



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/033
Order No.: 73 (NY/2021)
Date: 11 August 2021
Original: English

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

MINZER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICATION FOR SUSPENSION
OF ACTION**

Counsel for Applicant:
Cristian Gimenez Corte

Counsel for Respondent:
Alan Gutman, ALD/OHR, UN Secretariat
Clementine Foizel, ALD/OHR, UN Secretariat

Introduction

1. On 6 August 2021, the Applicant, a staff member with the Economic Commission for Latin America and the Caribbean (“ECLAC”), filed an application requesting urgent relief under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure.

Consideration

2. 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. For an application for suspension of action to be receivable, a request for management evaluation must therefore be pending.

3. In this case, the Applicant describes the contested decision as the decision “to declare him incapacitated and others” dated 23 April 2021 and 13 May 2021 and states that the contested decision(s) are to be implemented on 17 August 2021.

4. By letter dated 13 May 2021, the Organization notified the Applicant of the decision to terminate his contract for health reasons as of 17 August 2021 based on the United Nations Staff Pension Committee (“UNSPC”)’s determination that he is incapacitated for further service.

5. The Appeals Tribunal has “consistently held that the key characteristic of an administrative decision subject to judicial review is that the decision must ‘produce[] direct legal consequences’ affecting a staff member’s terms and conditions of appointment; the administrative decision must ‘have a direct impact on the terms of appointment or contract of employment of the individual staff member’” (see *Lee* 2014-UNAT-481).

6. The Applicant defines the contested decisions as the decision to “declare him incapacitated and others”. However, a medical determination finding him incapacitated for further service in itself does not produce any direct legal consequences. It is only the decision to terminate his contract taken on the basis of a medical determination that produces direct legal consequences affecting his terms and conditions of appointment. The Tribunal also notes that the Applicant has requested a review of medical determination in accordance with ST/AI/2019/1 (Resolution of disputes relating to medical determination) and thus the contested medical determination is not final.

7. Accordingly, the Tribunal considers that the contested administrative decision subject to judicial review in this case is the decision to terminate his contract for health reasons.

8. However, while the Applicant requested a review of medical determination made by UNSPC, the record shows that he failed to request management evaluation of the decision to terminate his contract.

9. Since there is no pending management evaluation, the Tribunal concludes that the application for suspension of action is not receivable.

Conclusion

10. The application for suspension of action is rejected as not receivable.

(Signed)

Judge Joelle Adda

Dated this 11th day of August 2021