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Original:

Introduction

1. On 29 May 2012, the Applicant, a staff member in the United Nations Stabilization Mission in Haiti ("MINUSTAH"), submitted an application for suspension of action, pending management review, of the decision to reassign her from the Procurement Section to the Civil Affairs Section, MINUSTAH. The contested decision goes into effect on 1 June 2012.

2. The Applicant initially filed her paper

Background

4. The following background information is based on the parties' submissions and the record.

5. The Applicant is an Associate Civil Affairs Officer on a P-2 post originally assigned to the Civil Affairs Section, MINUSTAH. It appears that approximately two years ago there was some friction between the Applicant and her supervisor, the Chief of the Civil Affairs Section, which resulted in the Applicant filing a complaint against him. Following the intervention of the Chief of Mission Support, the Applicant withdrew her complaint against her supervisor and was reassigned in September 2010 to the Contracts Management Unit, MINUSTAH, where she stayed for eight months before moving, in May 2011, to the Procurement Section, MINUSTAH. The Applicant alleges her reassignment was brokered on the understanding that she withdrew her complaint against her supervisor.

6. The Applicant is an active member of the Field Staff Union, although it is not known to the Tribunal when she joined. She submits that, on 9 December 2011, she represented the Field Staff Union during a meeting with the Field Personnel Division ("FPD") on the issue of MINUSTAH retrenchment exercise. The Applicant submits that it was "discovered that some staff members assigned to MINUSTAH on regular posts in 2004 found themselves on [general] temporary assistance posts while others on loan to other sections were moved to positions different from the ones they have been recruited". The Applicant questioned the propriety of these movements during the meeting and all parties present agreed to revisit the method of the retrenchment exercise.

7. Also on 9 December 2011, the Applicant received an email from the Chief Procurement Officer, her supervisor in the Procurement Section. The email concerned the ongoing downsizing exercise in MINUSTAH and the return of the Applicant's post to the Civil Affairs Section. The email stated:

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her case, it was determined that when she was reassigned from the Civil Affairs Section to the Contracts Management Unit and later to the Procurement Section, she continued to encumber the P-2 post that belonged to the Civil Affairs Section. In effect, her post was loaned within the Mission. Following the decision to downsize the Mission, the Civil Affairs Section requested that the P-2 post encumbered by the Applicant be returned to them. The Officer-in-Charge, Mission Support, further stated:

2. ... I wish to clarify that the Chief of Civil Affairs did not request for you specifically. Rather, the request was for the return of their post.

3. The decision for you not to stay in Procurement is not a reflection of your performance. It is regrettable that you cannot stay in Procurement as you have not been cleared for any procurement position. The only position matching your qualifications at this point in time is in Civil Affairs where you have been initially recruited.

16. The Applicant requested management review of the contested decision on 7 May 2012.

Applicant's submissions

17. The Applicant's principal contentions may be summarised as follows:

Prima facie unlawfulness

a. Returning the Applicant to the Civil Affairs Section without resolving the issues with her supervisor will create an intimidating and stressful work environment for the Applicant;

b. The stressful situation created by the Administration is not only a retaliation for her duties as a Staff member, but also constitutes an abuse of power and authority;

Particular urgency

c. The return to the Civil Affairs Section under the supervision of the same Chief responsible for her removal will create a hostile environment;

Irreparable damage

d. Implementation of the contested administrative decision will result in the “loss of [the Applicant’s] job” and create “obstacle[s] to [her] career development”.

Respondent’s submissions

18. The Respondent’s principal contentions may be summarised as follows:

Prima facie unlawfulness

a. The Respondent has authority to assign the Applicant pursuant to staff regulation 1.2(c) and staff rule 1.2(a). The allegations made by the Applicant do not establish that the contested decision is *prima facie* unlawful;

Particular urgency

b. The Applicant filed the present application immediately prior to the implementation of the contested decision, although she was aware of it at least since 13 April 2012. The self-created urgency in this case deprived the Respondent of a real opportunity to exercise his due process right to make meaningful submissions in response to the Applicant’s case. As a result, the Respondent was unable to seek and receive instruction from the relevant parties on the Applicant’s alleged factual allegations within the set deadline for reply;

Irreparable damage

c. The Applicant has not been irreparably harmed by the contested decision. The application fails to plead a cause of action relating to the matter decision. Trepa(e (. ticof

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Conclusion

27. The present application for suspension of action is rejected.

(Signed)

Judge Ebrahim-Carstens

Dated this 3rd day of May 2012

Entered in the Register on this 3rd day of May 2012

(Signed)

Hafida Lahiouel, Registrar, New York