



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/062

Judgment No.: UNDT/2011/170

Date: 29 September 2011

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: Anne Coutin, Officer-in-Charge

McCLUSKEY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Shelly Pitterman, UNHCR

Introduction

1. By an application filed on 28 September 2011, the Applicant requests the Tribunal to suspend, during the pendency of the management evaluation, the implementation of the decision not to extend his fixed-term appointment beyond its expiry on 30 September 2011.

Facts

2. The Applicant joined the Office of the United Nations High Commissioner for Refugees in November 2006 and is currently employed as a Programme/Project Manager in the Division of Information Systems and Telecommunications (“DIST”).

3. Towards the end of April 2010, DIST staff members were notified that the Division was to be reorganized, thus resulting in the advertisement of several positions.

4. By a memorandum dated 7 July 2010, staff members were informed of the special measures which would be applied to mitigate the impact of the DIST reorganization on its staff. Among the measures adopted, it had been decided that fixed-term appointments due to expire on or before 31 December 2010 would be extended until 30 June 2011.

5. The Applicant’s appointment was extended until 30 June 2011 and, in early June 2011, he was offered a three-month contract until 30 September 2011.

6. By an email of 23 September 2011 from the Division of Human Resources Management, the Applicant was notified that his appointment would not be extended after its expiry on 30 September 2011.

7. In an email of 27 September 2011 to the Deputy High Commissioner, the Applicant requested management evaluation of the decision not to extend his appointment beyond its expiry, and on 28 September 2011, he filed his application for suspension of action with the Tribunal.

8. On 29 September 2011, the Respondent filed his reply. He appended a memorandum of the same date, whereby the Deputy High Commissioner informed the Applicant that his request for management evaluation had been rejected.

Parties' contentions

9. The Applicant contends that the decision not to extend his appointment is *prima facie* unlawful and that his situation meets the requirement of urgency since his contract will expire on 30 September 2011. He further contends that he will suffer irreparable damage if the contested decision is implemented.

10. The Respondent submits that management evaluation has been completed on 29 September 2011, and requests the Tribunal to consider the application as moot and to reject it accordingly.

Consideration

11. Article 2.2 of the Tribunal's Statute provides that the Tribunal may "suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage".

12. It is clear from this provision that the Tribunal has no authority to order suspension of action on a decision once the management evaluation has been completed.

13. In this respect, the Appeals Tribunal considered in *Tadonki* 2010-UNAT-005, *Onana* 2010-UNAT-008 and *Kasmani* 2010-UNAT-011 that the Dispute Tribunal had exceeded the limits of the jurisdiction conferred on it by article 2.2 of its Statute when it ordered the suspension of the execution of the contested decision beyond the date on which the management evaluation was completed.

14. The Appeals Tribunal further specified in *Igbinedion* 2011-UNAT-159:

... the suspension of the execution or implementation of an administrative decision constitutes an exception that cannot be extended beyond the limits and prohibitions established by the Statute since, otherwise, the legislative texts, spirit, and goals underlying them would be ignored or violated ... By fixing a date without taking into account that the management evaluation might be completed earlier, the UNDT exceeded its jurisdiction and committed an error of law.

15. In the instant case, the Tribunal can only take note of the fact that the management evaluation was completed on 29 September 2011, thus rendering moot the application for suspension of action.

Conclusion

16. In view of the foregoing, the application for suspension of action is rejected.

(Signed)

Judge Thomas Laker

Dated this 29th day of September 2011

Entered in the Register on this 29th day of September 2011

(Signed)

Anne Coutin, Officer-in-Charge, Geneva Registry