



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2016/048

Order No.: 152 (GVA/2016)

Date: 3 August 2016

Original: English

Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

AITKHOZHINA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON SUSPENSION OF ACTION**

Counsel for Applicant:
Mariam Munang, OSLA

Counsel for Respondent:
UN WOMEN

Introduction

1. By application filed on 3 August 2016, the Applicant, a national staff member of UN Women based in Almaty, Kazakhstan, seeks the suspension of the implementation, pending management evaluation, of the implicit decision not to renew her fixed-term contract, which is due to expire on 4 August 2016.
2. On the same date, the application was served on the Respondent for reply by Friday, 5 August 2016.

Consideration

3. Pursuant to art. 2.2 of its Statute and art. 13 of its Rules of Procedure, the Tribunal has the power to suspend the implementation of an administrative decision while its management evaluation is underway, provided that a set of cumulative conditions be met. The Tribunal must decide on an application for suspension of action within five working days of the service of such application being served on the respondent (art. 13.2 of its Rules of Procedure).
4. Furthermore, the Appeals Tribunal ruled in *Villamorán* 2011-UNAT-160 that, based on arts. 19 and 36 its Rules of Procedure, the Dispute Tribunal may order the suspension of action regarding a decision while considering a suspension of action request under art. 13 of the Rules of Procedure. Specifically, the Appeals Tribunal found:

Where the implementation of an administrative decision is imminent, through no fault or delay on the part of the staff member, and takes place before the five days provided under Article 13 of the UNDT Rules have elapsed, and where the UNDT is not in a position to take a decision under Article 2(2) of the UNDT Statute, i.e. because it requires further information or time to reflect on the matter, it must have the discretion to grant a suspension of action for these five days. To find otherwise would render Article 2(2) of the UNDT Statute and Article 13 of the UNDT Rules meaningless in cases where the implementation of the contested administrative decision is imminent.

5. The Tribunal notes that the Applicant's appointment is due to expire tomorrow, that is, on 4 August 2016. Although the Applicant has so far not been expressly notified of the non-renewal of her contract, should the Administration proceed to implement such a decision, it would take effect as of tomorrow.

6. Moreover, after review of the Applicant's submission, it is clear that the Tribunal requires further information and documents to make a well-founded determination on the application of suspension of action at hand.

7. The Tribunal is satisfied that the Applicant acted promptly upon receipt of the report of the rebuttal panel that upgraded her performance ratings for the period 2015-2016, which was issued on 21 July 2016 and notified to her on 27 July 2016.

8. In addition, she has repeatedly requested clarification on the Administration's position regarding the renewal of her contract, including by email sent on 3 August 2016, that is, the very day before the due date of expiration of her appointment with the Organization.

9. However, she has not obtained any clear response from the Administration. In light of such a sequence of events, the obvious urgency in this application cannot, in any manner, be said to be self-created.

Conclusion

10. In view of the foregoing, it is ORDERED that the implementation of the contested decision be suspended until the Tribunal issues an order ruling on the application for suspension of action, pursuant to arts. 2.2 of its Statute and 13 of its Rules of Procedure, within the time limit set out in art. 13.2 of said Rules of Procedure.

(Signed)

Judge Teresa Bravo

Dated this 3rd day of August 2016

Entered in the Register on this 3rd day of August 2016

(Signed)

René M. Vargas M., Registrar, Geneva