



Before: Judge Joelle Adda
Registry: New York
Registrar: Nerea Suero Fontecha

SASSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:
Dorota Banaszewska, OSLA

Counsel for Respondent:
ALD/OHR, UN Secretariat

Introduction

1. On 11 October 2019, the Applicant, an Investment Officer at the P-3 level on a temporary appointment with United Nations Joint Staff Pension Fund (“UNJSPF”), filed an application pursuant to art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure requesting a suspension pending management evaluation of the decision not to extend his temporary appointment beyond 11 October 2019.

2. With the application for suspension of action, the Applicant also requested that the impugned decision be suspended during the pendency of the Dispute Tribunal’s consideration of the present case in accordance with *Villamorán* 2011-UNAT-160.

Consideration

3. Under art. 2.2 of the Dispute Tribunal’s Statute and art. 13.1 of the Rules of Procedure, the Tribunal may 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. The Dispute Tribunal can suspend the contested decision only if all three requirements have been met.

Prima facie unlawfulness

4. In considering whether to suspend an administrative decision pending management evaluation, the Dispute Tribunal’s Statute does not require the Tribunal to make a definitive finding regarding the legality of the impugned decision. Any determination made in the present case is not binding in a possible subsequent substantive case. Rather, based on case record at hand, the Tribunal is merely to make a precursory finding regarding the lawfulness of the impugned decision.

5. In the present case, the Applicant contends that the non-renewal of his temporary appointment is unlawful because the Administration failed to consider the following factors:

- a. “a clear organisational need” exists for filling “the post of a Real Estate Investment Officer” at the P-3 level with the UNJSPF;
- b. “This post is included in the UNJSPF’s budget for 2020”;
- c. The Applicant is “eligible for the appointment extension” according to staff rule 4.12(b) and secs. 2.7 and 14 of ST/AI/2010/4 Rev. 1 (Administration of temporary appointments);
- d. “The Applicant performance has so far exceeded expectations”.

6. The Applicant further submits that “the Administration’s decision to open a new recruitment for the post at stake and, as a result, to hire somebody else when there is an excellent staff member already placed against this post, eligible for an extension and ready to continue his work for the Organisation, cannot be described no different than as counterproductive and a complete waste of the Organisation’s time and its financial and administrative resources”.

7. The Tribunal notes that it is trite law that a temporary appointment carries no expectation of non-renewal (see staff rule 4.12(c) and sec. 1.2 of ST/AI/2010/4 Rev.1). If the staff member affected by a non-renewal decision requests to be provided a reason therefor, the Administration must do so and the reason must be lawful and supported by facts (see, for instance, *Obdeijn* 2012-UNAT-201 and *El-Arqan* 2019-UNAT-911).

8. It follows from an email of 4 October 2019 appended to the application for suspension of action that the Applicant was hired temporarily against the post of an “Investment Officer” to replace an incumbent who was going on maternity leave. The incumbent’s maternity leave has ended and she is back at work—the Applicant’s temporary appointment was therefore not renewed.

9. Accordingly, the Tribunal finds no *prima facie* illegality whatsoever in the non-renewal of the Applicant's temporary appointment as the reason behind this decision appears to be nothing but appropriate. The Tribunal further notes that the recruitment for the position as a "Real Estate Investment Officer", which apparently has not even been approved by the General Assembly, seems to be entirely unrelated to the post that the Applicant was recruited against, namely the post as an "Investment Officer". On this basis, no legal right for the Applicant to have his temporary appointment renewed therefore exists, and the circumstances to which the Applicant refers are all irrelevant.

Other conditions under art. 2.2 of the Dispute Tribunal's Statute and art. 13.1 of the Rules of Procedure

10. As the Tribunal finds no *prima facie* unlawfulness in the present case, it is not necessary to examine whether the present case is particularly urgent or if the impugned decision would cause irreparable harm to the Applicant.

IT IS ORDERED THAT:

11. The application for suspension of action is rejected.

(Signed)

Judge Joelle Adda

Dated this 11th day of October 2019