

CSAT/16(No.1)

IN THE ARBITRAL TRIBUNAL OF THE COMMONWEALTH SECRETARIAT

In the matter of

MONICA OYAS

Applicant

AND

THE COMMONWEALTH SECRETARIAT

Respondent

Before the Tribunal constituted by

Justice K M Hasan, President in consultation with

Mr D K Dabee, member and Justice R N Ukeje, member

(under Rule 23 of the Tribunal Rules)

INTERIM INJUNCTION AND DIRECTION

Interim Injunction and Direction

1. Upon reading the Application dated 4 August 2010 by the Applicant herein seeking, among other things, an urgent temporary order against the Respondent to suspend:

(i) the recruitment process for the post of Director Human Resources and/or other steps taken in execution of the Respondent's decisions of 26 January 2009, 14 October 2009, 15 December 2009, 27 January 2010 and 29 January 2010 to advertise the post of Director of HR and fill it by open competition and was thus advertised in the Economist on 29 May 2010 and on the Respondent's website, and

(ii) the making or implementation of any decisions by the Secretary General, Assistant Secretary General, Management Committee or any other servant or agent of the Respondent relating to the Applicant's contract of employment until the Tribunal makes its final decision on the merits of the Applicant's claim;

2. And in accordance with Tribunal Rule 23.1 having consulted with Mr D Dabee QC, and Judge R Ukeje OFR, Tribunal members, and having invited the Respondent to show cause why the order sought by the Applicant should not be made;

3. And upon reading the representations made by counsel, on behalf of the Respondent and after further consultations with Mr Dabee and Judge Ukeje, I am satisfied that there are reasonable grounds to justify the issuing of an interim injunction restraining the Respondent from taking any of the steps or implementing any of the decisions complained of by the Applicant as described above, pending the final determination by the Tribunal of the merits of the Application and I therefore so order.

4. In making this Order, I am mindful that the Tribunal has no power to substitute its own judgment for that of the Respondent in carrying out its executive functions and would emphasise the temporary nature of the injunction. By its nature, this injunction is intended only as a temporary measure and should be seen as such. It does not, in any way, prejudge the final outcome of the Tribunal's judgment on the merits of the Applications claims.

5. Pending the Tribunal's judgment on the merits, the Applicant's contract shall be deemed to have been extended for 6 months as from 30 September 2010 by virtue of Rule 16 of the Staff Rules, and shall continue for such period beyond the six months period as the Tribunal may direct should the Tribunal's judgment not be delivered within that six month period.

6. In the event that the Applicant is unable to substantiate her claims, the injunction will be discharged and the Respondent would be free to implement the impugned decisions.

7. For the avoidance of doubt, the Tribunal's power in this regard, which is acknowledged by the Respondent, derives from Article X and Rule 23 of the Tribunal Statute and Tribunal Rules respectively. The Tribunal has been faced with a request of a similar nature before and it is implicit from the Tribunal's ruling in that case that it has the power, in an appropriate case, to issue an interim injunction (see Csat/5 - Rumman Faruqi v The Commonwealth Secretariat).

8. In light of this Order, I hereby direct that the Respondent shall now, in accordance with the Tribunal Rules, file its Answer to the Application within ninety (90) days of the date of this order, that is on or before the close of business on 7 January 2011.

This Order is made the 31st day of August 2010.

K M Hasan,

President

To:

- (i) Mr Akbar Khan, Director LCAD & Counsel for the Respondent
- (ii) Mrs Monica Oyas, Applicant

CSAT/16(No.2)

IN THE ARBITRAL TRIBUNAL OF THE COMMONWEALTH SECRETARIAT

In the matter of

MONICA OYAS

Applicant

AND

THE COMMONWEALTH SECRETARIAT

Respondent

Before Justice K M Hasan, President

DIRECTION and ORDER

1. Upon reading the Representation dated 1 April 2011 made by the Applicant herein requesting further consideration and direction by the Tribunal regarding the Interim Injunction issued on 31 August 2010 paragraph 5 of which ordered that "the Applicant's contract shall be deemed to have been extended for 6 months as from 30 September 2010 by virtue of Rule 16 of the Staff Rules, and shall continue for such period beyond the six months period as the Tribunal may direct should the Tribunal's judgment not be delivered within that six month period."

2. And after consulting Mr D K Dabee, SC, Tribunal member and Judge R N Ukeje, OFR, Tribunal member, I hereby direct that the Applicant's contract is deemed to have been further extended until 31 July 2011 or until the Tribunal's judgment whichever is the sooner.

3. In making this Order, I am mindful that the Tribunal has no power to substitute its own judgment for that of the Respondent in carrying out its executive functions and would emphasise that this remains only as a temporary measure and does not, in any way, prejudge the final outcome of the Tribunal's judgment on the merits of the Applicants claims. This Order is made in the interest of fairness and justice in terms of Rule 23 of the Tribunal Rules.

This Order is made the ... day of ... 2011.

K M Hasan

President

To:

- Mr Akbar Khan, Director LCAD & Counsel for the Respondent
- Mrs Monica Oyas, Applicant