



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

UTAMI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**INTERIM ORDER
ON AN APPLICATION
FOR SUSPENSION OF ACTION**

Counsel for Applicant:

Miriam Munang, OSLA

Counsel for Respondent:

Elizabeth Brown, UNHCR

Introduction

1. On 28 December 2016, the Applicant filed an application for suspension of action seeking to suspend, pending management evaluation, the decision not to renew her fixed-term appointment upon its expiration on 31 December 2016.

Consideration

2. Pursuant to art. 19 of the Rules of Procedure of the Dispute Tribunal

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.

3. Article 36.1 of the Rules of Procedure provides that:

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.

4. Pursuant to art. 13.3 of its Rules of Procedure

The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the Respondent.

5. In *Villamorán* 2011-UNAT-160, the Appeals Tribunal found that the Dispute Tribunal did not exceed its competence when it ordered suspension of the decision pending a determination of the application for suspension of action, on the basis of art. 19 and art. 36 of its Rules of Procedure, and without making a finding as to whether the requirements of a suspension of action under art. 2.2 of its Statute and art. 13 of its Rules of Procedure had been met.

6. In para. 43 of *Villamoran*, the Appeals Tribunal held that:

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 for 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.

7. The Tribunal notes that after being placed under a performance improvement plan (“PIP”) in October 2016, the Applicant was informed of the non-renewal of her fixed-term appointment on 30 November 2016. While she filed her request for management evaluation and the present application for suspension of action only on 28 December 2016—that is, four days prior to the expiration of her fixed-term appointment—the Tribunal is satisfied that she undertook a significant number of actions to resolve the matter and to preserve her rights shortly after 30 November 2016: the Applicant contacted the Performance Management Unit, she had a meeting with the UNHCR Representative in Indonesia to discuss an extension of her contract to allow her to improve her performance under the PIP, and she contacted the Office of the Ombudsman. Upon realisation that none of these actions would resolve the matter, the Applicant contacted the Office of Staff Legal Assistance, whose Legal Officer acted without delay. The Tribunal is thus satisfied that the conditions set down by the Appeals Tribunal in *Villamoran* are met in the case at hand.

8. In view of the foregoing, and since the above-mentioned administrative decision is due to be implemented on Saturday, 31 December 2016, the Tribunal finds it appropriate to order the suspension of the implementation of the decision not to renew the Applicant’s fixed-term appointment upon its expiration on 31 December 2016 pending the final determination of the present application for suspension of action, pursuant to arts. 19 and 36 of its Rules of Procedure.

Conclusion

IT IS ORDERED THAT:

9. The implementation of the decision not to renew the Applicant's fixed-term appointment upon its expiration on 31 December 2016 be suspended until **Friday, 6 January 2017** or further order.

(Signed)

Judge Rowan Downing

Dated this 29th day of December 2016

Entered in the Register on this 29th day of December 2016

(Signed)

René M. Vargas M., Registrar, Geneva