Translated from French

UNITED NATIONS DISPUTE T

Case No.: UNDT/GVA/2011/073
Judgment No.: UNDT/2011/187
Date: 4 November 2011
English

Introduction

1. By application filed with the Registry of the Dispute Tribunal on 1 November 2011, the Applicant requests the Tribunal to order a suspension of action on the decision depriving her of her functions and de facto evicting her from her unit.

Facts

2. On 1 September 2009, the Applicant was granted a two-year fixed-term appointment to the Office of Staff Legal Assistance, Office of Administration of Justice, United Nations Secretariat. Having previously worked in Beirut, she currently occupies a P-3 post in Geneva.

3. By memorandum dated 22 August 2011, the Chief of the Office of Staff Legal Assistance recommended non-renewal of the Applicant's contract, which was due to expire on 31 August 2011, on the grounds that her performance was unsatisfactory.

4. By letter dated 24 August 2011, the Applicant was informed that, based on her department's recommendation, her appointment would be extended for one month, in other words until 30 September 2011, in order to allow her, and her supervisor, to complete her performance appraisal report (e-PAS) for the period from April 2010 to March 2011.

5. On 27 September 2011, the Applicant filed with the Tribunal an application for suspension of action on the implied decision not to renew her appointment beyond 30 September 2011.

6. By e-mail of 28 September 2011, the Executive Office of the Secretary-General informed the Applicant that, in line with a recommendation by the Management Evaluation Unit at United Nations Headquarters in New York, the United Nations Office at Geneva had been requested to extend her appointment from 1 October to 11 November 2011.

7. On 29 September 2011, the Applicant informed the Tribunal that she had decided to withdraw her application for suspension of action. The Tribunal took formal note of that fact in Order No. 165 (GVA/2011) of 29 September 2011.

8. The Applicant was placed on sick leave for the periods from 22 August to 9 September and from 22 September to 17 October 2011.

9. On her return on 18 October, she learned in the course of an e-mail exchange with the Chief of the Office of Staff Legal Assistance that, in her absence, she had been replaced by another counsel of the said Office in a case brought before the Appeals Tribunal to which she had previously been assigned.

10. By e-mail of 19 October 2011 sent to the Executive Director of the Office of Administration of Justice and the Chief of the Office of Staff Legal Assistance, the Applicant complained that another case for which she had been appointed as counsel had been reassigned in her absence to another counsel, without her being informed. The Chief of the Office of Staff Legal Assistance replied to her the same day by return e-mail:

> … In light of your extended absence from [the Office of Staff Legal Assistance] and general unprofessional behaviour, I had to reassign your cases to other counsel. You have complained that you should have been informed. Consider yourself so informed. Note that you specifically communicated you did not wish to be disturbed [with] work-related issues while on sick leave. This was respected apart from]TJ0 is d issuerector eah(e)2.6a(s6(reuu8(is

colleague, the cases in question would be assigned to other counsels within the Office.

14. By letter dated 31 October 2011, the Applicant requested a management evaluation of the decision whereby she had been deprived of her functions and de facto evicted from the Office.

15. By application dated 1 November 2011, the Applicant appealed the said decision under article 2, paragraph 1, of the Statute of the Tribunal. By the present application, also dated 1 November 2011, she requested a suspension of action on the decision pursuant to article 14 of the Tribunal's rules of procedure and, subsidiarily, article 13 of the said rules.

16. On 2 November 2011, the Applicant filed a request for disclosure of evidence, which was rejected by Order No. 190 (GVA/2011) dated 3 November 2011.

17.

represented, even if they inform her that they do not understand the change of counsel and are dissatisfied with it;

i. No financial compensation could retroactively remove the extreme emotional distress that the Applicant is suffering and would suffer if the contested decision is upheld;

j. Her eviction from the Office cannot be hidden from third parties since she is the only legal officer of the Office of Staff Legal Assistance in Geneva and they are bound to assume that the treatment inflicted on her is attributable to particularly serious and ignominious misconduct. Consequently, her reputation and career prospects, as well as her health, have been seriously harmed.

k. As someone in whom the beneficiaries of legal assistance had put their trust, the Applicant is suffering irreparable moral and professional damage since she is caught between the hierarchical principle, on the one hand, and the Guiding Principles of Conduct for Office of Staff Legal Assistance Affiliated Counsel in the United Nations, on the other.

19. The Respondent's contentions are:

a. The decisions to reassign the cases previously assigned to the Applicant and to curtail her access to related confidential electronic case files are not administrative decisions within the meaning of article 2 of the Statute of the Tribunal, since they do not produce direct legal consequences. The Applicant does not have the right to be assigned specific cases or to access files that have not been assigned to her;

b. The contested decisions are not disciplinary measures. Under the Secretary-General's bulletin ST/SGB/2010/3 (Organization and terms of reference of the Office of Administration of Justice), the Chief of the Office of Staff Legal Assistance coordinates representation of staff members and supervises the work of the staff of the unit; furthermore, he manages the human, financial and other resources allocated to the unit, as

required, and advises the Executive Director of the Office of Administration of Justice on administrative, human resources and logistical matters related to the operational activities of the Office of Staff Legal Assistance;

c. In the present case, the Chief of the Office of Staff Legal Assistance decided to reassign to other counsels the cases previously assigned to the Applicant and to curtail her access to related confidential electronic case files, giving due consideration to the needs of staff members requiring representation and the available human resources, particularly in view of the Applicant's extended absences and the fact that she had failed to meet performance expectations. Those decisions therefore correspond to the needs of the Office and constitute a reasonable exercise of the discretion of the said Chief;

d. The Applicant's argument concerning access to work documents does not establish any urgency. The Applicant does not need to access the files of cases that are no longer assigned to her in order to prepare her performance rebuttal and she should be able to document her work through her own means. Furthermore, sh

Consideration

20. In requesting the Tribunal to order a suspension of action, the Applicant does not identify a particular decision with a specific date but refers to several decisions that might have had the purpose and effect of depriving her of her functions and evicting her from her unit. Consequently, the Tribunal must first consider if the decision challenged is a genuine administrative decision able to be contested before the Tribunal.

21.

25. It appears to the Tribunal that, while the aforementioned decisions of the Chief of the Office, taken separately, can be considered to be measures concerning the organization of work that are for him to take and that cannot be contested before the Tribunal, the combination of those measures has had the purpose and effect of depriving the Applicant of all functions within her unit. That combination of measures therefore constitutes an administrative decision that may be contested before the Tribunal. It is clear from the Applicant's individual workplan that the tasks assigned to her essentially consist in providing legal assistance to current and former staff members and performing case management. Thus, the contested decision that, in particular, had the effect of depriving her of her legal assistance role, an essential component of her work, is likely to be prejudicial to the rights arising from her status and her contract.

Lawfulness of the contested decision

26. The Tribunal must therefore decide whether a staff member's supervisor may lawfully deprive him or her, for a certain period, of the bulk of his or her