



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/062

Judgment No.: UNDT/2011/073

Date: 25 April 2011

Original: English

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**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Santiago Villalpando

MODESTE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Alan Gutman, ALS/OHRM, UN Secretariat

## **Introduction and procedural history**

1. On 25 March 2010 the Applicant filed an application under art. 2.2 of the Statute of the Dispute Tribunal for suspension of action of a decision to appoint another candidate to the post of Coordinator, Information Processing, at the P-4 level in the Department of Public Information in New York. The Applicant had already filed a request for management evaluation on 12 March 2010.

2. The application was heard on 29 March 2010 and the Tribunal considered whether each of the three statutory prerequisites included in art. 2.2 of the Statute was satisfied for the granting of an application for suspension of action, being: *prima facie* unlawfulness, particular urgency and irreparable damage.

## **Consideration**

3. The failure to satisfy any one of the prerequisite criteria stipulated in art. 2.2 of the Statute renders an application for suspension of action unsuccessful (see, for example, *Hepworth* UNDT/2009/003, *Bofill* Order No. 4 (GVA/2011)). Notwithstanding this, in this case, the Tribunal examined all of the criteria, finding that none were satisfied. The Tribunal found that the evidence did not show a reasonably arguable case that the decision was unlawful, and that therefore the requirement of *prima facie* unlawfulness was not established. Nor did it find that there was a real risk of irreparable damage as any loss suffered by virtue of the Applicant failing to be promoted was compensable. Finally, the Tribunal concluded that there was no particular urgency.

4. On 29 March 2010 the Tribunal delivered an *ex tempore* order refusing the application, which was followed on 5 April 2010 by written Order No. 62 (NY/2010).

5. As stated above, the Applicant's request for management evaluation was filed on 12 March 2010. On 17 March 2010 the Applicant received an acknowledgement from the Chief of the Management Evaluation Unit of the Department of Management.

The acknowledgement emphasised the crucial importance of informal conflict resolution and encouraged the Applicant and her manager to make every effort to resolve the matter by whatever informal means possible.

6. Pursuant to provisional staff rule 11.2(d), the Secretary-General's response was to be communicated to the Applicant within 30 calendar days of receipt of the request for management evaluation, given that the staff member was stationed in New York. Thus, the response to the request for management evaluation should have been communicated to her by 12 April 2010. Following this, in accordance with provisional staff rule 11.4(a), the Applicant had a period of 90 calendar days to file an application under art. 2.1 of the Tribunal's Statute from the earlier of the date on which she received the outcome of the management evaluation or from the date of expiration of the deadline specified under staff rule 11.2(d). This date was 12 July 2010.

7. Following the refusal of the suspension of action, this matter remained open pending the filing of an application under art. 2.1 of the Statute from the Applicant, or other submission related to the proceedings. However, to date the Tribunal has not received any application, request for extension of time, notice of settlement or withdrawal, nor any other correspondence, motion or pleading from either party.

8. As noted by this Tribunal in *Saab-Mekkour* UNDT/2010/047 and *Monagas* UNDT/2010/074, an applicant must have a legitimate interest in the maintenance of his or her proceedings. Moreover, as noted in *de la Fayette* UNDT/2010/037, it is in the Tribunal's interest to ensure that only current proceedings are maintained before it. As this is no longer the case in this matter, the proceedings shall be closed.

## **Conclusion**

9. In light of Order No. 62 (NY/2010) and the subsequent lack of prosecution of the proceedings, there is no matter for adjudication before the Tribunal. Case No. UNDT/NY/2010/062 is therefore closed without determination of its merits.

Case No. UNDT/NY/2010/062

Judgment No. UNDT/2011/073

*(Signed)*

Judge Ebrahim-Carstens

Dated this 25<sup>th</sup> day of April 2011

Entered in the Register on this 25<sup>th</sup> day of April 2011

*(Signed)*

Santiago Villalpando, Registrar, New York