



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

CHERNEVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Bart Willemsen, UNICEF

Introduction

1. By application filed on 4 May 2018, the Applicant requests suspension of action, pending management evaluation, of the decision to “limit [her United Nations Children’s Fund (“UNICEF”) email account] to not allow the sending of emails”.
2. On 7 May 2018, the application was served to the Respondent who filed his reply on 8 May 2018.

Facts

3. On 16 April 2018, the Applicant sent two emails to her colleagues in the Private Fundraising and Partnerships Division (“PFP”), UNICEF. Later that day, UNICEF changed the Applicant’s email account password and restricted the account to receiving and reading emails.
4. Also on 16 April 2018, the Chief, Policy, Administrative Law and Liaison Section (“PALLS”), Division of Human Resources, UNICEF Headquarters in New York, sent an email to the Applicant—in response to a complaint from the latter about the suspension of her UNICEF email account—that read *inter alia* as follows:

The contents of [your 16 April 2018 emails] were inappropriate, and inconsistent with the standards of conduct for the international civil service. As a result, it was decided to suspend your UNICEF email account, as your use of [it] is subject to compliance with the same standards of conduct.

Please note that DHR has requested IT to restore your access to your UNICEF account, in order for you to receive emails; you will not, however, be able to send emails from your UNICEF account, until further notice.

5. By letter (erroneously) dated 15 April 2018, the Applicant requested management evaluation of the decision set forth in para. 1 above.

Parties' contentions

6. The Applicant's primary contentions may be summarized as follows:

Prima facie unlawfulness

- a. Suspending all features of her UNICEF email account, "including job applications, performance evaluation, training and benefits platforms and accounts" is unlawful;

Urgency

- b. She is missing professional opportunities in view that she cannot apply to UNICEF vacancies as an internal candidate;
- c. She requires access to her "benefits account MyCase" to claim or cancel benefits; and

Irreparable damage

- d. Irreparable harm "is personal stress, professional opportunities loss, harm to health and inability to claim benefits".

7. The Respondent's primary contentions may be summarized as follows:

Prima facie unlawfulness

- a. Changing the password to access the Applicant's official email account and limiting said account to receiving and reading email is not *prima facie* unlawful because these decisions resulted from the Applicant sending "highly inappropriate emails to (all) her UNICEF colleagues in the Private Fundraising and Partnerships Division (PFP)";

- b. Moreover, the matter is moot because appropriate action was taken to inform the Applicant of how to proceed to reset her password and regain access to her official email account; and

Urgency and irreparable damage

- c. The matter is “neither urgent nor would the Applicant’s continued lack of access to her UNICEF email account cause her irreparable harm”.

Consideration

8. At the outset, the Tribunal notes that the Applicant’s challenge concerns the limitations that UNICEF implemented on her official email account and not simply her lack of access to it. The fact that the Respondent took action to restore the Applicant’s access to her official email account does not render the matter moot. It follows that the Tribunal must examine the substance of the Applicant’s request for suspension of action.

9. Art. 2.2 of the Tribunal’s Statute provides that the Tribunal shall be competent to suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. These three requirements are cumulative and must all be met in order for a suspension of action to be granted.

Prima facie unlawfulness

10. The Tribunal recalls that the threshold required in assessing this condition is that of “serious and reasonable doubts” about the lawfulness of the impugned decision (*Hepworth* UNDT/2009/003, *Corcoran* UNDT/2009/071, *Miyazaki* UNDT/2009/076, *Corna* Order No. 90 (GVA/2010), *Berger* UNDT/2011/134, *Chattopadhyay* UNDT/2011/198, *Wang* UNDT/2012/080, *Bchir* Order No. 77 (NBI/2013), *Kompass* Order No. 99 (GVA/2015)).

11. In her application, the Applicant did not minimally show that the decision she was challenging is unlawful. She simply asserted unlawfulness, without providing any specific ground to support her assertion.

12. The Tribunal examined the content of the two emails that the Applicant sent on 16 April 2018 (cf. para. 3 above). It notes that the limits imposed on the Applicant's use of her UNICEF professional email account appear *prima facie* reasonable in response to her sending these two emails to all her PFP, UNICEF, colleagues, which contain grave accusations. The measure taken also appears proportionate to the aim it seeks to achieve, since it gives the Applicant continued access to her email account while being prevented from potentially causing harm to colleagues.

13. Accordingly, the Tribunal finds that the requirement of *prima facie* unlawfulness is not met in the present case.

14. Having found that one of the three cumulative conditions to grant a suspension of action is not met, the Tribunal will not address the remaining two conditions, namely irreparable harm and urgency.

Conclusion

15. In view of the foregoing, the application for suspension of action is rejected.

(Signed)

Judge Rowan Downing

Dated this 11th day of May 2018

Entered in the Register on this 11th day of May 2018

(Signed)

René M. Vargas M., Registrar, Geneva