



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

RAFII

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON APPLICATION FOR  
SUSPENSION OF ACTION**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Sarahi Lim Baró, ALS/OHRM, UN Secretariat

## **Introduction**

1. By application received by the New York Registry of the Dispute Tribunal on 29 May 2012, the Applicant, a staff member of the United Nations Assistance Mission in Afghanistan (“UNAMA”), sought suspension of action, pending management evaluation, of the decision of UNAMA “refus[ing] to grant a lien on [her] post to enable [her] to work elsewhere in the United Nations system on a temporary basis”.

2. The Applicant initially filed her application Sunday, 27 May 2012. As Monday, 28 May 2012, was a holiday, the application was received by the Registry the following working day, Tuesday, 29 May 2012. On 29 May 2012, following receipt of the present application through the eFiling portal, the Tribunal’s web-based electronic filing portal, the New York Registry transmitted it to the Respondent, directing the Respondent to file a reply by 31 May 2012.

## **Background**

3. The following background information is based on the parties’ written submissions and the record.

4. The Applicant commenced a fixed-term assignment with UNAMA as a Political Affairs Officer on 15 July 2011.

5. On 2 January 2012, she was placed on extended certified sick leave on full pay by the United Nations Medical Service, based upon the opinion of medical professionals that it was not advisable for her to work in Afghanistan, though she could work in a more suitable environment.

6. Her certified sick leave on full pay having been exhausted, the Applicant was placed on certified sick leave on half pay on 21 March 2012.

7. In or around April 2012, the Applicant was offered a temporary position with the Department of Economic and Social Affairs (“DESA”) in New York. 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”.

8. On 23 April 2012, the United Nations Medical Service declared the Applicant fit for work, but not fit for duty in UNAMA and other similar stations. Her certified sick leave ended on 30 April 2012 as she was deemed able to work elsewhere, and she was placed on annual leave.

9. On 17 May 2012, the Applicant received an email from the Field Personnel Division in New York 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”.

10. The Applicant submitted that, following exhaustion of her annual leave entitlement, she would be placed on special leave without pay on 5 June 2012.

11. On 25 May 2012, the Applicant filed a request for management evaluation, identifying the contested decision as “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”.

### **Parties’ submissions**

12. In her application, the Applicant submitted, with respect to the prima facie unlawfulness of the contested decision, that she was denied authorization by the United Nations Medical Service to work in UNAMA and, at the same time, UNAMA denied her the option of working elsewhere in the United Nations system by refusing to grant a lien on her post. The Applicant submitted that the matter was urgent as she

would be placed on special leave without pay effective 5 June 2012. Also, the Applicant submitted that she has an opportunity for temporary employment in New York in connection with a conference to be held on 20–22 June 2012, and, therefore, time was of the essence. The Applicant submitted that the implementation of the decision would cause her irreparable damage as she would be denied the possibility of pursuing, on a temporary basis, an existing career opportunity with the United Nations in a suitable location. She would also be precluded from continuing to earn a salary. The Applicant submitted that the stress associated with the loss of salary and its financial consequences could affect her health and well-being due to her current medication condition.

13. On 31 May 2012, the Respondent filed a submission stating that the present application for suspension of action should be dismissed as moot as UNAMA had agreed to allow the Applicant to retain a lien against her post. Attached to the Respondent's submission was an email of 30 May 2012 from the Chief, Mission Support, UNAMA, stating: "We are in a position to agree to maintain[n] a lien as we will not be able to fill it even on a temporary basis. DESA may proceed with [the Applicant] on temporary basis. I would suggest that FPD redouble its efforts to place her after July 2012".

14. Following the Respondent's submission of 31 May 2012, the Applicant sent a communication to the Registry on the same day, stating that, although the Respondent agreed to allow her to retain a lien on her post, some formalities for commencing an assignment away from UNAMA "cannot be immediately concluded, even if [the Applicant were] available and ready for work". The Applicant submitted that, therefore, the case should not be considered moot as she would be placed on special leave without pay on 5 June 2012 pending finalisation of formalities for her new appointment. The Applicant stated that had UNAMA agreed to place a lien on her post when initially requested, she would not be in this situation now.

## **Consideration**

15. This is an application for a suspension of action pending management evaluation. It is an extraordinary discretionary relief, which is generally not appealable, and which requires consideration by the Tribunal within five working days of the service of the application on the Respondent (art. 13.3 of the Rules of Procedure). It is interim relief preserving the *status quo* pending management evaluation and is not meant to make a final determination on the substantive claims.

16. Article 2.2 of the Statute of the Tribunal provides that it may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The Tribunal can suspend the contested decisions only if all three requirements of art. 2.2 of its Statute have been met.

17. The Respondent contends that the present application for suspension of action is moot, whilst the Applicant contends that it is not.

18. In her application for suspension of action, the Applicant identified the contested decision as follows (see p. 3 of the application):

Briefly describe what the decision was about: My mission in Afghanistan refused to grant a lien on my post to enable me to work elsewhere in the United Nations system on a temporary basis, despite the fact that the United Nations Medical Service had certified that I was fit to work, but not fit for duty in Afghanistan and other similar duty stations.

19. It is clear from the application that the subject matter of the application was UNAMA's refusal to grant the Applicant a lien on her post while she would be working elsewhere on temporary basis. The Applicant explained in her application that, as a factor in considering the urgency of her case, the Tribunal should take into account that, without a lien being granted to her, she would be placed on special leave

without pay effective 5 June 2012 due to the exhaustion of her sick leave and annual leave entitlements.

20. Similarly, in her request for management evaluation, the Applicant identified the contested decision as “the decision made by [UNAMA] not to release [her] on a temporary basis to work elsewhere”. She replied to the question “What remedy do you seek through management evaluation” as follows: “I would like the Mission (UNAMA) to grant a lien on my post, so that I may work on a temporary basis elsewhere in the UN system”. Although the placement on administrative leave effective 5 June 2012 was mentioned in her request for management evaluation, it was not included as a separate administrative decision.

21. The decision not to approve a lien on the Applicant’s post having been set aside, there can no longer be any pending application for suspension of action of such decision. Any other claims by the Applicant are not a matter for interim relief under the current application.

22. However, the present Judgment does not preclude the Applicant from filing, in due course and in compliance with proper procedures, a separate application in relation to the decision to place her on special leave, should such placement indeed take place.

**Conclusion**

23. The decision contested by the Applicant in her management evaluation request and in her application for suspension of action being reversed, the Tribunal finds there can no longer be any pending application for suspension of action of such decision. Accordingly, the present application is dismissed.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 1<sup>st</sup> day of June 2012

Entered in the Register on this 1<sup>st</sup> day of June 2012

*(Signed)*

Hafida Lahiouel, Registrar, New York