)

6. On 2 March 2011, prior to taking up a new temporary appointment with MINUSTAH, the Applicant sent an email to MINUSTAH Recruitment Unit, enquiring whether she would have to take a break in service. She stated:

As I know you're well aware, [the Office of the Special Representative of the Secretary-General] is anxious to have me come onboard as soon as possible, and I know there is an issue of my having to take a 31-day contract break before taking up the job with MINUSTAH. Do you know of any measures that can be taken to avoid my having to do this?

7. By email dated 5 March 2011, sent by the MINUSTAH Recruitment Unit, the Applicant was informed that, if she were to resign prior to the expiration of her temporary appointment with DPKO and prior to her new appointment with MINUSTAH, she would not have to take any break in service. The email stated:

In regards to your query regarding break of service for a month regarding your temporary appointment with MINUSTAH, we wish to inform you that 30 days break of service is not applicable to your case as resignation is filed prior to your contract expiration of temporary with

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Consideration

15. In accordance with art. 2.2 of its Statute, the Tribunal has to consider whether the impugned decision appears to be *prima facie* unlawful, whether the matter is of particular urgency, and whether its implementation will cause the Applicant irreparable harm. The Tribunal must find that all three of these requirements have been met in order to suspend the action (implementation of the decision) in question.

16. Applications for suspension of action are necessarily urgent requests for interim relief pending management evaluation. Under art. 13 of its Rules of Procedure, the Tribunal is required to consider such an application within five days. Although art. 13 of the Rules of Procedure requires that such an application be transmitted to the Respondent, there is no obligation to require a response from the Respondent before deciding the application (*Kananura* UNDT/2011/176).

17. Speed is of the essence in considering an application for a suspension of action. The decision should, in most cases, be in summary form. The Tribunal is not required to provide, and the parties should not expect to be provided with, an elaborately reasoned judgment either on the facts or the law. To do so would defeat the underlying purpose of a speedy and cost-effective mechanism. Moreover, the time, effort and costs thereby saved by all those involved with the formal system of internal justice could be utilised to enhance the disposal of other cases.

Prima facie unlawfulness

18. It is important for all concerned, including the Management Evaluation Unit of the Department of Management, to understand that, in essence, the Tribunal is expressing an opinion as to whether on the facts presented by the Applicant it appears that the decision is *prima facie* unlawful.

19. The Tribunal is not required to make a finding that the impugned decision is, in fact, unlawful. For the *prima facie* unlawfulness test to be satisfied, it is enough for an applicant to present a fairly arguable case that the contested decision was influenced by some improper considerations, was procedurally or substantively defective, or was contrary to the Administration's obligation to ensure that its decisions are proper and made in good faith (*Villamorán* UNDT/2011/126).

24. The Applicant submits that had she not been given the advice of 5 March 2011, she would have taken a 31-day break in service in June 2011 and would subsequently have been able to serve, without any restrictions, for 364 days with MINUSTAH starting 2 June 2011, with the possibility of exceptional extension up to a period of 729 days.

25. The Applicant was entitled to believe that the advice given by MINUSTAH was correct. She was misled and now faces imminent separation from service on 1 May 2012 due to the break-in-service requirement. The only reason for the non-extension of the Applicant's contract is that she has now approached the limit requiring her break in service.

26. It must be noted that the memorandum of 4 April 2012, when stating that the Applicant "will reach the maximum period of temporary appointment on 1 May 2012", appears to mistakenly refer to sec. 11 of ST/AI/2010/4/Rev.1, which concerns travel-related entitlements

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on the material put forward by the Applicant in accordance with art. 2.2. of the Tribunal's Statute. Should the matter go to trial, the Respondent will have a full opportunity to challenge any application on the merits.

Urgency

29. The Applicant was informed of the contested decision on 10 April 2012. The present application was filed on 24 April 2012 and she will be unemployed as of 2 May 2012, unless the implementation of the decision is suspended. This is not a case of self-created urgency. The Tribunal finds that the requirement of particular urgency is satisfied.

Irreparable damage

30. Loss of employment is to be seen not merely in terms of financial loss, for which compensation may be awarded, but also in terms of loss of career opportunities. This is particularly the case in employment within the United Nations which is highly valued. Once out of the system the prospect of returning to a comparable post within the United Nations is significantly reduced. The damage to career opportunities and the consequential effect on one's life chances cannot adequately be compensated by money. The Tribunal finds that the requirement of irreparable damage is satisfied.

Conclusion

31. The present application has met the conditions for a suspension of action.

Order

32. The Tribunal orders suspension, during the pendency of the management evaluation, of the implementation of the decision not to extend the Applicant's contract beyond 1 May 2012 and to require her to take a break in service starting 2 May 2012.

(Signed)

Judge Goolam Meeran

Dated this 26th day of April 2012

Entered in the Register on this 26th day of April 2012

(Signed)

Hafida Lahiouel, Registrar, New York