



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

LEWIS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Nicole Wynn, ALS/OHRM

Introduction

1. On 6 October 2016, the Applicant, a staff member of the United Nations Support Mission in Libya (UNSMIL), filed an application with the United Nations Dispute Tribunal (the Tribunal) seeking suspension of the implementation of the decision to place him on a performance improvement plan.

Facts

2. The Applicant serves as Chief Security Officer at the P-4 level in UNSMIL.

3. In the Applicant's performance evaluation for the period 2015-2016, his former first reporting officer (FRO) rated the Applicant's performance as "successfully meets expectations". However, his second reporting officer (SRO), the UNSMIL Special Representative of the Secretary-General (SRSG), did not agree with the FRO's assessment of the Applicant's performance. The SRO noted the Applicant's performance shortcomings in the core and managerial competencies and considered that his performance only "partially [met] expectations". The SRO recommended that a performance improvement plan be put in place in order to provide the Applicant with an opportunity to remedy the shortcomings.

4. On 30 August 2016, the Applicant filed a request for management evaluation to contest the negative comments made by his SRO in his 2015-2016 performance evaluation.

5. By email dated 29 September 2016, the Applicant's current FRO informed the Applicant that based on ongoing performance shortcomings that he had identified, he was going to institute a performance improvement plan as a remedial measure (the contested decision). The FRO explained that the performance improvement plan would be in effect for six months beginning 1 October 2016, the effective date of the renewal of the Applicant's appointment.

6. On 6 October 2016, the Applicant filed an Application with the Tribunal seeking suspension of the implementation of the decision to place him on a performance improvement plan.

7. Pursuant to Order No. 450 (NBI/2016) dated 7 October 2016, the Registry served the Application on the Respondent, who was ordered to file a Reply by 10 October 2016.

8. By letter dated 7 October 2016, the Officer-in-Charge of the Management Evaluation Unit (MEU) replied to the Applicant's request for management evaluation. The MEU was of the view that the Applicant's request was both premature and not receivable and therefore upheld the administrative action.

9. On 10 October 2016, the Respondent filed his Reply.

Applicant's contentions

10. The Applicant's contentions may be summarized as follows:

Prima facie unlawfulness

- a. The decision to impose on him a performance improvement plan is unlawful, arbitrary and in contravention of the provision of ST/AI/2010/5;
- b. The contested decision is based on misrepresentations and the improper motives of the SRO.

Urgency

- c. The implementation of the performance improvement plan should be suspended until the review of his request for management evaluation is completed by MEU.

Irreparable damage

- d. He has suffered humiliation at work, loss of respect of peers, erosion of trust from supervisees, damage to his professional and personal reputation along with mental anguish;

- e. The imposition of a performance improvement plan will cause him irreparable harm by exposing him to continued discrimination, a hostile working environment and further damage to his professional reputation and well-being.

Respondent's contentions

11. The Respondent's contentions may be summarized as follows:
 - a. The Application is not receivable because the Applicant has not sought management evaluation of the 29 September 2016 decision to institute a performance improvement plan. This decision was made after the Applicant filed his request for management evaluation on 30 August 2016;
 - b. In the alternative, if the Tribunal finds that the 30 August 2016 request for management evaluation includes the 29 September 2016 decision to institute a performance improvement plan, the Application is still not receivable because the management evaluation was completed on 7 October 2016;
 - c. The contested decision is not a reviewable administrative decision because it is not a final decision and as such, it had no direct legal consequences to the Applicant's appointment or his contract of employment. The Applicant remains in active service. His appointment was renewed for six months effective 1 October 2016;
 - d. The Application is not receivable because the decision to institute the performance improvement plan was implemented effective 1 October 2016.

Considerations

12. Pursuant to art. 2.2 of its Statute and art. 13.1 of its Rules of Procedure, the Dispute Tribunal is competent to hear and pass judgment on an application filed by an individual requesting the Tribunal:

[T]o suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage (emphasis added).

13. There is evidence before the Tribunal that the performance improvement plan was implemented effective 1 October 2016 and that the management evaluation was completed on 7 October 2016. As a consequence, the Tribunal is not in a position to entertain this application for suspension of the impugned administrative decision/action pending management evaluation. In other words, the present application is not receivable.

Conclusion

14. This application for suspension of action is accordingly refused.

(Signed)

Judge Nkemdilim Izuako

Dated this 12th day of October 2016

Entered in the Register on this 12th day of October 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi