



**Before:** Judge Rowan Downing

**Registry:** Geneva

**Registrar:** René M. Vargas M.

ANDELIC

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER  
ON MOTION FOR  
INTERIM MEASURES**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Steven Dietrich, ALS/OHRM, UN Secretariat

## **Introduction**

1. By application on the merits filed on 22 February 2018, the Applicant contests the non-renewal of her fixed-term appointment (“FTA”) beyond 31 December 2017.
2. The application was served on the Respondent, who was granted until 26 March 2018 to file his reply on the merits.
3. On 25 February 2018, the Applicant filed a motion for interim measures requesting “suspension of the implementation of the decision of the Secretary-General, communicated to [her] via letter dated 19 February 2018 from the Under-Secretary-General for Management, to uphold the original contested decision of the [Chief of Mission Support (“CMS”), United Nations Assistance Mission in Afghanistan (“UNAMA”)], dated 13 December 2017, not to renew [her] [FTA] based on the reason of poor performance, and the subsequent memorandum of the Chief of Section, Human Resources ... dated 21 February 2018 instructing the Applicant to finalize her checkout from UNAMA by close-of-business 31 March 2018”.

## **Facts**

4. The Applicant served as a Coordination Officer (P-4), Jalalabad Field Officer, UNAMA, Department of Peacekeeping Operations (“DPKO”), under an FTA that expired on 31 December 2017.
5. On 15 June 2016, she electronically acknowledged that her performance review for the 2015-2016 cycle had been conducted, with a rating of “partially meets performance expectations”. The Applicant submitted a rebuttal against this performance rating.

6. The record before the Tribunal shows that as per instruction of the Acting Assistant-Secretary General (“Acting ASG”), Office of Human Resources Management (“OHRM”), the outcome of the rebuttal process was annulled, and the Applicant then agreed upon the constitution of an ad-hoc Rebuttal Panel (“ad-hoc panel”).
7. On 31 March 2017, the Applicant’s First Reporting Officer (“FRO”) during her 2015-2016 and 2016-2017 performance evaluation cycles retired from the service of the Organization.
8. On 3 May 2017, the Applicant submitted her rebuttal statement to the ad-hoc panel examining the rebuttal of her 2015-2016 performance cycle rating.
9. On 10 June 2017, the Applicant electronically acknowledged that her performance review for the 2016-2017 cycle had been conducted, with a rating of “does not meet performance expectations”. On 21 June 2017, the Applicant submitted a rebuttal concerning this rating.
10. On 9 August 2017, the ad-hoc panel submitted its report to the Acting ASG, OHRM, concerning the Applicant’s performance rating for the 2015-2016 cycle. The panel recommended that the Applicant’s rating be maintained as “partially meets performance expectations”.
11. On 5 December 2017, the rebuttal panel constituted to consider the Applicant’s rebuttal of her 2016-2017 performance cycle rating submitted its report to the CMS, UNAMA. The panel recommended, by “majority of consensus”, that the Applicant’s performance rating be changed from “does not meet performance expectations” to “partially meets performance expectations”.
12. By memorandum dated 13 December 2017, the CMS, UNAMA, informed the Applicant of the rebuttal process outcome and more importantly, that “[b]ased on the [rebuttal process outcome, her] fixed term appointment ... [would] not be extended further to sections 10.3 and 15.6 of ST/AI/2015/5 (Performance Management and Development System)”.

13. On 19 December 2017, the Applicant requested management evaluation of the decision not to renew her FTA beyond 31 December 2017. On the same day, she filed an application for suspension of action pending management evaluation of the decision not to renew her FTA beyond 31 December 2017, pursuant to art. 2.2 of the Tribunal's Statute and art. 13 of its Rules of Procedure.

14. The Tribunal, by Order No. 260 (GVA/2017) of 27 December 2017, ordered that the contested decision be suspended pending the outcome of the management evaluation. Accordingly, the Applicant's FTA was extended until 31 March 2018.

15. The Under-Secretary-General for Management informed the Applicant by letter of 19 February 2018 that the decision not to renew her FTA was upheld.

16. On 22 February 2018, the Chief of Section, Human Resources Unit, UNAMA, advised the Applicant via a memorandum dated 21 February 2018 that her checkout from UNAMA had to be finalized by close-of-business on 31 March 2018.

### **Consideration**

17. Article 10.2 of the Statute of the Dispute Tribunal provides that:

At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, 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.

18. Art. 14.1 of its Rules of Procedure reads as follows:

At any time during the proceedings, the Dispute Tribunal may order interim measures to provide temporary relief 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.

19. It follows from the above provisions that the Tribunal cannot grant a request for interim measures in cases of appointment, promotion or termination.

20. In *Benchebbak* 2012-UNAT-256, the Appeals Tribunal held that the Dispute Tribunal exceeded its jurisdiction or competence in ordering the suspension of the contested decision beyond the date of the completion of management evaluation in a matter concerning the Applicant's separation upon non-renewal of a fixed-term appointment.

21. In *Auda* 2016-UNAT-671, the Appeals Tribunal ruled that the Dispute Tribunal correctly found that it had no jurisdiction to grant an application for suspension of action under art. 10.2 of its Statute, as follows:

The Tribunal finds that, pursuant to art. 10.2 of its Statute and the Appeals Tribunal's rulings in *Benchebbak* and *El-Komy*, a request to suspend the implementation of a contested administrative decision pending proceedings cannot be granted in this case as [Mr. Auda's] fixed-term appointment expires on 31 December 2015, and, under the Staff Rules, its extension would require a new letter of appointment. Thus, this case falls under the exclusionary provision of art. 10.2 of the [Dispute] Tribunal's Statute, and the Tribunal does not have jurisdiction to suspend the contested decision pending determination of the case on its merits.

22. The Tribunal notes that pursuant to art. 10.2 of its Statute and the above-referenced jurisprudence, it has no jurisdiction to grant the Applicant's request for suspension of the non-renewal decision pending a determination of the case on the merits.

23. The Tribunal's competence is a matter of patent and unarguable law, which can be decided even if not raised by the parties and without serving the application to the Respondent (see *Christensen* 2013-UNAT-335; *Bofill* UNDT/2013/141; *Lee* UNDT/2013/147; *Kostomarova* UNDT/2014/027). Therefore, the Tribunal ruled on the present motion without serving it to the Respondent.

Case No. UNDT/GVA/2018/014  
Order No. 51 (GVA/2018)

IT IS ORDERED THAT:

24. The motion for interim relief is rejected.

*(Signed)*

Judge Rowan Downing

Dated this 27<sup>th</sup> day of February 2018

Entered in the Register on this 27<sup>th</sup> day of February 2018

*(Signed)*

René M. Vargas M., Registrar, Geneva