

Introduction

1. By application filed at the New York Registry of the Dispute Tribunal on 10 September 2012, the Applicant, a staff member of the United Nations Assistance Mission in Afghanistan (“UNAMA”), contests two decisions. Firstly, she contests UNAMA’s refusal to grant her a lien on her post to enable her to work in another office on a non-reimbursable loan/temporary duty assignment. UNAMA subsequently reversed this decision shortly after it was made, but the Applicant nevertheless maintains that the initial de

Sick leave

5.

the United Nations Conference on Sustainable Development (“Rio+20 Conference”), to be held from 20 to 22 June 2012.

10. On 10 April 2012, the Applicant wrote to the Executive Officer, DESA, informing him that she “will be at UNHQ on the afternoon of Thursday, 12 April 2012, to discuss possibilities of working for the Rio+20 Conference”. However, on 11 April 2012, the Executive Officer, DESA, advised the Applicant that UNAMA had informed him that “they do not approve, as a matter of principle, non-reimbursable loans/liens to posts of staff on temporary assignment”. The Applicant was advised that, “[i]n light of this, it will not be able to place you in the Secretariat of Rio+20”.

11. On 17 May 2012, the Applicant received an email from the Field Personnel Division, Department of Field Support, advising her that “the Mission [was] unable to make an exception regarding a lien on [her] post if [she] were to be on assignment to another location”.

12. On 25 May 2012, the Applicant filed a request for management evaluation of “the decision made by [UNAMA] not to release [her] on a temporary basis to work elsewhere, so that [she] can continue to earn a UN salary instead of being placed on administrative leave without pay”.

First suspension of action application

13. On 29 May 2012, the Applicant filed an application for suspension of action of that decision, but while her application was before the Tribunal, she was informed that the decision not to permit her non-reimbursable loan had been set aside by the Respondent. On 31 May 2012, UNAMA informed the Applicant by email that it “agreed to [her] [temporary duty assignment]/non-reimbursable loan to DESA Rio+20 Conference” and that she should complete and return her US visa application as soon as possible, which the Applicant did the following day. On 1 June 2012, the Tribunal rendered *Rafii* UNDT/2012/082, finding that, in view of the reversal of

the contested decision, the application for suspension of action was moot. Accordingly, the application for suspension of action was dismissed.

Further communications regarding the temporary position at DESA

14. However, there were subsequent delays in completing the formalities for the Applicant's temporary assignment with DESA in New York. The Applicant states that initially the Department of Field Support was to process a request for her US visa and subsequently changed its position and claimed it was the responsibility of DESA to do so. The DESA staff who could have granted approval for the G-4 visa had already left for Rio and, upon their return during the last week of June 2012, requested confirmation that the Applicant's UNAMA contract would be renewed beyond 14 July 2012. The Applicant secured this confirmation and contends that all these delays were not of her making. Furthermore, she alleges that she was verbally informed on 23 July 2012 that UNAMA had again decided not to agree to her non-reimbursable loan arrangement, but that subsequently, on 14 August 2012, it was confirmed to her that the information provided to her on 23 July 2012 regarding objections to her loan arrangement was a result of miscommunication.

15. The Respondent submits that the Department of Field Support pursued efforts to find a temporary assignment with the United Nations Supervision Mission in Syria, the Integrated Operational Team at the Department of Peacekeepin5 0 TD.0tr

before the hearing of 17 August 2012, the Applicant had already confirmed her availability to take up an alternative temporary assignment with UNMIT, to which there was no objection by the Respondent. Accordingly, in view of the Applicant's

Consideration on the papers

24. Having reviewed the papers and being of the view that this case could be decided on the papers, by Order No. 225 (NY/2012), the Tribunal directed the parties to file any final submissions by 15 November 2012, indicating also whether they wished to have a hearing. The parties' final submissions were duly filed, with neither party requesting a hearing.

Motion to redact the Applicant's name

25. The Applicant has requested that her name be redacted from any rulings made in this case, on the grounds that "the present case may refer to her personal medical information in greater detail as it is being decided on the merits" and that the "use of personal and confidential information pertaining to her medical history and condition may be prejudicial to her, as it could adversely affect her professional career advancement and employment opportunities with prospective employers".

the new system of administration of justice—its transparency (see also *Finniss* 2012-UNAT-210 referring to the public nature of internal system of justice). It is essentially a question of weighing the public interest against the private interest. The present Judgment does not deal with the Applicant's medical history or condition in any detail, or with any sensitive or confidential matters. Therefore, this case is not of such a nature as to outweigh the guiding principle of transparency in judicial proceedings and published rulings of the Tribunal.

29. Having considered the grounds furnished by the Applicant and the Respondent's objections, the Tribunal finds that the Applicant has not established sound and valid reasons for the redaction of her name (see also *Yisma* Order No. 63 (NY/2011), dated 1 March 2011), and the motion for anonymity is rejected.

Scope of the case

30. As stated above, the Tribunal finds that this case is limited to two issues, namely: (i) the lawfulness of UNAMA's initial refusal to allow her to work elsewhere whilst maintaining a lien on her post and whether this refusal resulted in harm to the Applicant, and (ii) the calculation of her absence from work starting 1 May 2012 against her annual leave instead of her sick leave, and the subsequent

Airfare from Ottawa to Dubai

32. On 12 September 2012, the Applicant filed a motion for leave to submit additional documents “to appraise the Tribunal of the continuing difficulties she has been experiencing with [the] Respondent, especially with regard to arranging her official travel to [UNMIT]”. The Applicant submitted email communications concerning official travel arrangements related to her temporary assignment with UNMIT, stating that she was expected to pay for a portion of the air ticket from her home in Canada to UNMIT.

33. On 14 October and 6 November 2012, the Applicant filed further motions to file additional documents “pertaining to her request for a management evaluation of the decision to deny her official travel entitlement from Ottawa to Dubai, when she was en route to commence a temporary assignment with [UNMIT]”. Specifically, the Applicant included in her request for management evaluation, dated 21 September 2012, the decision that she would be responsible for the payment of her airfare to Dubai. The Applicant did not clarify what relief she sought with respect to her claims, however, she requested the Tribunal “to consider this matter in conjunction with her previous submissions for this case”.

34. The Respondent submits that the Applicant’s travel arrangements and any decisions pertaining to them are outside the scope of the present case.

35. By her filings of 12 September, 14 October, and 6 November 2012 concerning travel arrangements related to UNMIT, the Applicant in effect sought to introduce new claims regarding separate administrative decisions. The application in the present case was filed on 10 September 2012, prior to the issue of the airfare arising. Accordingly, the alleged decision requiring the Applicant to pay for the airfare cannot be part of the present case. Applications are not intended to have a snowball effect, and, after filing an initial application, applicants cannot keep adding additional matters to the same case as they arise. This would be a back-door way of

Consideration

Lien on a non-reimbursable loan/temporary duty assignment

Lawfulness of the contested decision

39. With respect to the present application, the Tribunal finds no reason to depart from its findings in the judgments on suspension of action that the initial decision of UNAMA to disallow the Applicant's temporary assignment outside of UNAMA with a lien on her post was rescinded on 31 May 2012. The decision to grant a lien on a non-reimbursable loan/temporary duty assignment was finally made to the Applicant's satisfaction, as the Tribunal established in both *Rafii* UNDT/2012/082 and *Rafii* UNDT/2012/127.

40. The Tribunal finds that, in any event, the Applicant has failed to demonstrate that the initial decision not to allow her temporary duty assignment on lien was unlawful. The Respondent has filed and served a memorandum of the Officer-in-Charge of the Field Personnel Division of the Department of Field Support to all Directors of Missions Support, dated 28 August 2008, which explains the Organization's procedures for temporary duty assignments for mission staff. The policy is further elaborated in the Standard Operating Procedure of the Department of Field Support, dated 16 April 2008. Both the memorandum and the Standard Operating Procedure explain that a temporary duty assignment is generally a temporary loan of a staff member from one mission to another or from Headquarters to a field mission for a period not exceeding three months. During the temporary duty assignment period, staff members will remain against their post in the parent mission and will continue receiving salary and allowances at the parent mission. One of the purposes of a temporary duty assignment is "to provide the receiving mission with highly experienced and qualified staff to meet urgent requirements during start-up, expansion, downsizing and/or liquidation, or to

thereafter extended the Applicant's contract and took steps to find a temporary assignment for her at an acceptable duty station.

Summary of findings with regard to the issue of lien on a non-reimbursable loan/temporary duty assignment

44. Therefore, the Tribunal finds, firstly, that the initial decision to refuse a lien on a non-reimbursable loan/temporary duty assignment was rescinded; secondly, that the Applicant has failed to demonstrate that the contested decisions relating to the issue of lien and non-reimbursable loan/temporary duty assignment were unlawful; and, thirdly, that the Applicant has failed to establish sufficient grounds for an award of compensation. Accordingly, the Tribunal finds that the Applicant's claims with regard to the issue of lien and non-reimbursable loan/temporary duty assignment are without merit.

Placement on special leave without pay effective 5 June 2012

45. The Respondent submits that the Applicant exhausted her sick leave with full pay on 21 March 2012. To keep the Applicant on full pay status, she was placed on sick leave with half pay and half annual leave, from 22 March through 30 April 2012, in line with ST/AI/2005/3 (Sick leave). The Respondent submits that "[the Medical Services Division] cleared the Applicant to return to duty effective 30 April [2012]", which is why her absence from 1 May 2012 was charged fully against her annual leave. The Applicant exhausted her annual leave on 4 June 2012 and, from 5 June 2012 onward, she was placed on special leave without pay.

46. The Tribunal finds that the Respondent is mistaken in stating that the Medical Services Division "cleared the Applicant to return to duty effective 30 April [2012]", which resulted in the Applicant's absence from 1 May 2012 being charged fully against her annual leave. In fact, the memorandum of 23 April 2012 from the Chief Medical Officer, Medical Services Division, to the Chief of Mission Support, UNAMA, stated that the Applicant was "fit for work, but *not* fit for duty in UNAMA

Accrual of annual leave during sick leave

3.6 In accordance with staff rules 105.1(a) and 205.1(a), a staff member shall accrue annual leave:

...

(b) While absent from work under an agreed arrangement whereby a half-day of annual leave is combined with a full day of sick leave at half pay.

49. Accordingly, provisions of staff rule 6.2(b) applied, and the Applicant should have been placed on sick leave on half salary and half annual leave, pursuant to staff rule 6.2(b)(ii) and sec. 3 of ST/AI/2005/3, for a period of up to three months. (The Tribunal finds on the circumstances in this case that in all likelihood the Applicant would have agreed to such an arrangement under sec. 3.3 of ST/AI/2005/3.) Had proper procedures been applied, the Applicant's placement on half pay sick leave in combination with half days of annual leave, as during the period of 22 March to 30 April 2012, would have continued for up to three months, until the exhaustion of her annual leave. It should be noted that, during this period, she would have also continued to accumulate annual leave pursuant to sec. 3.6(b) of ST/AI/2005/3.

50. The Tribunal finds that the decisions to count the Applicant's absence from work starting 1 May 2012 against her annual leave and the subsequent placement on special leave without pay starting 5 June 2012 are unlawful and stand to be rescinded, with appropriate adjustments to be made to restore the Applicant's situation.

Conclusion

51. The decisions to calculate the Applicant's absence from work starting 1 May 2012 against her annual leave instead of her sick leave, and the subsequent decision to place her on special leave without pay commencing 5 June 2012, are rescinded.

52. The Respondent shall make appropriate adjustments, including any related payments and adjustments to benefits and entitlements, to reflect the placement of the Applicant on three months of sick leave on half pay combined with half days of annual leave commencing 22 March 2012, bearing in mind sec. 3.6(b) of ST/AI/2005/3.

(Signed)

Judge Ebrahim-Carstens

Dated this 24th day of December 2012

Entered in the Register on this 24th day of December 2012

(Signed)

Hafida Lahiouel, Registrar, New York