



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/072

Order No.: 230 (NBI/2015)

Date: 2 July 2015

Original: English

Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

LEE SIN CHEONG

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION

Counsel for the Applicant:
Jiries Saadeh, OSLA

Counsel for the Respondent:
Steven Dietrich, ALS/OHRM

The Application and Procedural History

1. The Applicant is a Receiving and Inspection Assistant at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). He serves on a continuing appointment at the FS-4 level in Entebbe, Uganda.

2. On Saturday, 27 June 2015, the Applicant filed an Application for Suspension of Action seeking an injunction against the decision not to renew his appointment beyond 30 June 2015.

3. The Application was seen and processed by the Registry of the United Nations Dispute Tribunal (UNDT) in Nairobi on 29 June 2015, and was served on the Respondent on the same day.

4. The Respondent filed his Reply to the Application on 30 June 2015, and the Applicant was afforded the opportunity to make submissions in response to the Reply.

5. The Respondent informed the Tribunal that the impugned decision has been stayed pending management evaluation, and that there is therefore no issue to be adjudicated upon by the Tribunal.

6. The Applicant contends that the Respondent's assurance to suspend the "unlawful decision to terminate his continuing appointment" is inadequate, and does not "cure or otherwise remedy the unlawful actions of the Respondent which form the substance of the Applicant's case." Only an order of the court "can provide the Applicant with sufficient peace of mind that his substantive rights will not continue to be violated by the Respondent." (By way of example, the Applicant informs the

Tribunal that as at the time of filing, the Applicant has not been paid for the month of June and that no explanation has been forthcoming).

Deliberations

7. Applications for suspension of action are governed by article 2.2 of the Statute of the United Nations Dispute Tribunal and article 13 of the Tribunal's Rules of Procedure.

8. The three statutory prerequisites contained in art. 2.2 of the Statute, i.e. *prima facie* unlawfulness, urgency and irreparable damage, must be satisfied for an application for suspension of action to be granted.

9. The remedy under art.13 is only available for the period of review by the Management Evaluation Unit (MEU). Whatever the Tribunal's decides and orders in respect of the lawfulness or otherwise of an administrative decision, the order lapses as soon as MEU completes its review and issues its decision. That period can be for as long as 45 days, but it has in many cases been seen to be shorter.

10. In the present case, the Tribunal and the Applicant have on record the Respondent's undertaking that the impugned decision has been suspended pending review of the matter by MEU.

11. As it is the role of MEU, as prescribed in ST/SGB/2010/9 (Organization of the Department of Management), to conduct "an impartial and objective evaluation of administrative decisions contested by staff members of the Secretariat to assess whether the decision was made in accordance with rules and regulations," the Tribunal finds it appropriate under the circumstances of the present case, and given the Respondent's undertaking, that the Unit be afforded the opportunity carry out that evaluation and, if necessary, "propose means of informally resolving disputes" between the Applicant and the Respondent.

12. Since the Respondent has stated that the decision to terminate the Applicant would not be taken until MEU gives its decision it would make no difference if the Tribunal makes a similar order as whatever order the court makes will automatically lapse through the decision of MEU, an emanation of management itself. To that extent it may be wondered whether article 13 still has its *raison d'être*.

13. The Application for Suspension of Action pending management evaluation is therefore moot, and so **DISMISSED**.

(Signed)

Judge Vinod Boolell

Dated this 2nd day of July 2015

Entered in the Register on this 2nd day of July 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi