



Before: Judge Joelle Adda
Registry: New York
Registrar: Nerea Suero Fontecha

DELSOL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Katrina Waiters, UNFPA

Introduction

1. On 11 October 2019, the Applicant, a Public Information Media Specialist at the P-4 level, step 15, filed an application for suspension of action pending management evaluation under art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure, seeking to suspend: (a) the decision to retain the overall ratings for core and functional competencies at "Developing Proficiency" in his performance appraisal for 2018; and (b) the decision to not renew his fixed-term appointment based on poor performance.

2. Since the Applicant initially filed the application via regular email, the Registry instructed him to instead do so using the eFiling portal as per Practice Direction No. 4 on filing of application and replies. The Applicant complied with the Registry's instructions and, on 14 October 2019, the application was served on the Respondent, which, upon the directions of the undersigned Judge, was directed to file a reply by 17 October 2019.

3. The Respondent, in his reply of 17 October 2019, submits that: (a) the Applicant has failed to establish that the three requirements for suspension of action were met regarding the contested decisions on his performance appraisal; and (b) the appeals against the non-renewal of his fixed-term appointment is not receivable as the Applicant has not requested management evaluation of this decision.

Consideration

Legal framework

4. Under art. 2.2 of the Dispute Tribunal's Statute and art. 13.1 of the Rules of Procedure, the Tribunal may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. The Dispute Tribunal can only

suspend any contested administrative decision if all three requirements have been met.

Receivability of the claim against the non-renewal decision and scope of the present case

5. For the Tribunal to suspend an administrative decision pending the management evaluation process, the applicant must first have requested such management evaluation under staff rule 11.2 because, otherwise, no management evaluation would be ongoing.

6. Attached to the Applicant's application for suspension of action, he appends his request for management evaluation of 9 October 2019 in which, under the heading, "Administrative Decision to be Evaluated", is stated: "Reclusion of the Decision to retain the Overall Rating for Competencies at 'Developing Proficiency' and Reclusion of the Decision to retain the Overall Rating for Functional Competencies at 'Developing Proficiency'". The Applicant makes no mention of the non-renewal decision and, as submitted by the Respondent, this decision is not being reviewed as part of the pending management evaluation process.

7. Accordingly, the Applicant's claim regarding the non-renewal of his fixed-term appointment is not receivable because no management evaluation process is pending concerning this decision.

Particular urgency

8. The Dispute Tribunal has consistently held that urgency is relative and that each case regarding suspension of action will turn on its own facts, given the exceptional and extraordinary nature of such relief (see, for instance, *Farhadi* Order No. 131 (GVA/2017) and *Montecillo* Order No. 54 (NY/2019)). If an applicant seeks the Tribunal's assistance on an urgent basis, she or he must come to the Tribunal at the first available opportunity, taking the particular circumstances of her or his case into account (see, for instance, *Evangelista* UNDT/2011/212, *Farhadi* Order No. 131

(GVA/2017), *Montecillo* Order No. 54 (NY/2019) and *Nsubuga* Order No. 85 (NBI/2019). The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the applicant (see, for instance, *Villamorán* UNDT/2011/126, *Dougherty* UNDT/2011/133, *Jitsamruay* UNDT/2011/206, *Farhadi* Order No. 131 (GVA/2017), *Montecillo* Order No. 54 (NY/2019) and *Nsubuga* Order No. 085 (NBI/2019)).

9. In the present case, the Applicant submits that he was informed of the rebuttal panel's decision on 12 August 2019 and that the matter before the Tribunal is now urgent because his fixed-term appointment expires on 31 October 2019. The Applicant further indicates that he has known about the decision not to renew his appointment since 21 August 2019. The Applicant provides no explanation for this delay other than, under the heading, "Why do you consider this matter to be urgent?" in his suspension of action application, he states a chronology of events according to which he was apparently in negotiations with the relevant office for human resources, staff council and ombudsman, as well as the Office of Staff Legal Assistance, from 19 September to 8 October 2019 regarding a "compensation package".

10. The Tribunal notes that whereas the Applicant has known about the outcome of the rebuttal panel's decision since 12 August 2019, he only files his application for suspension of action of this decision on 11 October 2019—almost two months later. At minimum, the notification of the non-renewal of his fixed-term appointment of 21 August 2019, should have alerted him that the matter was extremely urgent as it was stated therein that his appointment would "not be renewed beyond [31 October 2019] because of unsatisfactory service". The Applicant, however, apparently rather than challenging the rebuttal panel's decision, intended to negotiate a "compensation package".

11. In light of the Applicant's unjustifiable delay in filing the application for suspension of action, the Tribunal finds that the current urgency is self-inflicted as he

had ample opportunity, as well as reason, to file it at a much earlier stage. Accordingly, the Applicant has not satisfied the requirement of particular urgency.

Prima facie unlawfulness and irreparable harm

12. As the Applicant has not satisfied the requirement of particular urgency, it is not necessary for the Tribunal to examine the two other conditions, namely *prima facie* unlawfulness and irreparable harm. However, the Tribunal notes that albeit filing extensive amount of other written evidence (70 pages), the Respondent does not appear to have submitted any actual documentation for the rebuttal panel process.

Conclusion

13. The application for suspension of action is rejected.

(Signed)

Judge Joelle Adda

Dated this 17th day of October 2019