



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2017/049
Order No.: 134 (GVA/2017)
Date: 5 July 2017
Original: French

Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

FORTIS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:

Afshin Salamian

Counsel for Respondent:

Stéphanie Cochard, UNOG

Introduction

1. By application filed on 30 June 2017, the Applicant requests suspension of action, pending management evaluation, of the decision of 24 April 2017 informing him that he had received an overpayment in the amount of 11,996.49 Swiss francs.

Facts

2. The Applicant is a former staff member of the United Nations Office at Geneva who had worked in the Security and Safety Service at the United Nations at Geneva from 2000 until separating from service in September 2016 for health reasons.

3. He had been placed on disability by the United Nations Joint Pension Fund effective 28 September 2016. He has significant medical bills and is going through a divorce.

4. On 24 April 2017, the Human Resources Management Service informed the Applicant that he had received an overpayment of 11,996.49 Swiss francs as final emolument which should be recovered by the United Nations. The memorandum also indicated that the Applicant would be contacted by the Financial Resources Management Service to that end. To date, Financial Service has not sent any communication to the Applicant.

5. The Applicant requested a management evaluation of the decision on 23 June 2017 and submitted the present application on 28 June 2017 by email and on 30 June 2017 through the portal for the electronic submission of applications.

6. The Respondent submitted his reply on 4 July 2017, undertaking not to request reimbursement of the overpayment disputed by the Applicant before the Management Evaluation Unit reviewed the decision. The Respondent pointed out that said undertaking could not be construed as recognition of any error or liability on the part of the Organization in the handling of the Applicant's case.

Parties' contentions

7. The Applicant's contentions are as follows:

Urgency

a. With the decision of 24 April 2017, it is quite likely that the Financial Service will soon send a letter to the Applicant to recover the alleged overpayment, with the risk that the Applicant might be sued in case of refusal to pay the required amount pending the Administration's response to the request for management evaluation;

Irreparable damage

b. His financial situation is relatively precarious, owing to his family obligations, the cost of his medical treatment and the reimbursement of real estate loans for which he is responsible; implementing the decision without waiting for the outcome of the management evaluation would cause him irreparable damage, inasmuch as it would put him in an even more difficult financial position, with the risk that he would not be able to meet his obligations or to obtain treatment;

8. The Respondent's contentions are as follows:

Irreparable damage

a. The memorandum of 24 April 2017 is an informational memorandum that is not likely to cause irreparable damage to the Applicant's rights.

Urgency

b. Given that the Organization has indicated its agreement not to request reimbursement of the overpayment pending a review by the Management Evaluation Unit, there is no urgency to suspend any decision whatsoever.

Consideration

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, thus, all be met in order for a suspension of action to be granted (*Ding* Order No. 88 (GVA/2014), *Essis* Order No. 89 (NBI/2015), *Carlton* Order No. 262 (NY/2014)).

10. The Tribunal considers that the application for suspension of action became moot once the Administration gave an undertaking that it will not request reimbursement of the 11,996.49 Swiss francs from the Applicant until the management evaluation is completed. There is therefore no decision for the Tribunal to suspend.

Conclusion

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

(Signed)

Judge Teresa Bravo

Dated this 5th day of July 2017

Entered in the Register on 5 July 2017

(Signed)

René M. Vargas M., Registrar, Geneva