



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

FARES

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:

Robbie Leighton, OSLA

Counsel for the Respondent:

Elizabeth Brown, UNHCR

Introduction

1. On 17 August 2015, the Applicant, a Senior Administrative Associate at the GS-7 level at United Nations High Commissioner for Human Rights (“UNHCR”), filed an Application with the Dispute Tribunal seeking suspension of implementation of the decision to extend her placement on Administrative leave on 3 August 2015.
2. The Application was served on the Respondent on 17 August 2015. The Respondent filed a Reply to the Application on 18 August 2015.
3. The Tribunal heard the matter on 19 August 2015.
4. The Parties filed their closing submissions on 20 August 2015.

Facts

5. The Applicant was recruited to UNHCR in April 2008 and has worked as an Administrative Assistant.
6. On 3 December 2014, the Applicant was informed that she was being placed on administrative leave with full pay for a period of one month pending investigations into allegations of potential misconduct. The Applicant was interviewed in relation to the allegations on 2 February 2015.
7. Since 3 December 2014, the Applicant’s administrative leave has been extended six times, most recently on 3 August 2015.
8. The Applicant requested management evaluation of the decision on 14 August 2015.
9. Two witnesses testified at the hearing of this Application on 19 August 2015 and the Parties were thereafter directed to file closing submissions by 20 August 2015.

10. At paragraph 1 of his closing submissions, the Respondent informed the Tribunal that:

Following the oral hearing, a review of the feasibility of redeployment of the Applicant was undertaken. This review has resulted in a decision by the Respondent to lift the administrative leave of the Applicant as of Monday 24 August 2015. The Applicant will be redeployed to administrative functions in the Office of the Director, Middle East and North Africa Bureau, Amman, Jordan and will be notified in writing tomorrow, Friday 21 August 2015.

11. The Respondent further submitted that in view of his latest decision to lift the Administrative leave complained of, this Application is therefore moot.

12. In response to the Respondent's latest decision and submissions, the Applicant made the following submissions:

- a. In accordance with ST/AI/371 (Revised disciplinary measures), suspension may be contemplated if the conduct in question might pose a danger to other staff members or to the Organization, or if there is a risk of evidence being destroyed or concealed and if redeployment is not feasible.
- b. The process spelt out in ST/AI/371 is clear; ordinarily the subject of an investigation is expected to continue performing their functions as normal. If the circumstances justifying placement on administrative leave exist (risk of destruction or concealment of evidence) then consideration must be given to whether or not it is feasible to place the staff member on administrative leave. Only when it is considered that redeployment is not feasible will administrative leave then be applied.
- c. This means that redeployment can only be considered when the conditions justifying administrative leave exist.
- d. If the Tribunal finds that the circumstances justifying administrative leave did not exist then it follows that redeployment should never have been considered.
- e. By proposing to redeploy the Applicant, the Respondent is effectively indicating that it finds that the circumstances justifying administrative

leave were lawfully present and therefore will redeploy. This is shifting position in an attempt to avoid the jurisdiction of the Tribunal.

- f. The Respondent's proposal means that the unlawful nature of the decision challenged remains uncured. This means the application is not moot. The Respondent's last minute change of position risks creating a situation where further applications on the same facts and evidence are required to address the illegality of a redeployment decision based on a finding that the circumstances for administrative leave existed.
- g. The issue as to whether those conditions existed is still a live issue properly before the Tribunal. These last minute maneuvers have not rendered that Application moot and should not be allowed to thwart the jurisdiction of this Tribunal.
- h. The Applicant's transfer to an as yet undisclosed position in an alternative UNHCR office will not have the effect of addressing the reputational damage flowing from the Administration's decision to place her on administrative leave. The Applicant has been sent on Administrative Leave from one day to the next only to be parachuted into a different office eight months later. This will not have the effect of easing the continuing damage to her reputation and to her prospects for career advancement.
- i. The risk to the Applicant's health and family life flows from this ongoing reputational damage thus the urgency and irreparable damage complained of in the Application following the suspension of action hearing remain in effect.

Considerations

13. The Application before the Tribunal is for suspension of action pending Management Evaluation of a decision to extend Administrative Leave during an investigation into alleged misconduct.

14. Counsel for the Respondent in closing submissions has given an undertaking that the Respondent will lift the Administrative Leave of the Applicant as of Monday, 24 August 2015. The Applicant will be redeployed to administrative functions in the Office of the Director, Middle East and North Africa Bureau, Amman Jordan and will have been notified in writing by Friday 21 August 2015.

15. The Respondent's Counsel's undertaking to the Tribunal apart from being an undertaking is a statement from the Bar on which the Tribunal must rely.

16. The submissions of the Applicant's Counsel following this undertaking that the actions of the Respondent serves to avoid the jurisdiction of the Tribunal is without merit. This Suspension of Action Application was brought against the decision to place the Applicant on Administrative Leave. It was argued that redeployment as provided for by ST/AI/371 was not even considered before the Administrative Leave was effected. The lifting of the said Administrative Leave by the Respondent pending finalization of the ongoing investigation accordingly renders this Application moot as there is no longer a decision to suspend.

IT IS ACCORDINGLY ORDERED THAT:

17. The Application for suspension of action is hereby refused.

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(Signed)

Judge Nkemdilim Izuako

Dated this 24th day of August 2015

Entered in the Register on this 24th day of August 2015

(Signed)

Legal Officer, for,
Abena Kwakye-Berko, Registrar, Nairobi