



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Santiago Villalpando

VILLAMORAN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON SUSPENSION OF ACTION**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Stephen Margetts, ALS/OHRM, UN Secretariat

## **Introduction**

1. On 5 July 2011 the Tribunal received an application for suspension of action, in which the Applicant seeks suspension of two decisions: (i) the decision to separate her from service with the requirement that she take a break in service of 31 days; and (ii) the decision to give her a temporary appointment. It is common cause that the Applicant is to be separated from service on 7 July 2011.

## **Consideration**

2. Article 7.2 of the Statute of the Dispute Tribunal provides as follows:

1. Subject to the provisions of the present statute, the Dispute Tribunal shall establish its own rules of procedure, which shall be subject to approval by the General Assembly.

2. The rules of procedure of the Dispute Tribunal shall include provisions concerning:

...

(j) Suspension of implementation of contested administrative decisions;

...

(l) Other matters relating to the functioning of the Dispute Tribunal.

3. Pursuant to art. 19 of the Rules of Procedure of the Dispute Tribunal, which were approved by the General Assembly,

The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, 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.

4. Article 36 of the Rules of Procedure provides, *inter alia*:

1. All matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Dispute Tribunal on the particular case, by virtue of the powers conferred on it by article 7 of its statute.

5. By email of 5 July 2011, the New York Registry transmitted the present application to the Respondent, informing him that he had until 1 p.m., Thursday, 7 July 2011, to submit his reply. At 3:30 p.m. on Thursday, 7 July 2011, the Tribunal held a hearing, which was attended by the Applicant and Counsel for the Respondent. At the hearing, the Applicant gave oral evidence under affirmation.

6. Article 13 (Suspension of action during a management evaluation) of the Rules of Procedure provides that “[t]he Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent”. Therefore, as the application was served on the Respondent on 5 July 2011, the Tribunal has until Tuesday, 12 July 2011, to complete its consideration of the present application.

7. In view of the fact that 7 July 2011 is the last working day before the Applicant’s separation, I directed at the hearing, before 5 p.m. (close of business in New York), that the implementation of the contested decisions be suspended until further order.

8. Having considered the facts before it and the submissions made by both parties, the Tribunal determines that, in view of the complex issues in the present case, further submissions are required for the fair and expeditious disposal of the application and to do justice to the parties.

9. The Tribunal further considers that, given that the contested administrative decisions are due to be implemented today, it is appropriate, in the special circumstances of the present case, to order the suspension of the implementation of the contested decisions pending the final determination of the present application for suspension of action.

IT IS ORDERED THAT:

10. The implementation of the contested decisions shall be suspended until **5 p.m., Tuesday, 12 July 2011.**

11. By **10 p.m., Friday, 8 July 2011**, the Respondent shall file and serve an additional written submission, including:

a. The legal basis and legal force of the memorandum of 17 June 2011 of the Assistant Secretary-General for Human Resources Management and the prior rules or issuances, if any, that are modified by this memorandum;

b. The delegated authority of the Assistant Secretary-General for Human Resources Management in relation to the decision to impose the requirement of 31-day break in service;

c. Whether the Applicant's medical coverage will continue for the entire duration of her proposed break in service (i.e., 31 days);

d. The implications of the 31-day separation on the Applicant's visa status in the United States;

e. Any other submissions or evidence the Respondent deems relevant.

12. By **10 a.m., Monday, 11 July 2011**, the Applicant shall file a submission, if any, in response to the Respondent's submission.

13. An additional hearing on the present application for suspension of action is set for **11 a.m., Monday, 11 July 2011**.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 7<sup>th</sup> day of July 2011