



**Before:** Judge Teresa Bravo  
**Registry:** Geneva  
**Registrar:** René M. Vargas M.

CHOCOBAR

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:**

Dorota Banaszewska, OSLA

**Counsel for Respondent:**

Alan Gutman, AAS/ALD/OHRM, UN Secretariat

## **Introduction**

1. By application filed on 25 August 2020, the Applicant requests suspension of action, pending management evaluation, of the decision to separate her from service before the exhaustion of her sick leave entitlement. She also challenges “the separation for reasons of her alleged unsatisfactory service”.
2. The application for suspension of action was served on the Respondent, who filed his reply on 27 August 2020.

## **Facts**

3. The Applicant is a former staff member who at the time of her separation from service held a continuing appointment at the P-4 level with the United Nations Global Service Centre in Brindisi (“UNGSC”).
4. On 12 August 2020, the Applicant received a “notice of termination” with immediate effect of her continuing appointment due to unsatisfactory service. Said notice provides in its relevant part as follows:

As you are aware, you received a rating of “partially meets performance expectations” for the 2017-2018 cycle and “does not meet performance expectations” for the 2018-2019 cycle. Both ratings were upheld by separate rebuttal panels. Every effort has been made to clarify your performance expectations, make you aware of your performance expectations and provide you with ample opportunities to improve.

5. She was also informed that she would receive compensation in lieu of notice pursuant to staff rule 9.7(d) and that the Human Resources Section would provide her with further information on the checkout process.
6. By email of 12 August 2020, the Chief, Human Resources Office, UNGSC, asked the Applicant *inter alia* to “return all UN property within two weeks (by COB 26 [A]ugust 2020)”.
7. On 24 August 2020, the Applicant requested management evaluation of the decision to separate her from service.

## Consideration

8. Applications for suspension of action are governed by art. 2.2 of this Tribunal's Statute and art. 13 of its Rules of Procedure. They both provide that the Tribunal shall be competent to suspend the implementation of a contested administrative decision during the pendency of management evaluation "where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage". These three requirements are cumulative and must all be met for a suspension of action to be granted (*Ding* Order No. 88 (GVA/2014), *Essis* Order No. 89 (NBI/2015), *Carlton* Order No. 262 (NY/2014)). Furthermore, the burden of proof rests on the Applicant.

9. It is clear from art. 2.2 of the Tribunal's Statute and art. 13 of its Rules of Procedure that an application for suspension of action requires that the contested decision has not yet been implemented and is the subject of an on-going management evaluation.

10. Indeed, relief under an application for suspension of action is, in substance and effect, akin to an *interim* order of injunction in national jurisdictions. It is an order limited in scope and time to provide temporary relief by maintaining the *status quo* between the parties. It follows, therefore, that an order for suspension of action cannot restore a situation or reverse an allegedly unlawful act that has already been implemented.

11. It is established jurisprudence of this Tribunal that where a contested decision has been implemented, suspension of action cannot be granted (see *Dalgamouni* Order No. 137 (NBI/2014), *Laurenti* Order No. 243 (NBI/2013); *De Luca* Order 79 (GVA/2019)).

12. The Applicant indicates in her application that she was notified of the contested decision on 12 August 2020, but that said decision was to be implemented on 26 August 2020.

13. However, the Tribunal notes that the letter dated 12 August 2020 clearly mentions that the termination of the Applicant's continuing appointment due to unsatisfactory service was effective immediately, and that she would receive compensation in lieu of the required notice.

14. The evidence on record, namely the email of 12 August 2020 from the Chief, Human Resources Office, UNGSC, shows that the Applicant was notified of the termination of her continuing appointment effective immediately on 12 August 2020 but she was granted two weeks, that is, until 26 August 2020 to return all United Nations property. This communication does not change the terms of the notice of termination and cannot be interpreted as if the Applicant's termination was only to be implemented on 26 August 2020.

15. The Tribunal further notes that a Personnel Action was issued on 13 August 2020 reflecting the Applicant's separation for unsatisfactory service effective 12 August 2020.

16. The Applicant also claims in her application that, first, on 13 August 2020, she had an accident and submitted a request to be placed on certified sick leave until 27 August 2020 and that, second, on 19 August 2020, her psychiatrist recommended that she be placed on sick leave "in the following three months with a requirement of a follow up every month".

17. The Tribunal notes that the Applicant did not file any evidence to support her claims in this regard and finds that, in any event, the Administration was not under the obligation to process any sick leave request beyond the date of the termination of the Applicant's continuing appointment, i.e., 12 August 2020.

18. Given the facts on record, the Tribunal finds that the decision to terminate the Applicant's continuing appointment has already been implemented and, consequently, her application for suspension of action fails.

**Conclusion**

19. In view of the foregoing, the application for suspension of action pending management evaluation is rejected.

*(Signed)*

Judge Teresa Bravo

Dated this 31<sup>st</sup> day of August 2020

Entered in the Register on this 31<sup>st</sup> day of August 2020

*(Signed)*

René M. Vargas M., Registrar, Geneva