UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2025/022
Order No.: 29 (NBI/2025)
Date: 11 March 2025
Original: English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

HADDAD

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON THE APPLICANT'S APPLICATION FOR SUSPENSION OF ACTION PENDING MANAGEMENT EVALUATION

Counsel for Applicant:
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Anthony K. WILSON

Counsel for Respondent:
Alhagi Marong, ECA

Introduction

1. The Applicant serves on a fixed term appointment as the Director of Administration at the United Nations Economic Commission for Africa (UNECA), and is based in Addis Ababa, Ethiopia.

Procedural History and Submissions

2. On 28 February 2025, the Applicant filed an application for suspension of action to stay the Respondent's decision to place him on administrative leave with pay (ALWP) from 26 February 2025 "until the completion" of an investigation into allegations of procurement irregularities at UNECA. The application also contains a letter from the UNECA Executive Secretary informing the Applicant, *inter alia*, "there is information to suggest you might have possibly tampered with evidence and therefore interfered with the investigation."

3. The application before the Tribunal also included motions for anonymity and for production of evidence. In respect of the latter, the Applicant requests the Tribunal to direct the Respondent, in his reply (to the application for suspension of action), to "produce the 24 February 2025 memorandum from the Director, Investigations Division" which formed the basis of the impugned decision of 25 February 2025.

4. On 3 March 2025, the Tribunal issued Order No. 23 (NBI/2025) dismissing the Applicant's motion for anonymity and production of evidence. In the same Order, the Tribunal also directed the Respondent to file his reply to the application by 4 March 2025.

5. On 5 March 2025, the Respondent filed a motion to respond to the application for suspension of action out of time, and with it his response to the application on its merits.

6. On 6 March 2025, the Applicant filed a rejoinder to the Respondent's reply. The Applicant took issue with the Respondent's reply being filed out of time. The Applicant moved the Tribunal to reconsider its decision in respect of the production

of the 24 February 2025 memo from the Director of the Investigations Division, on which basis the impugned decision has been taken. The Applicant submits that his motion for reconsideration is warranted because "the Respondent is relying entirely on this memo in his Reply."

7. It is the Applicant's case that the impugned decision is *prima facie* unlawful. The Respondent has acted in violation of staff rule 10.4 by not providing a "valid reason for the placement of the Applicant" on administrative leave with pay and not stating a "probable duration" for his placement on leave. The Applicant submits

> The Applicant has absolutely no idea what he is being investigated for and yet he has been placed on ALWP for an as yet undetermined duration controlled at the whim of OIOS and the Administration. This is abusive. He also is due to retire in January 2026 with the likelihood that any possible disciplinary process will not be completed.

8. The Applicant argues that "urgency of this application is established by the fact that the impugned decision is having a continuous and negative impact on the Applicant's life and reputation, and these will only be further compounded with time." In respect of irreparable harm, the Applicant argues that the decision will irretrievably impact his life, reputation and career.

9. The Respondent submits that the application should be dismissed. The decision is lawful. The decision letter of 25 February 2025 meets all the requirement of staff rule 10.4. The Respondent further argues that the Applicant has not met the test of urgency or irreparable harm as required by rule 13 of the UNDT Rules of Procedure. The Applicant has been placed on administrative leave with full pay, and any putative damage to his reputation can be properly remedied by monetary compensation should the Respondent's actions be found to have been unlawful.

Considerations

10. As a preliminary matter, the Tribunal addresses the Applicant's rejoinder. The Applicant is correct that the Respondent did not file his response timely in accordance with Order No. 23 (NBI/2025). However, the Applicant has

demonstrated no prejudice from the short delay, and thus the untimely response will be accepted.

11. The Applicant also asks the Tribunal to revisit its prior ruling in Order No. 23 that the Respondent need not produce the requested documents "[s]ince the Respondent is relying entirely on this memo in his Reply to support the decision." Having determined that the Reply will be accepted, the Applicant's request to revisit the ruling is moot. Moreover, the Tribunal still does not feel the need for the requested document in this proceeding.

12. Articles 2.2 of the Dispute Tribunal's Statute and 13 of its Rules of Procedure govern the Tribunal's jurisdiction in deciding on applications to suspend implementation of a contested administrative decision that is the subject of an ongoing management evaluation. An applicant must satisfy the Tribunal that the contested decision is *prima facie* unlawful, that the case is of particular urgency and that implementation of the decision would cause irreparable damage.

13. These three requirements are cumulative. In other words, they must *all* be met in order for a suspension of action to be granted. *Hepworth* UNDT/2009/003, para. 8. The burden of proof rests on the Applicant.

14. This Tribunal held in *Applicant* Order No. 087 (NBI/2014) para. 24 that

> A suspension of action order is, in substance and effect, akin to an interim order of injunction in national jurisdictions. It is a temporary order made with the purpose of providing an applicant temporary relief by maintaining the status quo between the parties to an application pending trial. It follows, therefore, that an order for suspension of action cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented.

Prima Facie Unlawfulness, Urgency and Irreparable Harm

15. The Tribunal recalls that the threshold required in assessing this condition is that of "serious and reasonable doubts" about the lawfulness of the impugned decision (*Hepworth* UNDT/2009/003, *Corcoran* UNDT/2009/071, *Miyazaki* UNDT/2009/076, *Corna* Order No. 90 (GVA/2010), *Berger* UNDT/2011/134,

Chattopadhyay UNDT/2011/198, *Wang* UNDT/2012/080, *Bchir* Order No. 77 (NBI/2013), *Kompass* Order No. 99 (GVA/2015)).

16. Staff Rule 10.4(a) provides that

> [A] staff member may be placed on administrative leave, under conditions established by the Secretary-General, at any time after an allegation of misconduct and pending the completion of a disciplinary process. Administrative leave may continue until the completion of the disciplinary process.

17. As such, a decision to implement administrative leave has two requirements: (1) an allegation of misconduct; and (2) a pending disciplinary process.

18. Although the Applicant challenges the lawfulness of the decision to place him on administrative leave, and requests the Tribunal to suspend that decision, he fails to argue how the decision was unlawful. At no point does he dispute that there was an allegation of misconduct nor that there is a pending investigation as part of the disciplinary process. As such, the challenged decision is deemed lawful.

19. Instead, the Applicant argues that the statement required under staff rule 10.4(b) is defective. That provision requires that "[a] staff member placed on administrative leave pursuant to paragraph (a) above shall be given a written statement of the reason(s) for such leave and its probable duration."

20. Unfortunately, the Applicant is improperly conflating the two provisions, which call for the Secretary-General to make two separate decisions: whether to impose administrative leave (under 10.4(a)); and what to write in the statement required by 10.4(b) once the decision to impose administrative leave has been made. These two decisions are not interchangeable. A great statement cannot save a bad decision to place someone on administrative leave. Nor can an improper statement invalidate a proper decision to impose administrative leave.

21. For example, imagine that a supervisor decides to place a subordinate on administrative leave because their voice is annoying. Such a decision would be invalid as there is no allegation of misconduct and no pending disciplinary process. Then, imagine that the supervisor writes a wonderful statement explaining at length

(and in great detail) how the supervisor is in the midst of a nasty divorce and subordinate's voice sounds just like the estranged spouse, how the supervisor just cannot bear to hear that reminder every day at work. And since the divorce is expected to be finalized in three months, the administrative leave is likely to continue until then. Such a letter, in complete compliance with 10.4(b) does not make the decision to impose administrative leave proper.

22. In this case, the Applicant argues the reverse - that a defective statement should invalidate a completely lawful decision to impose administrative leave. This cannot be correct, and thus the application fails.

23. Even assuming, *arguendo,* that the two decisions were inextricably linked and a defective statement could invalidate a proper decision to impose administrative leave, the applicant would still fail.

24. On the issue of *prima facie* unlawfulness, the Tribunal rejects the Applicant's claim that the challenged statement letter failed to state the reasons for the administrative leave. To the contrary, the letter says the Applicant was placed on administrative leave because of "ongoing investigations into allegations of procurement irregularities" and "information to suggest you might have possibly tampered with evidence and therefore interfered with the investigation." Those are certainly sufficient reasons to place the Applicant on administrative leave.

25. The Applicant complains that he has not been interviewed yet and he "has absolutely no idea what is being investigated." However, staff rule 10.4(a) imposes no obligation on the Administration to interview a suspected staff member or disclose details of the allegations or investigation prior to placing them on administrative leave.[1] Indeed, an allegation of evidence tampering alone would be sufficient to make such a decision.[2]

[1] Of course, staff rule 10.3 and ST/AI/2017/1 do impose certain due process protections but are unrelated to the imposition of administrative leave. For example, rule 10.3 requires notice of the allegations and an opportunity to respond to them before imposition of a disciplinary measure. And ST/AI/2017/1 para. 6.10 requires similar notice and opportunity to respond before or during an interview.

26. The Applicant also argues that the notification letter was unlawful as it did not state a probable duration of the administrative leave. This is true.

27. In response, the Respondent merely says the letter complies because "the duration of the ALWP is linked to the completion of OIOS' investigation [and] such investigations can sometimes last several months." The completion of the process is, of course, the maximum duration permissible under staff rule 10.4(a), but rule 10.4(b) expressly requires that the statement inform the staff member "of its likely duration." It has long been held that "the regular principle of interpretation before the Dispute Tribunal is the plain meaning rule." *Nadeau* UNDT/2019/168, para. 27, citing *Scott* 2012-UNAT-225. In *Scott*, the Appeals Tribunal made clear that

> The first step of the interpretation of any kind of rules, worldwide, consists of paying attention to the literal terms of the norm. When the language used in the respective disposition is plain, common and causes no comprehension problems, the text of the rule must be interpreted upon its own reading, without further investigation." *Id*., para 28.

28. Paying attention to the literal terms of staff rule 10.4(b), it is clear that it requires more than just a rote repetition of this maximum duration. Instead it requires the Secretary-General to estimate the likely length of the investigation and thus the likely duration of the administrative leave. Respondent's argument would render the last sentence of the rule nugatory.

29. Accordingly, the Tribunal finds that the Applicant has demonstrated that the notice is *prima facie* unlawful for failure to inform him of the likely duration of his administrative leave.

30. In addition to showing *prima facie* unlawfulness, the Applicant must show that his is a case of particular urgency and that implementing the decision would cause irreparable damage. The Tribunal notes that the Applicant has been placed on administrative leave *with* pay. In that respect, the impugned decision has not

[2] In his response, the Respondent states, that OIOS concluded "most of the equipment had recently been [*sic*] wiped and reformatted" and that "hundreds of files were deleted from a Lenovo laptop computer a day before it too was handed over to OIOS by the staff member." However, these statements are unsupported by any evidence and as such not considered by the Tribunal.

placed him in harm's way financially. The Applicant argues that he urgently requires access to the ECA compound for banking and healthcare purposes. The Respondent has mitigated this concern by agreeing to grant him access to the compound "by informing the Chief Security Officer whenever he intends to visit."

31. The damage to reputation that the Applicant alleges was addressed in Order No. 23 (NBI/2025). The damage to reputation that the Applicant alleges was addressed in Order No. 23 (NBI/2025) and neither the reply nor rejoinder provide any reasons to revisit that finding.

32. Thus, even if the deficient statement were considered, the Applicant has failed to demonstrate that he is entitled to have the decision to place him on administrative leave with pay suspended pending management evaluation.

ORDERS

33. The application for suspension of action pending management evaluation is DENIED.

(Signed)
Judge Sean Wallace
Dated this 11th day of March 2025

Entered in the Register on this 11th day of March 2025
(Signed)
Wanda L. Carter, Registrar, Nairobi