



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Nerea Suero Fontecha

NOUINOU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON SUSPENSION PENDING THE
CONSIDERATION OF AN
APPLICATION FOR SUSPENSION OF
ACTION UNDER ART. 2.2 OF THE
DISPUTE TRIBUNAL'S STATUTE**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
ALS/OHRM

Introduction

1. On Sunday, 21 October 2018, the Applicant, the Programme Management Assistant at the G-5 level with the Office of Counter-Terrorism in New York, filed an application requesting urgent relief under art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure seeking to suspend, pending management evaluation, the decision by the Office of Counter-Terrorism not to renew her temporary appointment beyond the expiration date of 23 October 2018. The Applicant submits that the decision is *prima facie* unlawful because, *inter alia*, the decision not to renew her contract was taken due to her activities as a staff representative. She alleges no reason for the decision was given to her and there has been no evaluation of her work on file.

2. On Monday, 22 October 2018, the application was registered and assigned to the undersigned Judge and served on the Respondent directing, upon the instructions of the assigned Judge, that a reply be filed by 4:00 p.m. on Tuesday, 23 October 2018.

Consideration

3. Pursuant to art. 19 of the Rules of Procedure of the Dispute Tribunal,

The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

4. Article 36.1 of the Rules of Procedure provides that:

All matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Dispute Tribunal on the particular case, by virtue of the powers conferred on it by article 7 of its statute.

5. Pursuant to art. 13.3 of the Rules of Procedure,

The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

6. In *Villamorán* 2011-UNAT-160, the Appeals Tribunal upheld this Tribunal's *Villamorán* Order No. 171 (NY/2011) finding that the Dispute Tribunal was within its competence to order a suspension of the contested decision pending a determination of the application for suspension of action on the basis of the aforesaid Rules of Procedure and without having to make a finding as to whether the requirements of a suspension of action under art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure had been met. The Appeals Tribunal, *inter alia*, found that:

43. Where the implementation of an administrative decision is imminent, through no fault or delay on the part of the staff member, and takes place before the five days provided for under Article 13 of [the Dispute Tribunal's, "UNDT"] Rules have elapsed, and where the UNDT is not in a position to take a decision under Article 2(2) of the UNDT Statute, i.e. because it requires further information or time to reflect on the matter, it must have the discretion to grant a suspension of action for these five days. To find otherwise would render Article 2(2) of the UNDT Statute and Article 13 of the UNDT Rules meaningless in cases where the implementation of the contested administrative decision is imminent.

7. In instances such as this, the Tribunal does not have the luxury of time and often relies very much on the good faith of an applicant's filing; suffice to say such proceedings should not be abused. The Tribunal notes that the Applicant filed an application with annexes of over 400 pages, which took time for the Registry to prepare the file and the Tribunal has not had the time to review and make a considered ruling on the matter. The Tribunal further notes that the implementation of the contested decision is imminent as the contract is to expire on 23 October 2018, and once the decision is implemented, the Applicant will have no recourse. In this instance the Tribunal does not have all the facts on the matter of urgency such as to make a considered decision. However, not only the interests of justice, but the balance of convenience test dictate the grant of urgent relief in this case, pending the

consideration of the application for suspension of action pending management evaluation.

8. In accordance with arts. 19 and 36.1 of the Dispute Tribunal's Rules of Procedure,

IT IS ORDERED THAT:

9. Without prejudice to the Dispute Tribunal's determination of the application for suspension of action under art. 2.2 of its Statute and art. 13 of its Rules of Procedure, the implementation of the contested decision shall be suspended until the Dispute Tribunal has rendered its decision on this application, or until further order.

(Signed)

Judge Ebrahim-Carstens

Dated this 22nd day of October 2018