



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

DUA

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:**  
Jorge Ballesterro, UNICEF

## **Introduction**

1. On 25 September 2012, the Applicant, a former staff member of the United Nations Children’s Fund (“UNICEF”) in India, filed an application for suspension of action, identifying the contested decision as “the manner of [his] separation from UNICEF ... and events following [his] separation ... , which caused [him] significant mental distress” (emphasis omitted). The Applicant states that the contested decision was made on 17 April 2012.

2. The Applicant alleges that his separation from UNICEF was the result of “long standing, chronic problems that were not addressed by [the Country Representative], UNICEF India [Country Office,] despite the issues having been brought to her notice by [the Applicant]”. The Applicant also refers to a note for the record about his alleged poor performance, which was allegedly prepared after his separation from UNICEF and which prompted the Applicant to file the present application with the Dispute Tribunal.

3. The Respondent submits that the present application is not receivable and should be dismissed. The Respondent states that the Applicant was separated at his own request and “the manner of [his] separation” is not an administrative decision violating his terms of employment. The Respondent further submits that, under art. 2.2 of the Tribunal’s Statute, suspension of action may only be ordered pending management evaluation, and there is no ongoing management evaluation in this case.

4. The Applicant initially submitted his application by email on Tuesday, 25 September 2012, in response to which he was instructed by the Tribunal to file his papers through the eFiling portal. Due to technical problems experienced by the Applicant in accessing the eFiling portal, I directed the Registry to accept the application as it was filed on 25 September 2012. On Friday, 28 September 2012,

the Registry transmitted the application to the Respondent, directing him to file a reply by 12 p.m., Wednesday, 3 October 2012.

## **Background**

5. In view of the conclusions arrived at below, the Tribunal need not include an extensive background section. The following background information is based on the parties' written submissions and the record.

6. The Applicant received his initial two-year fixed-term appointment with UNICEF in April 2009. Two years later, his contract was extended for one year, until 30 April 2012. It appears that, throughout his employment with UNICEF, the Applicant remained on loan from the Government of Rajasthan, India.

7. On 8 March 2012, the Applicant's supervisor, Chief of UNICEF Office for Rajasthan sent an email to the Human Resources Officer, UNICEF India Country Office, recommending "the extension of [the Applicant's] fixed-term appointment contract up to 31 December 2012". This email was copied to several senior managers and the Applicant was requested to submit a "No Objection Certificate" from the Government of Rajasthan to "facilitate the extension of the contract".

8. Between 8 and 10 April 2012, the Applicant followed-up with the Government of Rajasthan regarding the extension of his release to UNICEF.

9. On 12 April 2012, the Chief of UNICEF Office for Rajasthan sent an email, apparently to several recipients, including the Applicant, discussing, *inter alia*, some managerial matters and reporting lines. The Applicant responded on the same day that he wished to "express serious dissatisfaction and reservations" regarding parts of the Chief's email. The Applicant further stated that "with this background, [he did] not wish [his] contract to be extended beyond 30 April 2012". The Applicant also forwarded his email to the Human Resources Officer, UNICEF India Country Office,

saying he “did not wish [his] contract to be extended [and that UNICEF] may like to initiate necessary action with regard to my separation”. (The emails of 12 April 2012 are quoted from the Applicant’s application as no copies of the actual emails were submitted to the Tribunal.)

10. On 17 April 2012, the Applicant received a letter from the Human Resources Manager, UNICEF India Country Office, regarding his email of 12 April 2012 requesting separation from UNICEF. The letter stated that the Applicant would be separated on 30 April 2012 upon expiration of his contract.

11. However, in May 2012, the Applicant discovered that a note for the record was being prepared to the effect that he had left UNICEF on account of his under-performance. It is at this juncture that, according to the Applicant, “[he] decided that [he] would like to proceed to [the] Disputes Tribunal”.

12. On 11 June 2012, the Applicant requested management evaluation of “the process of [his] separation from UNICEF”, also raising concerns with regard to the alleged note for the record regarding his alleged under-performance.

13. The written response received by the Applicant on 28 June 2012, signed by the Chief, Policy and Administrative Law Section, Division of Human Resources, UNICEF, stated that the letter dated 17 April 2012 did not contain an administrative decision but that it was rather a direct result of the decision taken by the Applicant to separate from UNICEF at the end of his contract on 30 April 2012. Accordingly, the request for management evaluation was not directed at an administrative decision and was “manifestly irreceivable”. The response further stated that some of the issues raised by the Applicant “warrant[ed] further inquiry” and had been transmitted to the UNICEF Regional Office for South Asia and the UNICEF Office of Internal Audit and Investigation for “any action they may deem necessary”. Finally, the Applicant was advised that, if he was dissatisfied with the response, he could file an application with the Dispute Tribunal within 90 days of the receipt of its letter.

## **Consideration**

### *Scope of this application*

14. In his application for suspension of action, the Applicant identified the contested decision as follows (see p. 3 of the application) (emphasis in original):

Briefly describe what the decision was about: The decision was about the manner of my separation from UNICEF as a National Professional Officer ... after having been associated for three years as a Fixed-Term Appointment, and the events following my separation from UNICEF, which caused me significant mental distress.

15. At first blush, from a perusal of the papers filed by the Applicant, it is not clear whether he is alleging constructive dismissal or simply seeking redress for “chronic issues” which he raised and which he alleges were not addressed by UNICEF. It appears that the Applicant also wishes to contest the circulation of the note for the record regarding his alleged under-performance.

### *Applications for interim relief*

16. Applications for suspension of action (under art. 2.2 of the Statute) and motions for interim relief (under art. 10.2 of the Statute) allow a staff member to seek urgent relief, which is generally not appealable, and which requires consideration by the Tribunal within five days of the service of the application on the Respondent. In terms of these provisions, the Tribunal can only consider suspending the implementation of a contested decision pending management evaluation, or it may grant interim relief once a substantive appeal has been filed before it.

### *Consideration under article 2.2 of the Statute*

17. In terms of art. 2.2 of its Statute, the Tribunal is competent to hear and pass judgment on an application filed by an individual requesting it 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. The Tribunal can suspend the contested decisions only if all three requirements of art. 2.2 of its Statute have been met.

18. However, in the instant case, there is presently no case pending before management evaluation. Thus, it is clear to the Tribunal that this is not an application in terms of art. 2.2 of the Tribunal's Statute. Furthermore, the Applicant's separation was effected on 30 April 2012 and is therefore not capable of being suspended.

19. Therefore, the present application, considered under art. 2.2 of the Tribunal's Statute, stands to be dismissed.

*Consideration under article 10.2 of the Statute*

20. In terms of art. 10.2 of its Statute, at any time during the proceedings, the Tribunal may order an interim measure, which is not appealable, 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.

21. However, interim measures under art. 10.2 of the Statute may be ordered only if the Tribunal is seized of an application on the merits under art. 2.1 of the Statute. The Tribunal finds that, at the present time, no application on the merits has been filed and, accordingly, there are no substantive proceedings before it to which the present motion would relate.

22. Further, even if the Applicant filed an application on the merits under art. 2.1 of the Statute in addition to the present application for suspension of action, his claim for interim relief would have been dismissed as the decision to separate him was made in April 2012 and he became aware of the note for the record in May 2012. Thus, considering that the present application was filed several months later, in September 2012, it does not satisfy the requirement of particular urgency (*Jitsamruay* UNDT/2011/206).

23. As a result, the present filing, considered under art. 10.2 of the Tribunal's Statute, stands to be dismissed.

*Application on the merits*

24. It appears from the Tribunal's review of the present application and the pleas and claims advanced by the Applicant that he may have intended to submit an application on the merits, mistakenly using the form prescribed for applications for suspension of action. However, by failing to use the form prescribed for applications on the merits under art. 2.1 of the Statute (form UNDT/F.1E), the Applicant has in effect filed an incomplete application on the merits.

25. Pursuant to art. 19 of the Tribunal's Rules of Procedure, it "may ... issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties". The Tribunal finds it appropriate to direct that, should the Applicant decide to re-file his application as an application on the merits under art. 2.1 of the Statute, he shall have until 5 November 2012 to re-file it using the correct form prescribed by the Tribunal for applications on the merits (see form UNDT/F.1E, available on the Tribunal's website). The Tribunal will consider 25 September 2012 as the initial filing date.

26. The present Judgment is without prejudice to the Tribunal's consideration of any issues of receivability or merits in the course of further proceedings, if any.

**Orders**

27. The application for suspension of action is dismissed.

28. The Applicant's application under art. 2.1 of the Tribunal's Statute, if any, shall be re-filed by 5 November 2012, using form UNDT/F.1E.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 5<sup>th</sup> day of October 2012

Entered in the Register on this 5<sup>th</sup> day of October 2012

*(Signed)*

Hafida Lahiouel, Registrar, New York