



**Before:** Judge Rowan Downing

**Registry:** Geneva

**Registrar:** René M. Vargas M.

CHERNEVA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Esther Uwazie, UNICEF

## **Introduction**

1. By application filed on 22 December 2017, the Applicant, a Corporate Research Officer with the Private Fundraising and Partnerships Division, United Nations International Children's Emergency Fund ("UNICEF"), requests suspension of action, pending management evaluation, of a communication informing her of overpayments made to her by the Organization and giving her options on how the overpayments could be recovered. The communication further informed her that in compliance with the Tribunal's Order No. 250 (GVA/2017), she was being placed on special leave with half pay pending the review of her case for a disability benefit.

2. The application was served to the Respondent who filed his reply on 27 December 2017.

## **Facts**

3. After an incident on 17 May 2017, the Applicant was placed on certified sick leave ("CSL") with full pay. Effective 9 August 2017, and following exhaustion of the Applicant's entitlement to CSL with full pay, she was placed on CSL with half pay combined with half annual leave to keep her on full-pay status. Upon exhaustion of her annual leave balance, the Applicant was placed on CSL with half pay effective 24 August 2017. The Applicant exhausted all leave entitlements on 8 November 2017.

4. By email of 17 October 2017, the Chief, Human Resources, Private Fundraising and Partnerships Division, UNICEF, ("Chief, HR") informed the Applicant of the status of her leave entitlements, and notified her that based on her leave use she would be placed on special leave without pay ("SLWOP") effective 9 November 2017. The Applicant was also informed that her health insurance coverage would expire in light of her being placed on SLWOP.

5. On 5 December 2017, the Applicant filed a request for suspension of action for the decision to place her on SLWOP and through Order No. 250 (GVA/2017) issued on 12 December 2017, the Tribunal *inter alia* found that the Administration was obliged to place the Applicant on special leave with half pay, in application of sec. 29 of DHR/PROCEDURE/2017/006 (UNICEF procedure on sick leave). Therefore, the Tribunal found that the decision to place the Applicant on SLWOP was *prima facie* illegal and suspended its implementation pending management evaluation.

6. It appears that in correcting the error in its decision placing the Applicant on SLWOP, UNICEF decided to comply with the provisions of its rules and to place the Applicant on special leave with half pay pending the review of the Applicant's case by the United Nations Joint Staff Pension Fund for a disability benefit. The Applicant was informed of this on 21 December 2017. In the same communication the Chief, HR also informed the Applicant of the Organization's discovery of overpayments made to her during the period 24 August to 30 September 2017.

7. To recover the overpayments, the Chief, HR gave the Applicant two options: to either have the recovery done in monthly instalments or by a lump-sum deduction when the Applicant receives her end of service payments should she be separated from service.

### **Consideration**

8. Pursuant to art. 2.2 of the Tribunal's Statute and art. 13.1 of its Rules of Procedure, the Tribunal may suspend the implementation of an administrative decision during the pendency of a management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage to the concerned staff member. It is clear that all three conditions have to be satisfied before an application for suspension of action is granted.

*Receivability*

9. As this Tribunal has held before, any request for suspension of action has to be to an administrative decision or action that is capable of being suspended. (*Cherneva* Order No. 251 (GVA/2017). The Applicant, in her request, seeks to have a communication informing her of options on how an erroneous overpayment will be recovered and informing her of the implementation of the Tribunal's Order characterised as an administrative decision which can be suspended.

10. Being given a chance to decide on how a legal overpayment should be done is not an action capable of being suspended since it has no impact on the Applicant's conditions and terms of employment. It is not an administrative decision within the contemplation of Article 2 of the UNDT Statute. The Tribunal notes that the Applicant is not challenging the allegation that she was overpaid but rather the attempt at recovery. The Applicant should be informed that the Organization has an obligation to notify a staff member of any overpayments and the intended recovery so as to ensure fairness and reasonableness in the process of recovery.

11. Additionally, requesting suspension of action of the Respondent's deed of complying with the Tribunal's Order No. 250 (GVA/2017) is an exercise in futility. The Tribunal notes that paragraphs 21, 24 and 25 of Order 250 (GVA/2017), in respect of that which the Respondent ought to have done and needed to do, is very clear and concise. There is thus no room for ambiguity which the Applicant seems to attempt to bring about.

12. Therefore, the application is not receivable *ratione materiae*.

13. The Tribunal notes with concern that this is the fourth application for suspension of action from the Applicant in a period of one month. The Applicant should be mindful that not each and every communication that she does not see as favourable is a decision capable of being challenged. The Tribunal further notes that it seems that there is an appearance of mistrust and misunderstanding of the parties' situation in possible difficult circumstances, and believes that both parties will benefit from the assistance of the Office of the Ombudsman in an attempt at mediation to better resolve the matters between them.

14. The Tribunal strongly urges the Applicant to seek legal guidance concerning her matters from the Office of Staff Legal Assistance (“OSLA”), and OSLA is in turn encouraged to take up the Applicant’s case and to assist her accordingly.

**Conclusion**

15. In view of the foregoing, the request for suspension of action is dismissed.

*(Signed)*

Judge Rowan Downing

Dated this 28<sup>th</sup> day of December 2017

Entered in the Register on this 28<sup>th</sup> day of December 2017

*(Signed)*

René M. Vargas M., Registrar, Geneva