



Before: Judge Francesco Buffa

Registry: Geneva

Registrar: Liliana López Bello

SAMARASINHA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Manuel Calzada

Counsel for Respondent:

Elizabeth Gall, UNDP

Introduction

1. The Applicant, a staff member of the United Nations Development Programme (“UNDP”), filed an application contesting the decision of 20 August 2024 by UNDP to extend his placement on Administrative Leave Without Pay (“ALWOP”) from 25 August 2024 to 24 November 2024.

Procedural background

2. From 11 May 2023 to 24 November 2023, the Applicant was placed on Administrative Leave With Pay (“ALWP”) pending an investigation into allegations of sexual harassment, harassment and abuse of authority against him.

3. By letter dated 1 December 2023, the Assistant Secretary-General, Assistant Administrator and Director, Bureau for Management Services (“ASG/DBMS”), informed the Applicant of the decision to place him on ALWOP from 1 December 2023 through 24 February 2024. The reason given was said to be the same as in the 24 November 2023 letter placing the Applicant on ALWP and in addition that the Office of Internal Oversight Services (“OIOS”) had confirmed that there was preponderance of evidence that the Applicant had engaged in the alleged conduct and that the alleged misconduct was of such gravity that it would, if established, warrant separation or dismissal under staff rule 10.2 (a) (viii) or (ix).

4. On 24 January 2024, the Applicant filed an application for suspension of action pending management evaluation against the 1 December 2023 decision to place him on ALWOP. The Tribunal registered it under Case No. UNDT/GVA/2024/003.

5. By Order No. 9 (GVA/2024) dated 31 January 2024, the Tribunal rejected the Applicant’s application for suspension of action based on its finding that the contested decision was not *prima facie* unlawful.

6. On 9 May 2024, the Applicant filed an application on the merits contesting the 1 December 2023 decision to place him on ALWOP. The Tribunal registered it under Case No. UNDT/GVA/2024/015.

7. The Applicant's placement on ALWOP was extended twice: first, from 25 February to 24 May 2024, and then from 25 May to 24 August 2024. The Applicant did not challenge any of these extensions.

8. By letter dated 20 August 2024, the Applicant was informed of the ASG/DBMS decision to extend his placement on ALWOP from 25 August 2024 to 24 November 2024 (contested decision). The reason for the decision that the ASG/DBMS stated was the following:

I consider it appropriate to extend your [ALWOP] until 24 November 2024 for the reasons already expressed in my previous letters, noting of course that the review of your case is on-going.

9. On 9 September 2024, the Applicant filed a request for management evaluation of the 20 August 2024 decision.

10. On 10 September 2024, the Applicant filed a motion for interim measures pending management evaluation. The filing was registered under Case No. UNDT/GVA/2024/037.

11. At the request of the Tribunal, the Applicant clarified that his intention was instead to file said motion in Case No. UNDT/GVA/2024/015, which he did on 13 September 2024. In it, the Applicant requested the Tribunal to order the suspension of the 20 August 2024 decision extending his placement on ALWOP.

12. On 16 September 2024, the Applicant filed a motion to withdraw Case No. UNDT/GVA/2024/037, which the Tribunal closed by Order No. 109 (GVA/2024).

13. By Order No. 115 (GVA/2024) of 23 September 2024, the Tribunal rejected the Applicant's motion for interim measures seeking suspension of the 20 August 2024 decision to extend his placement on ALWOP from 25 August to 24 November 2024.

14. On 18 October 2024, the Applicant filed an application for suspension of action pending management evaluation concerning the 20 August 2024 decision to extend his placement on ALWOP. The Tribunal registered it under Case No.

UNDT/GVA/2024/040. The Applicant withdrew this application on 23 October 2024 as the management evaluation was completed on 17 October 2024. The Tribunal consequently closed the case in question by Order No. 132 (GVA/2024) of 23 October 2024.

15. On 22 October 2024, the Applicant submitted an application on the merits, contesting the 20 August 2024 decision mentioned in para. 8 above. The Tribunal registered it under Case No. UNDT/GVA/2024/041.

16. On 24 October 2024, the Applicant filed a motion for interim measures under art. 14 of the Tribunal's Rules of Procedure ("RoP") seeking the suspension of the 20 August 2024 decision in Case No. UNDT/GVA/2024/041.

17. On 29 October 2024, the Respondent filed his response to the Applicant's motion, and on 31 October 2024, the Applicant filed a rejoinder.

18. By Order No. 134 (GVA/2024) of 1 November 2024, the Tribunal denied the applicant's motion for interim measures.

19. On 22 November 2024, the Respondent filed a reply where it is argued that the contested decision was lawful.

20. On 6 December 2024, the Applicant filed an "application for revision/correction" of Order No. 134 (GVA/2024). In his motion, he also requested anonymity.

21. By Order No. 140 (GVA/2024) of 10 December 2024, the Applicant's motion for revision/correction was rejected. As to the Applicant's request for anonymity, the Tribunal found it not supported and denied it.

22. On 20 December 2024, the Applicant filed a motion to withdraw his application registered under Case No. UNDT/GVA/2024/015, indicating that the "contested issue is now moot and does not require a remedy through the Tribunal."

23. By Order No. 141 (GVA/2024) of 23 December 2024, the case mentioned in para. 6 was closed.

24. The present case was assigned to the undersigned Judge on 1 February 2025, for his deployment starting on the same day.

Considerations

25. Following an examination of the parties' submissions and pursuant to art. 16 of its RoP, the Tribunal preliminarily notes that the administrative decision was based on a draft report by the Office of Internal Oversight Services ("OIOS"). The Tribunal, however, notes that the Respondent in the reply (para. 18 of the reply and its annex 7) indicates that OIOS produced its final investigation report on 20 August 2024. It is, therefore, imperative for the Respondent to produce the final report and to indicate whether an appropriate action has been taken based on the final report and update the Tribunal on any relevant action undertaken after 24 November 2024.

26. In any case, the Tribunal considers it appropriate to conduct a hearing on the merits in the present case.

27. The hearing will be held at the Geneva Courtroom and is scheduled to take place on the days falling in the following timeframe **28 March to 15 April 2025 for the witnesses' testimonies and for the closing oral submissions.**

28. For the purpose of the hearing, taking into account in particular the draft report annexed to the reply, the Tribunal has preliminarily identified the following witnesses, to be called by the Respondent, if he agrees to the utility of their testimony:

- a. V04;
- b. V06;
- c. A S-K;
- d. T S;
- e. A M, and

f. The Applicant may be heard in his case first, if he so wishes.

29. No case management discussion will be held orally, but the parties are allowed to request in writing additional evidence, if any, on specific facts to be evaluated and to comment on the evidence above and on the evidence requested by the counter party.

30. The Tribunal will assess the relevance of the testimonies to be provided by the additional proposed witnesses, if any, for the determination of the merits of the case, and reserves the right not to call some of the proposed witnesses if, after having heard the parties' comments, it deems that testimonies are not relevant.

31. Unless exceptional circumstances arise, witnesses based in Geneva or within commuting distance of Geneva are expected to give their testimony in person in the Geneva courtroom, in full respect of the applicable security rules.

32. For the scheduling of the hearing, the parties are instructed to inform the Tribunal about the availability of their witnesses and about their attendance at the hearing (by them and by their witnesses) in person or remotely, specifying the days and the Geneva time for it. The parties shall also include a proposed order of appearance for their witnesses and cooperate with the Registry to set the specific agenda of the hearings.

Conclusion

33. In view of the foregoing, it is ORDERED THAT by **Tuesday, 18 February 2025** (Geneva COB time):

- a. The Respondent shall produce the investigation report in its final version, including all its annexes;
- b. The parties shall provide the Tribunal with the information required under paras. 25 and 32, and with their requests and observations on evidence, if any, as specified above;

c. The parties may submit all the documents they find relevant for the case, with the warning that other production of documents after 18 February 2025 is barred, except if a late production could be exceptionally justified.

34. By **Friday, 21 February 2025** (Geneva COB time), the parties will file their comments on the counter parties' requests, if any, and observations on evidence.

(Signed)

Judge Francesco Buffa

Dated this 6th day of February 2025

Entered in the Register on this 6th day of February 2025

(Signed)

Liliana López Bello, Registrar, Geneva