



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/117
Order No.: 170 (NBI/2022)
Date: 9 December 2022
Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

TURNER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:

Robbie Leighton, OSLA

Counsel for the Respondent:

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Fatuma Mnde-Silungwe, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant filed the current application seeking suspension of the implied decision by the United Nations Multidimensional Integrated Stabilization Mission in Mali (“MINUSMA”) not to renew her fixed-term appointment (“FTA”) beyond 6 December 2022. The Applicant has yet to be informed of any separation decision.¹

2. The application was transmitted to the Respondent on 6 December 2022.

Background

3. The Applicant serves with MINUSMA in Tombouctou, Mali, as a Project Management Officer at the P-4 level in the Stabilization and Recovery Section (“SRS”).

4. On 7 June 2022, the Applicant emailed the MINUSMA Conduct and Discipline Team (“CDT”) requesting an investigation into allegations of abuse of authority against the Tombouctou Acting Head of Office who is her First Reporting Officer (“FRO”). Her allegations stemmed from: (i) his decision to reverse her choice of an Officer-in-Charge during her absence; (ii) false accusations he had made against her; and (iii) conflict with him over her implementation of accountability measures for Quick Impact Project and Trust Funds projects.²

5. On 29 June 2022, the Applicant brought her allegations of bullying, mismanagement, and abuse of authority against her FRO and her Second Reporting Officer (“SRO”), the Director of SRS, to the attention of the MINUSMA Special Representative of the Secretary-General (“SRSG”).³

¹ Application, p. 4, para. 16.

² Application, annex 1.

³ Application, annex 2.

6. On 27 July 2022, the Applicant filed an official complaint against her FRO pursuant to ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) with the SRSG.⁴

7. On 11 September 2022, the Applicant emailed a contract extension recommendation form and her ePAS to her FRO for action.⁵ Her FTA was due to expire on 6 December 2022.⁶ She followed up on her contract extension with emails to SRS and the Human Resources Section (“HRS”) on 14 and 21 October 2022 to no avail.⁷

8. On 30 October 2022, the Applicant filed another ST/SGB/2019/8 complaint against her FRO with the SRSG and CDT.⁸

9. On 9 November 2022, a Human Resources Assistant based in Tombouctou sent a reminder to SRS Tombouctou about the paperwork for the Applicant’s FTA extension. SRS Tombouctou in turn followed up with SRS Bamako, Mali, on 16 November 2022.⁹

10. According to the Applicant, the Chief of the MINUSMA Human Resources Section (“Chief/HRS”) informed her on 17 November 2022 that the Senior Program Manager was to become her FRO. She also asserts that on 25 November 2022, the Senior Program Manager was announced as the new team leader for SRS Tombouctou, a role that she had previously performed.¹⁰

11. The Applicant emailed the SRS on 22 November 2022 seeking an update on her contract extension. SRS Bamako informed her the same day that her contract extension was “under process” and that they were expecting feedback from the Director/SRS “sometime soon”.¹¹

⁴ Application, annex 3.

⁵ Application, annex 4, p. 2.

⁶ Application, p. 3, para. 6.

⁷ Application, annex 4, p. 1.

⁸ Application, annex 5.

⁹ Application, annex 7, p. 2.

¹⁰ Application, p. 3, paras. 11 and 13.

¹¹ Application, annex 8.

12. On 28 November 2022, SRS Tombouctou sought an update from SRS Bamako regarding the Applicant's contract extension.¹²

13. On 6 December 2022, Counsel for the Applicant wrote to the Chief/HRS seeking confirmation of the extension of the Applicant's FTA and informing her that in the absence of a response, the Applicant would request management evaluation and file an application for suspension of action ("SOA").¹³ There was no response thus the Applicant sought management evaluation¹⁴ and filed her SOA application the same day.

14. The Respondent filed a reply on 7 December 2022 in which he submitted that the application is not receivable *ratione materiae* and is moot because MINUSMA had requested the renewal of the Applicant's fixed-term appointment for one year. The Respondent attached an email from Ancilla Kaizrukanyo, MINUSMA Chief Human Resources, dated 7 December 2022, 1444hrs, informing of MINUSMA's intention to extend the Applicant's appointment for one year. On 8 December 2022, the Respondent submitted a copy of personnel action confirming the same. The same day, the Applicant filed a motion to withdraw her application.

Considerations

15. It is documented that MINUSMA persistently ignored the Applicant's repeated queries regarding the extension of her appointment, from September 2022 until the date of its expiry on 6 December 2022. No reason whatsoever had been given for this lack of response. In this connection, the Tribunal wishes to recall that the Administration has a general duty to act fairly, justly and transparently in its dealings with its staff.¹⁵ A good administrative practice requires that a notice of non-extension be given

¹² Application, annex 9.

¹³ Application, annex 10.

¹⁴ Application, annex 11(a).

¹⁵ *Obdeijn* 2012-UNAT-201, para. 33; *Ahmed* 2011-UNAT-153, para. 45.

sufficiently in advance of the expiry of the appointment.¹⁶ Such notice, apart from the fact that it informs against eventual expectations for an extension that a staff member might harbour, also facilitates access to legal remedies and a timely and cost-effective separation. By extension, a staff member inquiring about extension of the appointment deserves an answer. Parting with the articulated good practice, especially if aimed at obscuring the fact of issuance of a negative decision, should be discouraged. The conduct of the Administration in this case is neither fair nor transparent. Since 28 November 2022, at the latest, the Administration clearly implied that the Applicant's appointment would not be extended. It is obvious that MINUSMA only moved to act when the Applicant filed a management evaluation request. This, it should be noted, appears to be a modus operandi of MINUSMA toward staff members who file complaints against the management, see *Pierre* UNDT/2020/126 and *Pierre* UNDT/2021/123.

16. The issue, in any event, has been overtaken by events in that the Applicant's appointment has been extended. This renders the present application moot.

ORDER

17. The application for suspension of action has become moot and, as such, is not receivable.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 9th day of December 2022

¹⁶ See Human Resources online handbook of the United Nations Secretariat - <https://hr.un.org/handbook>.

Entered in the Register on this 9th day of December 2022

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi