



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2012/071

Judgment No.: UNDT/2012/132

Date: 3 September 2012

Original: English

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**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** René M. Vargas M.

JAHNSEN LECCA

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:**  
Susan Maddox, ALS/OHRM, UN Secretariat  
Jérôme Blanchard, ALS/OHRM, UN Secretariat

## **Introduction**

1. By application dated 27 August 2012, the Applicant requested the Tribunal to order suspension of action on the decision to impose on her the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity.

## **Facts**

2. The Applicant is a former staff member of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) who, at the time of the contested decision, was working as a Legal Assistant, at level G-5.

3. By memorandum of 8 December 2011, the Chief of the Human Resources Policy Service in the Office of Human Resources Management (“OHRM”) at the United Nations Secretariat Headquarters in New York, notified the Applicant of charges made against her, namely that she had engaged in misconduct by taking, without authorization, another staff member’s bicycle.

4. By letter of 13 August 2012 from the Assistant Secretary-General for Human Resources Management, the Applicant was notified of the decision of the Under-Secretary-General for Management, taken on behalf of the Secretary-General pursuant to staff rule 10.2(a)(viii), to impose on her, with immediate effect, the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity. This decision was made on the grounds that in taking, without authorization, another staff member’s property, the Applicant had shown lack of integrity and her conduct did not befit to her status as an international civil servant. The Applicant received the letter on 27 August 2012.

5. The Applicant filed her application on 27 August 2012, and on 30 August, she submitted a corrigendum thereto. The Respondent filed his reply on 31 August 2012.

**Parties' contentions**

6. The Applicant's primary contentions may be summarized as follows:

*Prima facie unlawfulness*

a. The disciplinary measure of separation from service is disproportionate to the offence and, therefore, not appropriate in this case particularly in view of her long service at ICTY, her performance ratings, her supervisors' support, her status as a single mother and the sole source of income for her children and the fact that the theft constitutes a singular incident;

*Urgency*

b. She was only notified of her separation on 27 August 2012 and the disciplinary measure took effect immediately;

c. She is a single mother and the sole source of income for her children;

d. Further, she will lose her health insurance and, given her health condition, she will have difficulty securing insurance;

*Irreparable damage*

e. The implementation of the decision will cause irreparable damage to her career prospects and reputation. Further, the disciplinary measure makes securing future employment significantly more difficult;

f. Separation from service will result in long term financial difficulties, especially in view of the fact that the Applicant is a single mother and the sole source of income for her children.

7. The Respondent's primary contentions may be summarized as follows:

*Admissibility*

a. The Application is irreceivable. First, the decision became effective as at the date of the Applicant's receipt of the letter from the Assistant Secretary-General for Human Resources Management, that is, on 27 August 2012. The decision can therefore no longer be suspended. Second, articles 2.2 of the Tribunal's Statute and 13.1 of its Rules of Procedure provide that a suspension of action may be granted in the context of an ongoing management evaluation, which procedure is not applicable to a decision to impose a disciplinary measure pursuant to staff rule 11.2(b);

*Prima facie unlawfulness*

b. The Applicant has not demonstrated any procedural irregularities, nor showed any bias, and she has not demonstrated that the Respondent failed to take into account all mitigating factors ;

c. The sanction imposed on the Applicant was proportionate. Theft has consistently been considered as serious misconduct that is incompatible with the highest standards of integrity and probity expected of international civil servants. Besides, the Secretary-General enjoys broad discretion in determining the disciplinary sanction to be imposed;

*Urgency*

d. The Applicant was formally notified of the allegations of misconduct in December 2011 and she had ample time to anticipate that a possible consequence of such misconduct would be a separation from service;

*Irreparable damage*

e. The decision did not result in irreparable damage warranting suspension of action. It has already been implemented and any alleged irregularities may be adequately compensated through a monetary award.

**Consideration**

8. The Applicant seeks an order from the Tribunal suspending the implementation of the decision taken pursuant to staff rule 10.2(a)(viii) to impose on her the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity.

9. On the one hand, article 2.2 of the Tribunal's Statute provides:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to 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.

...

10. Article 13.1 of the Tribunal's Rules of Procedure further states:

The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to 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.

11. Staff rule 11.2 also relevantly provides:

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment ... shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

(b) A staff member wishing to formally contest ... a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation.

12. It is clear from a plain reading of these provisions that article 2.2 and 13.1 above apply only where management evaluation is required. In the instant case, the contested decision is a disciplinary measure which can be challenged before the Tribunal without first seeking management evaluation. Thus, the Tribunal cannot rely on the above provisions to order the requested suspension of action pending management evaluation which, in any event, was not requested.

13. On the other hand, article 10.2 of the Tribunal's Statute states :

At any time during the proceedings, the Dispute Tribunal may order an interim measure ... to provide temporary relief to either party, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

14. Further, staff rule 9.6 provides:

**Termination  
Definitions**

(a) A termination within the meaning of the Staff Regulations and Staff Rules is a separation from service initiated by the Secretary-General.

(b) Separation as a result of resignation, abandonment of post, expiration of appointment, retirement or death shall not be regarded as a termination within the meaning of the Staff Rules.

15. It follows from these provisions that where a staff member files an application before the Tribunal to challenge an administrative decision, he/she may seek an interim order from the Tribunal suspending the implementation of the contested decision. However, such suspension is explicitly excluded in cases of termination. In this case, the contested decision is a measure of termination within the meaning of staff rule 9.6, and the Applicant has not filed an application to challenge the merits of this decision and request its rescission.

16. Consequently, no provision allows in this case for the granting of the suspension of action on the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity. Thus, the application can only be rejected, notwithstanding the Applicant's right to file another application to challenge the merits of the sanction imposed on her.

**Conclusion**

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

*(Signed)*

Judge Jean-François Cousin

Dated this 3<sup>rd</sup> day of September 2012

Entered in the Register on this 3<sup>rd</sup> day of September 2012

*(Signed)*

René M. Vargas M., Registrar, Geneva