



Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

REES

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

None

Counsel for Respondent:

Ivan Koulov, HRMS/UNOG

Notice: The format of this judgment has been modified for publication purposes in accordance with Article 26 of the Rules of Procedure of the United Nations Dispute Tribunal.

BETWEEN:

Case No: UNDT/GVA/2009/44

REES

APPLICANT

AND

THE SECRETARY-GENERAL OF
THE UNITED NATIONS,

RESPONDENT

ORDER

1. By application registered on 13 August 2009 under UNDT/GVA/2009/44, the Applicant, Coordinator, Women's Rights and Gender Unit (hereinafter WRGU), Office of the High Commissioner for Human Rights (OHCHR), in Geneva, Switzerland, requested that the implementation of the decision to remove her as the coordinator of the WRGU and reassign her to undertake thematic research and advocacy on the issue of sexual orientation and human rights be suspended.

SUMMARY OF THE FACTS

2. Further to a request for suspension of action lodged by the Applicant before the Geneva JAB on 22 June 2009, the entrusted JAB panel issued a report (dated 30 June 2009) recommending to the Secretary-General that the decision to remove the Applicant as the coordinator of the WRGU and reassign her to undertake thematic research and advocacy on the issue of sexual orientation and human rights as of 1 July 2009 be suspended until a final decision be taken on the merits of the case.

3. By memorandum dated 30 June 2009, the Deputy Secretary-General for Management notified to the Applicant that she accepted the JAB's conclusion that the decision in question would result in irreparable harm to her if implemented and that, accordingly, she had decided to grant her request for suspension of action. The Deputy Secretary-General further stated she had decided to suspend implementation of the decision until 12 August 2009 to allow the Management Evaluation Unit (MEU) to

complete a review of her case. For that purpose, the Applicant was requested to forward to the MEU a request for a management evaluation of the above-mentioned decision no later than Monday, 6 July 2009.

4. The Applicant transmitted her request management evaluation to the Management Evaluation Unit on 3 July 2009.

5. On 6 July 2009, the Acting Chief of Management Evaluation Unit acknowledged receipt of the Applicant's request, specifying that it had been received at that office on 6 July 2009 and stating that the 45-day period of evaluation of the administrative decision would begin to run from the date the request was received at that office.

6. On 13 August 2009, date on which the Tribunal received the Applicant's application, no decision by Management Evaluation Unit had been notified to her on her case.

CONSIDERATIONS

7. Article 2.2 of the UNDT Statute reads as follows:

“The Dispute Tribunal shall be competent to hear and pass judgment 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 ongoing management evaluation where the decision appears *prima facie* to be unlawful in cases of particular urgency, and where its implementation would cause irreparable damage.”

8. Staff Rule 11.2 (d) as well as in Article 8.1 (i) a) of the UNDT Statute provide the timeframe for conducting management evaluation. Indeed, Staff Rule requires that “[t]he Secretary-General's response, reflecting the outcome of the management evaluation, shall be communicated in writing to the staff member (...) within forty-five calendar days of receipt of the request for management evaluation if the staff member is stationed outside of New York.” Article 8.1 (a) (i) b. of the UNDT Statute establishes that the period for management evaluation, if no response is provided, is 45 calendar days from the

submission of the decision to management evaluation for offices other from Headquarters.

9. According to the memorandum addressed by the Chief, MEU, to the Applicant on 6 July 2009, the latter's request for management evaluation was received on 6 July 2009. This was, in addition, the date specified by the Deputy Secretary-General as being the prescribed deadline for the purposes of submitting the request for management evaluation.

10. It is then established that the 45-day period for conducting management evaluation should therefore be calculated from 6 July 2009. Therefore, the final date for management evaluation to be carried out is **Thursday, 20 August 2009**. The time-limit for management evaluation has not yet expired.

11. Consequently, management evaluation of the impugned decision is still pending to date, and the conditions for an application for suspension of action pending management evaluation under Article 2.2 of the Tribunal's Statute, as well as Article 13 of its Rules of Procedure, are met in the present case.

12. Having found the above, the Tribunal must determine whether the three cumulative conditions which must be fulfilled for such a request to be granted, i.e. (1) that the decision appear *prima facie* to be unlawful; (2) particular urgency; (3) that the implementation of the decision would cause irreparable damage to the concerned staff member.

13. In this connection, the Tribunal took note of the findings of the JAB Panel which recommended suspension of action following to the Applicant's request to this end dated 22 June 2009, and of the the Deputy Secretary-General's memorandum by which such suspension was granted. As a matter of fact, both the Panel and the Secretary-General came to the conclusion, on the one hand, that the questioned decision was *prima facie* unlawful, and, on the other hand, that the Applicant's reassignment, if implemented, would cause irreparable damage to her professional reputation and career prospects. Furthermore, it is the Tribunal's view, based on the information and documents available before it, that the factual elements of the case remain essentially unchanged since 30 June 2009. On these grounds, the Tribunal considers the conditions of *prima facie*

unlawfulness of the decision at issue and irreparable harm in case of implementation of same are founded for the purposes of a request for suspension of action.

14. As regards the particular urgency requirement, it should be noted that the implementation of the impugned decision had been suspended until 12 August 2009, by virtue of the Deputy Secretary-General decision of 30 June 2009. It results that, on the very date the application was submitted to the Tribunal and the Tribunal examined it, the Administration is already in a position to implement the contested decision. Accordingly, its implementation appears imminent.

15. It was in view of this situation, which calls for any appropriate action to be taken without delay, that the Tribunal exceptionally proceeded to issue the present order without requesting comments from the Respondent. In adopting this exceptional course of action, it also took into account that the measures hereby ordered are meant to last only until the established period for conducting management evaluation comes to an end, this is, 20 July 2009 at the latest. The effects of the Tribunal's decision on the Applicant's application will thus be, in any event, necessarily limited in time.

CONCLUSION

For the reasons stated above

It is DECIDED that:

The implementation of the decision in question in the present case be suspended until the completion of management evaluation.

Furthermore, considering that the Tribunal has been informed by the Applicant that Respondent has manifested his will to have resort to mediation in view of settling the dispute at hand and the Appellant has shown readiness to engage in such mediation process, the Tribunal expressed its expectation that, unless there is a fundamental change in the overall circumstances of the case, the contested decision should not be implemented as long as the mediation efforts are underway.

(Signed)

Judge Thomas Laker

Dated this 13 day of August 2009

Entered in the Register on this 13 day of August 2009

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva