



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

CHERNEVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Bart Willemsen, UNICEF

Introduction

1. On 5 April 2017, the Applicant filed an “application for suspension of action without management evaluation”, against the decision to forward her case to the United Nations Staff Pension Committee (“UNSPC”) for consideration for a disability benefit, taken on the basis of the conclusion by the United Nations Medical Director that the Applicant is incapacitated for further service.

Facts

2. By email of 5 April 2018, the Chief, Policy and Administrative Law Section, UNICEF, informed the Applicant that the United Nations Medical Director had concluded that the Applicant is incapacitated for further service and that, therefore, her case would be forwarded to the UNSPC for consideration for a disability benefit at its upcoming meeting on 18 April 2018.

Parties’ contentions

3. The Applicant states that she did not file a request for management evaluation because the decision was a medical decision by a technical body, not subject to management evaluation.

Consideration

4. Pursuant to art.2.2 of its Statute,

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

5. It follows that the Tribunal cannot order the suspension of a decision that is not subject of an ongoing management evaluation.

6. Further, pursuant to art. 10.2 of its Statute,

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.

7. The above provision requires that an application on the merits contesting the decision that is subject to the request for interim measures be already pending with the Tribunal. The Tribunal does not have a pending application on the merits contesting the decision to forward the Applicant's case to the UNSPC.

8. The present application for suspension of action is therefore not receivable. The Tribunal also recalls that receivability of the application is a matter of law, which can be assessed without serving it to the Respondent (cf. *Gehr* 2013-UNAT-313, and *Christensen* 2013-UNAT-335).

9. The Tribunal also wishes to draw the Applicant's attention to the second sentence of sec. 3.2 of ST/AI/1999/16 (Termination of appointment for reasons of health), which provides for a special procedure in cases like the present.

Conclusion

10. In view of the foregoing, the application for suspension of action is rejected.

(Signed)

Judge Teresa Bravo

Dated this 6th day of April 2018

Entered in the Register on this 6th day of April 2018

(Signed)

René M. Vargas M., Registrar, Geneva