



**Before:** Francesco Buffa

**Registry:** Geneva

**Registrar:** René M. Vargas M.

CHATTERJEE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Bart Willemsen, UNICEF  
Alister Cumming, UNICEF

## **Introduction**

1. By an application filed on 28 January 2020, the Applicant, a staff member of the United Nations International Children's Emergency Fund ("UNICEF"), requests suspension of action pending management evaluation of the decision not to renew his appointment beyond 31 January 2020 ("the contested decision").

## **Facts**

2. The Applicant serves UNICEF India Country Office ("ICO") on a fixed-term appointment as Global Water and Sanitation Hygiene ("WASH") Specialist at the National Officer ("NO") level 3.

3. The Applicant's performance rating during the 2018 performance cycle was "low achievement".

4. The Applicant was placed on a Performance Improvement Plan ("PIP") during the period from 13 June to 12 September 2019. At the end of the PIP period, the Applicant's supervisor concluded that "he had failed to improve his performance and had not reached the desired outcome".

5. On 22 November 2019, the Applicant submitted an official rebuttal. On 27 December 2019, the Rebuttal report was issued, confirming the outcome of the PIP. On 6 January 2020, the Director, Division of Human Resources ("DHR") endorsed the Rebuttal Panel Report.

6. By letter dated 21 January 2020, the Director, DHR, UNICEF, informed the Applicant that his appointment would not be extended beyond 31 January 2020. He indicated in said letter that the Applicant's "placement on a [PIP] did not result in the necessary improvement of [his] performance, and that the assessment [had been] upheld in an independent rebuttal process". The Applicant was also informed of the decision that he would be paid one-month salary in lieu of notice.

7. On 28 January 2020, the Applicant requested management evaluation of the contested decision.

8. On the same day, the Applicant filed the present application for suspension of action.

9. On 29 January 2020, the application was notified on the Respondent who was instructed not to take any further decision or action in relation to the contested decision pending the finalization of the suspension of action proceedings before this Tribunal.

10. The Respondent complied with the Tribunal's instructions and filed his reply on 30 January 2020.

### **Consideration**

11. Applications for suspension of action are governed by art. 2.2 of the Tribunal's Statute and art. 13 of its Rules of Procedure, which provide that the Tribunal may 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.

12. The Tribunal considers that, for an application for suspension of action to be successful, it must satisfy the following mandatory and cumulative conditions:

- a. The Applicant requested management evaluation of the contested decision, whose evaluation is ongoing;
- b. The contested decision has not yet been implemented;
- c. The application concerns an administrative decision that may be properly suspended by the Tribunal;
- d. The impugned administrative decision appears to be *prima facie* unlawful;
- e. Its implementation would cause irreparable damage; and
- f. The case is of particular urgency.

13. In the present case, no issue has been raised about conditions a), b) and c) mentioned above, while the Parties' contentions are related to the lawfulness of the non-renewal decision.

14. Staff regulation 4.5(c) and staff rule 4.13 provide that "[a] fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal". In *Ahmed* 2011-UNAT-153, the Appeals Tribunal held that "if based on valid reasons and in compliance with procedural requirements, fixed-term appointments may not be renewed".

15. In the UNAT's case-law, it is well established that unsatisfactory performance constitutes a legitimate basis for the non-renewal of a staff member's fixed-term appointment (*Said* 2015-UNAT-500; *Morsy* 2013-UNAT-298 and *Ahmed*).

16. As a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal for an employee receiving a satisfactory performance evaluation, *a fortiori* it does not carry any expectancy for a staff member whose performance was found unsatisfactory.

17. In the case at hand, the Tribunal notes that the contested decision is based on a poor performance by the Applicant for almost two years.

18. Indeed, the Applicant had a negative performance in 2018, which he did not challenge. The Applicant's performance shortcomings continued in 2019 (as the Applicant "failed to improve his performance" in accordance with the PIP, the PIP was recently confirmed by the rebuttal report and it was eventually endorsed by the Director of the DHR).

19. In such circumstances, which make foreseeable a formal negative final evaluation of the performance of the Applicant for the 2019 performance cycle, the UNICEF's decision not to renew the Applicant's appointment on grounds of unsatisfactory service is not *prima facie* unlawful.

**Conclusion**

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

*(Signed)*

Judge Francesco Buffa

Dated this 5<sup>th</sup> day of February 2020

Entered in the Register on this 5<sup>th</sup> day of February 2020

*(Signed)*

René M. Vargas M., Registrar, Geneva