



Before: Judge Teresa Bravo

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 June 2018, the Applicant, a staff member of the United Nations Children’s Fund (“UNICEF”), requests suspension of action, pending management evaluation, of the decision to not renew her contract upon its expiration on 31 October 2018.

Facts

2. By email dated 29 May 2018, in reply to an email from the Applicant concerning her request to be placed on special leave with full pay, the Director, Human Resources, UNICEF, *inter alia* informed the Applicant that UNICEF would not be able to consider an extension of her contract beyond its expiry date of 31 October 2018. In her email to the Applicant, the Director of Human Resources also shared with her the reasons for the non-renewal decision.

3. By email of 2 June 2018, the Applicant requested management evaluation of the decision “to not renew [her] contract beyond its expiry date”.

Parties’ contentions

4. The Applicant’s primary contentions may be summarized as follows:

Prima facie unlawfulness

a. The reasons supporting the non-renewal of her appointment are speculative because the allegations she reported are still under investigation. It follows that the assertion by the Director, Human Resources, UNICEF, “is premature, at best, and [an] abuse of authority, at worst” and “reveals a procedural irregularity in the decision-making process”;

Urgency

b. The matter is urgent due to the emotional distress that it creates on her;

Irreparable damage

c. Irreparable damage would arise from the emotional distress she would suffer, the loss of professional opportunity, moral harm and reputational harm.

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

Receivability

a. The application is not receivable because the deadline for the completion of the Applicant's request for management evaluation, namely 17 July 2018, expires prior to the date of implementation of the contested decision, that is 31 October 2018;

Urgency

a. Since the contested decision will only be implemented on 31 October 2018, the matter is not urgent;

Prima facie unlawfulness and irreparable damage

b. The Respondent advanced no argument in support of either of these requirements.

Consideration

6. 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.

7. Without prejudice to the Respondent's argument on receivability, the Tribunal notes that the deadline to reply to the Applicant's request for management

evaluation (17 July 2018) expires a little over three months prior to the expiration of the Applicant's contract.

8. The rationale behind the interim relief provided by a suspension of action *pending management evaluation* is to preserve an Applicant's rights while the Organization reviews a contested administrative decision. The most evident situation for requesting such relief is one where the reply to a management evaluation request is due after the date of implementation of a contested administrative decision. That is not so in the case at hand.

9. If the Applicant is not satisfied with the reply to her request for management evaluation, or if she does not receive a reply within the statutory deadline, she has ample time to challenge the contested administrative decision through an application on the merits. For instance, if the Applicant does not receive a reply to her management evaluation request by 17 July 2018 at the latest, the 90-day deadline to file an application on the merits expires, also at the latest, on 15 October 2018, namely two weeks before the implementation of the contested decision.

10. In view of the foregoing, the Tribunal finds that there is no urgency in the current case.

11. 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 *prima facie* unlawfulness and irreparable harm.

Conclusion

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

(Signed)

Judge Teresa Bravo

Dated this 12th day of June 2018

Entered in the Register on this 12th day of June 2018

(Signed)

René M. Vargas M., Registrar, Geneva