

UNITED NATIONS DISPUTE TRIBUNAL



6. On 4 May 2011, the Executive Secretary established a fact-finding panel <sup>3 W K H</sup>  
3 D Q H to review the complaints,

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S U R F H H G R Q D G P L Q L V W U D W L Y H O H D Y H ´

11. On 15 December 2011 a letter from the ASG/OHRM to the Applicant informing her that she was to be placed on administrative leave with full pay was prepared ³ W K H \$ G P L Q L V W U D W L Y . H t w a s D e l i v e r e d H O W E V A H d d ´ 20 December. Due to absences from the office over the Christmas period, including that of the Applicant, the Administrative Leave Letter was not in fact delivered until 11 January 2012.

12. There is a dispute between the Parties as to how the Administrative Leave Letter was delivered and how the Applicant was treated thereafter. The Applicant maintains that on 11 January 2012, the Chief of Human Resources Staff Services ³ & K L H I + 5 6 6 ´ the Chief of Security Services ³ & K L H I f r o m E C A in Addis Ababa, Ethiopia, entered W K H \$ S S O L F D Q W ¶ V R I I L F H D Q G L Q I R U P H G K H U . W K D W V K I The A S S O L F D Q W ¶ V S R D a y D e s i g n e d m o b i l e p h o n e a n d S i g n a l F r e q u e n c y radio were confiscated. The Applicant was then presented with the Administrative Leave Letter and escorted out of her office without any prior notice or warning. The Applicant describes W K L V D V D m o b i l e p h o n e W W ¶ Q W ¶ ~ " Ž B μ ñ À ã à p ` l • b . M . > x S U ¶ G % o Ž H š œ " 0

14. The content of the Administrative Leave Letter is as follows:

Dear Ms. Ba,

By memorandum dated 18 November 2011, Mr. Abdoulie Janneh, Executive Secretary, Economic Commission for Africa (ECA), referred your case to me for appropriate action. The referral was based on the contents of an investigation report, concerning allegations that you had DFWHG FRQWUDU\ WR WKH SURYLVLRQV RI 67 6 \* % discrimination, harassment, including sexual harassment, and abuse of DXWKRTU\ Office of Human Resources Management (OHRM) is currently reviewing the investigation report.

The purpose of this letter is to advise you that I have decided, on behalf of the Secretary-General, and based on the information provi

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*Prima Facie unlawfulness*

16. The Applicant contends that being placed on administrative leave in the manner detailed above is unlawful for a number of reasons. Firstly, the Applicant has not been given adequate reasons for being placed on administrative leave. Staff Rule 10.4(b) requires the Respondent to give a written statement of the reason(s) for the leave, and the Applicant contends that the letter of 15 December provides insufficient detail to fulfil that requirement.

17. Secondly, the Applicant contends that the reasons that were given for placing the Applicant on administrative leave were improper reasons, such as the likelihood that the Applicant 'will not be able to function effectively'



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24. The Respondent opposes the Application. The respondent contends that suspension of action cannot be granted where the contested decision has been implemented, and that in the present case, the decision has indeed been implemented, since the Applicant was placed on administrative leave on 11 January 2012.

25.



Has the decision been fully implemented?

30. The first question for consideration is whether or not the decision can be said to have been fully implemented, as argued by the Respondent, rendering the Application moot. As stated in *Nwuke* 81'7

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However, in *Calvani* UNDT/2009/092, at paragraph 21, LW ZDV KHOG WKDW <sup>3</sup>WKH  
place a staff member on administrative leave without pay during a certain period of time has continuous legal effects during that period of time and can only be deemed to have

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seeks to distinguish the present case because here the Applicant is on administrative leave <sup>implemente hastily</sup> *with* pay. The Respondent argues that where a staff member such as in *Calvani* is being deprived of their pay and other benefits, there is a continuing legal effect, but where a staff member is in receipt of pay, this does not occur.

31. There is no logic to this argument and it cannot be accepted. The continuing legal effect is not accepted. stffits,

**Prima facie unlawfulness**

32. The next question for the Tribunal is whether or not the Applicant has made out a *prima facie* case of unlawfulness in the decision to place her on administrative leave with full pay.

33. The contested decision was taken pursuant to staff rule 10.4, which provides that:

- (a) A staff member may be placed on administrative leave, subject to conditions specified by the Secretary-General, at any time pending an investigation until the completion of the disciplinary process.
- (b) A staff member placed on administrative leave pursuant to paragraph (a) above shall be given a written statement of the reason(s) for such leave and its probable duration, which, so far as practicable, should not exceed three months.
- (c) Administrative leave shall be with full pay unless, in exceptional circumstances, the Secretary-General decides that administrative leave without pay is warranted.
- (d) Placement on administrative leave shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure. If administrative leave is without pay and either the allegations of misconduct are subsequently not sustained or it is subsequently found that the conduct at issue does not warrant dismissal, any pay withheld shall be restored without delay.
- (e) A staff member who has been placed on administrative leave may challenge the decision to place him or her on such leave in accordance with chapter XI of the Staff Rules.

34. Thus it is apparent that the Secretary-General has a broad discretion to place a staff member on administrative leave at any time from the moment an investigation is pending until the completion of a disciplinary process, should such occur. ST/AI/371 gives the ASG/OHRM the authority to place staff member on administrative leave, and

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question might pose a danger to other staff members or the Organization, or if there is a  
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the information provided to her by the senior management of ECA, and the Executive Secretary in particular.

41. The ASG/OHRM XSRQ UHFHLSW RI WKH ([HFXWLYH 6HFUH further enquiries, cited the relevant rules and regulations and provided the Executive Secretary with the Guidelines to assist him. This, it seems to the Tribunal, indicates that the ASG/OHRM took great care over the decision-making process, and that as far as she was concerned, it was not a mere rubber-stamping exercise as indicated by the Applicant.

42. However, the Executive Secretary, Mr. Janneh, provided with clear guidance from the ASG/OHRM, does not, *prima facie*, appear to have acted entirely within the law.

43. When questioned by the ASG/OHRM on the subject of redeployment <sup>2</sup> a highly relevant question <sup>2</sup> the Executive Secretary stated:

Although the Panel did not pursue in its investigation [sic], there have been allegations of poor management, lack of leadership and vision, which will be addressed separately through performance evaluation. In short, we do not believe that Ms. Ba will be able to function effectively as the Director in the Sub-Regional Office in Niamey in view of the existing situation and in view of the ongoing process, which must be protected in order to arrive at a fair and just settlement. As there is not commensurate post to which Ms. Ba can moved [sic], and if it did exist such option would be very costly for the organization, it would be best in the circumstances to ask her to proceed on administrative leave.

44. The ASG/OHRM appears to have accepted this statement as indicating that UHGHSOR\PHQW ZDV QRW IHDVLEOH suggests that there is WKH \$SSC a vacant D-1 post in Addis Ababa to which she has recently applied. If such is the case <sup>2</sup> and *prima facie* it appears to be so <sup>2</sup> then redeployment was feasible, but as far as the Executive Secretary was concerned, it was not desirable.

45. It is apparent from the above statement by the Executive Secretary that he was contemplating redeployment in the light of the performance-related issues which had been discussed by the Panel in its Report. There are proper procedures for addressing performance issues and using the opportunity provided by the investigation as an excuse



50.

## Irreparable harm

54. In *Amar*, the Tribunal stated:

« Depriving [the Applicant] of the opportunity to continue to gain meaningful professional experience in her work, she is exposed to hardship for which she cannot be compensated monetarily. The Respondent submitted orally that any harm including reputational damage can be cured by the award of compensation.

The Tribunal finds no merit in the argument that any harm suffered by the Applicant may be cured by damages. The deprivation of continuing professional experience especially where the administrative decision on which it based is not only unlawful but patently so cannot be adequately compensated in monetary terms.<sup>5</sup>

55. The same would appear to apply in the present case. It is further the view of this Tribunal that the Respondent is not entitled to refuse to continue to employ the Applicant in view of certain performance-related issues. The continuance of the administrative leave will only compound the prejudice against the Applicant in that regard and the Tribunal cannot but conclude that the harm caused by the on-going effect of the decision cannot be remedied by damages alone. Very often the possibility of an irreparable harm to the interest of a staff member may be considered a sufficient indicator of irreparable harm. Irreparable harm should not be confined to material harm but must also encompass moral harm.

## Conclusion

56. The Application is granted.

57. The decision to place the Applicant on administrative leave is hereby suspended. The Respondent is ordered to return the Applicant to her post as Director of the Niamey Office of ECA, or to redeploy her elsewhere forthwith.

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<sup>5</sup> UNDT/2011/040, paragraphs 39-40.



*(Signed)*

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Judge Vinod Boolell  
Dated this 15<sup>th</sup> day of February 2012

Entered in the Register on this 15<sup>dd B</sup>