



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Nerea Suero Fontecha

RONVED

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
ALD/OHR

Introduction

1. On 27 March 2019, the Applicant, a Human Resources Officer at the P-3 level, step 12, with the Department of Operational Support in New York, filed an application under art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure seeking to suspend the decision, pending management evaluation, "to recover USD 6,201.82 from [his] March 2019 salary", which is to be implemented on 28 March 2019 with the payment of the Applicant's March 2019 salary. The Applicant submits that the recovery of almost 60 percent of his March 2019 net salary will cause irreparable harm and undue financial hardship.

2. On the same day, the application was registered and assigned to the undersigned Judge.

Consideration

3. Applications for suspension of action pending management evaluation are governed by art. 2.2 of the Dispute Tribunal's Statute and art. 13 of the Rules of Procedure. The three statutory requisites of *prima facie* unlawfulness, urgency and irreparable harm must be satisfied for an application for suspension of action to be granted. Where an administrative decision has been implemented, a suspension of action may not be granted (*Gandolfo* Order No. 101 (NY/2013)), save where the implementation of the decision is of an ongoing nature (see, for example, *Calvani* UNDT/2009/092; *Hassanin* Order No. 83 (NY/2011); *Adundo et al* Order No. 8 (NY/2013); *Galliery* Order No. 60 (NY/2014)).

4. Pursuant to art. 19 of the Rules of Procedure of the Dispute Tribunal,

The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

5. Article 36.1 of the Rules of Procedure provides that:

All matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Dispute Tribunal on the particular case, by virtue of the powers conferred on it by article 7 of its statute.

6. Pursuant to art. 13.3 of the Rules of Procedure,

The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

7. The Applicant filed the application on 27 March 2019 to ensure that USD6,201.82 would not be deducted from his March 2019 salary, which apparently is to be paid on 28 March 2019.

8. In *Villamorán* 2011-UNAT-160, the Appeals Tribunal upheld this Tribunal's *Villamorán* Order No. 171 (NY/2011) finding that the Dispute Tribunal was within its competence to order a suspension of the contested decision pending a determination of the application for suspension of action on the basis of the aforesaid Rules of Procedure and without having to make a finding as to whether the requirements of a suspension of action under art 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure had been met. The Appeals Tribunal, *inter alia*, found that:

43. Where the implementation of an administrative decision is imminent, through no fault or delay on the part of the staff member, and takes place before the five days provided for under Article 13 of [the Dispute Tribunal's, "UNDT"] Rules have elapsed, and where the UNDT is not in a position to take a decision under Article 2(2) of the UNDT Statute, i.e. because it requires further information or time to reflect on the matter, it must have the discretion to grant a suspension of action for these five days. To find otherwise would render Article 2(2) of the UNDT Statute and Article 13 of the UNDT Rules meaningless in cases where the implementation of the contested administrative decision is imminent.

9. Upon perusing the application, noting that the urgency is not self-created as the Applicant was apparently only informed about the lump sum deduction on 21 March 2019, the Tribunal is satisfied that the requirements for an interim order pending the Tribunal's determination of a suspension of action as set out in *Villamorán* by the Appeals Tribunal have been satisfied in this case. The Tribunal therefore grants the interim order on urgency basis, pending the Tribunal's determination of the suspension of action application under art. 2.2 of the Statute.

10. Although the Tribunal does not have to make a finding as to whether the requirements of a suspension of action under art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure have been met, the Tribunal observes that it is a general principle of employment law and international labor standards or norms, in particular the Protection of Wages Convention, 1949, that wages shall be protected against attachment or assignment to the extent deemed necessary for the maintenance of a worker and his family. Furthermore, under the Protection of Wages Recommendation, 1949, that "all necessary measures should be taken to limit deductions from wages to the extent deemed to be necessary to safeguard the maintenance of the worker and his family".

11. However, the Tribunal is also privy to the technical difficulties that the interim suspension may cause as the electronic payroll system may already have processed the deduction. In this is the case, the Administration will therefore need to find an alternative solution to ensuring that the deduction is not implemented before the Tribunal has issued its final determination of the pending suspension of action application.

IT IS ORDERED THAT:

12. Without prejudice to any final determination of the present application for suspension of action pending management evaluation, the contested decision is suspended during the pendency of the instant proceedings, and the Respondent shall not make any deductions in the Applicant's March 2019 salary. If this is not

technically feasible, the Administration shall use its best endeavors to find an alternative solution to ensure that the Applicant receives his full salary for March 2019.

13. By **10:00 a.m. on Monday, 1 April 2019**, the Respondent shall file and serve a reply to the application for suspension of action pending management evaluation.

(Signed)

Judge Ebrahim-Carstens

Dated this 27th day of March 2019