



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2021/045
Order No.: 128 (NBI/2021)
Date: 30 June 2021
Original: English

Before: Judge Francis Belle

Registry: Nairobi

Registrar: Abena Kwakye-Berko

DOGRA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Evelyn Kamau, OSLA

Counsel for Respondent:

Christine Graham, AAS/ALD/OHR, UN Secretariat
Maureen Munyolo, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant holds a fixed-term appointment (“FTA”) at the FS-4 level. He serves as an Audiovisual Redactor/Editor, with the United Nations International Residual Mechanism for Criminal Tribunals (“UNIRMCT”) and is based in Arusha, Tanzania.

Facts and Submissions

2. On 30 March 2020, the Applicant joined UNIRMCT as an Audiovisual Redactor/Editor on a FTA at the FS-4 level.

3. On 22 April 2021, the Applicant was put on notice that his contact with the UNIRMCT would not be renewed when it comes to expire on 30 June 2021. This decision is based on the ongoing downsizing exercise within the Mechanism.

4. The Applicant then began making enquiries for health insurance for his family so that they are covered even after his term at the IRMCT ends. In his enquiries, he made clear that he was particularly concerned about health cover for his pregnant wife and the baby they are expecting in September 2021.

5. He was informed that maternity cover would not be included in a new policy for the first 12 months, as it would be deemed a pre-existing condition. Since the Applicant had cancelled his previous (private) Cigna policy, his family would be without cover.

6. On 27 April 2021, the Applicant wrote to Human Resources to apprise them of his situation, and sought advice on the possibility of him being placed on Special Leave Without Pay (“SLWOP”) with continuing health insurance cover under the existing policy but at his own cost. In other words, he was asking to be placed on special leave without pay for six months, during which time he would bear the cost of the insurance for himself and his family.

7. The Applicant made numerous attempts to follow-up on his query, both by phone and by email and was told that a decision was pending by the Registrar. On 23 June 2021, the Applicant was told that his request for SLWOP was denied. He sought reconsideration of that decision on 25 June 2021 but has not heard back.

8. The Applicant relies on article 13 of the UNDT's Rules of Procedure to file an application for suspension of action during management evaluation.

9. Article 7 of the UNDT's Statute provides for time limits for filing applications within 90 days from receipt of management evaluation or 90 days from the date management evaluation should have been received.

10. However, staff rule 11.2(a) requires that a staff member who is filing an application to the UNDT must first file a request for management evaluation within 60 days of the disputed management decision. The Respondent argues that the 60-day period ran from 22 April 2021, when the UNIRMCT Head of Administration notified the Applicant that his fixed term appointment would not be renewed beyond 30 June 2021 due to a downsizing exercise.

11. Based on the Respondent's argument the Applicant requested management evaluation four days late.

12. However, the factual basis for the Respondent's argument is that the administrative action that the Applicant is seeking to have suspended is the decision not to renew his fixed term appointment beyond 30 June 2021.

13. In *Roig* 2013-UNAT-368, UNAT upheld the legal principle that a staff member wishing to formally contest an administrative decision shall as a first step submit to the Secretary-General in writing a request for management evaluation.

14. In *Roig*, the staff member was not selected for a P-4 level post and contested the selection of a candidate other than her. The UNDT found that the application was not receivable since the staff member's request for management evaluation filed on 11 February 2011 was time barred.

15. UNAT agreed with the UNDT that the staff member's request for management evaluation was time barred and not receivable.

16. The Tribunal has considered the fact that the Applicant was involved in informal discussions with the administration for some months about this matter and was waiting for a decision from the Associate Human Resource Officer, Ms. Roseanna Pitman, who in turn was in contact with HR Chief, Ms. Sherin Hill, along with the Registrar, Mr. Abubacarr Tambaou.

17. The communication between the abovementioned officers and the Applicant continued until 23 June 2021, when the Applicant was informed of the Registrar's decision not to allow his request for SLWOP. On 25 June 2021, the Applicant requested that the Registrar reconsider his decision.

18. Consequently, it is evident on the face of the application that the decision the Applicant is contesting is the denial of his request for SLWOP from 1st July to 31 October 2021 and the related refusal to administratively extend the applicant's FTA (without pay) for the same period.

19. Since the Applicant's application is to contest the refusal of the request for SLWOP and not the original decision not to renew his FTA, the request for management evaluation on 25 June 2021 was timely and the application is therefore receivable.

The Merits

20. The Tribunal can consider the merits of this matter subject to article 13 of the UNDT's Rules of Procedure. The first issue to consider therefor is whether the refusal to grant SLWOP is *prima facie* unlawful.

21. The Respondent has submitted that while staff members have been granted SLWOP only in exceptional cases and in the interest of the Organization, placing the Applicant on SLWOP is not in the interest of the Organization. Rather, the Respondent argues, it would be in the sole interest of the Applicant since the extension is to enable him to extend his United Nations medical coverage at the Organization's cost.

22. The Respondent explains that the Organization's health plans are "experience rated" which means that the next year's premiums are the result of medical expenses incurred during the ongoing plan year and that even though the Applicant may pay the insurance premiums, it is active staff members and their relatives subsidized by the member states that will assume the risk and liability for all the medical expenses for the Applicant and his beneficiaries. The Secretary-General has not been authorized to assume this risk.

23. The Respondent also argues that the Applicant is not seeking an extension of his contract as leave without pay for the purpose of acquiring a pension pursuant to staff rule 5.3(d) since

he is not a long-term staff member. He was retrenched following a lawful downsizing exercise. In the premises, the action contested is not *prima facie* unlawful.

24. The Applicant argues that the suspension of action is urgently required because he found out about the refusal of his request to be granted SLWOP on 23 June 2021, and his contract comes to an end on 30 June 2021. No doubt this scenario paints the picture of urgency, and the Application would therefore be considered urgent in the circumstances. Indeed, urgency is at least arguable.

25. On the issue of irreparable harm, the Applicant's argument is two-fold: firstly, harm would commence on 1 July 2021; since on that date he would have to find the money for the medical care that is needed. Secondly, he argues that his wife has a complication and is not eligible for medical care in her country of origin since she has not worked nor contributed to the relevant scheme in that country, Finland.

26. The Tribunal must consider the probable cost of medical care during the Applicant wife's pregnancy and the possibility that there may be a complication. But neither circumstance is inevitably one in which irreparable harm will be done.

27. In the circumstances the application for suspension of action has not established *prima facie* unlawfulness, nor irreparable damage and therefore fails. The application is therefore denied.

(Signed)

Judge Francis Belle

Dated this 30th day of June 2021

Entered in the Register on this 30th day of June 2021

(Signed)

Abena Kwakye-Berko., Registrar, Nairobi