



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2025/100

Order No.: 147 (GVA/2025)

Date: 11 December 2025

Original: English

Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: Liliana López Bello

WAGNER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Manuel Calzada

Counsel for Respondent:

Halil Göksan, AS/ALD/OHR, UN Secretariat

Introduction

1. By application filed on 2 December 2025, the Applicant, a staff member of United Nations Interim Administration Mission in Kosovo (“UNMIK”), requests suspension of action, pending management evaluation, of the decision to terminate her fixed-term appointment effective 20 December 2025.

2. The application for suspension of action was served on the Respondent, who filed his reply on 8 December 2025, requesting the Tribunal to reject the application.

Facts

3. On 15 October 2021, the Applicant assumed her position as a Senior Political Affairs Officer and Special Assistant to the UNMIK Special Representative of the Secretary-General (“SRSG”) at the P-5 level.

4. On 7 October 2025, the Deputy SRSG (“DSRSG”), who served as Officer-in-Charge of UNMIK in the absence of the SRSG, advised UNMIK staff members in an email broadcast on “the status of the contingency planning”. The DSRSG informed that “[t]he UNMIK leadership has been advised by [United Nations Headquarters] that the Secretary-General is likely to be invoking the contingency. There will be a meeting with the leadership of all peacekeeping missions tomorrow at which we expect that mission leadership will be advised on the reduction level and conditions of the contingency plans to be implemented”.

5. On 8 October 2025, the Under-Secretary-General for Peace Operations sent a code cable to various United Nations missions, including UNMIK. Therein, he stated that “[p]ursuant to the Secretary-General’s decision, we kindly request that [UNMIK] proceed without delay to implement the contingency plans aligned with the 15 percent scenario” as “necessitated by the ongoing liquidity crisis”.

6. On 10 October 2025, the Secretary-General sent a letter to “All United Nations Personnel”. He explained that he had “asked all peacekeeping missions funded under the peacekeeping budget to prepare contingency plans based on

possible reductions of 15 to 25 per cent of their expenditures”, referring to the “current liquidity crisis”.

7. On 14 October 2025, the DSRSG notified UNMIK staff members in an email broadcast that “UNMIK will be required to make immediate and significant reductions in expenditures to meet the 15% reduction instructed by the Secretary-General”. The DSRSG further explained that “[t]o meet its reduction target, the Mission will now be required to reduce approximately 29% of serving civilian personnel across all components of the mission and all levels, specifically: 29% international staff— comprising 28 staff members [...]”.

8. On 23 October 2025, the Applicant was verbally informed by the DSRSG and the Chief of Mission Support about “the impact the contingency plan would have on her position” (as per the Respondent’s reply).

9. On 10 November 2025, the Applicant filed a request for management evaluation of the “[d]ecision to downsize the staff members position”, which was taken, or she became aware of, on 24 October 2025.

10. By letter dated 21 November 2025, the DSRSG notified the Applicant that her fixed-term appointment would be “terminated in accordance with Staff Regulation 9.3(a)(i) effective 20 December 2025” upon “conclusion of the comparative review conducted in accordance with the Organization’s policy on downsizing or restructuring resulting in termination of appointments (ST/AI/2023/1)”. The DSRSG further stated that “[t]his letter constitutes an official notice of the termination of your appointment in line with Staff Regulation 9.3(c) and Staff Rule 9.7”.

Consideration

11. Article 2.2 of the Tribunal’s Statute provides 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 case of particular urgency, and where its implementation would cause irreparable damage. These three requirements are cumulative. In other

words, they must all be met in order for a suspension of action to be granted. Furthermore, the burden of proof rests on the Applicant.

Prima facie unlawfulness

12. The Tribunal recalls that the threshold required in assessing this condition is that of “serious and reasonable doubts” about the lawfulness of the impugned decision (*Hepworth* UNDT/2009/003, *Corcoran* UNDT/2009/071, *Miyazaki* UNDT/2009/076, *Corna* Order No. 90 (GVA/2010), *Berger* UNDT/2011/134, *Chattopadhyay* UNDT/2011/198, *Wang* UNDT/2012/080, *Bchir* Order No. 77 (NBI/2013), *Kompass* Order No. 99 (GVA/2015)).

13. The Applicant’s submissions may be summarised as follows:

- a. The Applicant received the written notice regarding the termination of her appointment on 17 November 2025. This was less than 30 days before her termination and therefore in violation of staff rule 9.7(b).
- b. The restructuring was “premature” and “preceded [a General Assembly] review despite formal assurances—procedural inversion”.
- c. The Administration failed to ensure “consultation and transparency”, which was in “[n]on-compliance with “SMC XIII and Section 2.2 obligation [unknown references]”.
- d. “[E]xtension practices were “[i]nconsistent” and amounted to a “[d]eviation from ST/IC/2025/17 [unknown reference, the relevant information circular does not exist] without objective justification”.
- e. The “staffing implementation” was “arbitrary” as a “29% reduction vs. 15% target” constituted a “material overreach”.
- f. “[M]itigation measures was not applied as “[n]o reassignment, redeployment, or attrition alignment per ST/AI/2023/1 [Downsizing or restructuring resulting in termination of appointments]”.

g. The “comparative review” was “[o]paque” since there was an “[a]bsence of objective data directly contraven[ing] *Castillo Cabrera* (UNDT/2012/035) and *Lemonnier* (UNDT/2016/186)”.

h. The Applicant “[p]ost remains authorized”, which constitutes a “[s]tructural contradiction; termination reason lacks internal coherence”.

i. “Indicators of retaliation” were presents as “[m]aterial changes post-[Field Staff Union, “FSU”] activity support *prima facie* improper motive per [*Hepworth* UNDT/2009/003].

14. The Respondent’s submissions may be summarised as follows (references to footnotes omitted):

a. It is “well settled that an international organization has power to restructure some or all of its departments or units, including the abolition of posts or reduction of staff”, referring to *Loeber* 2018-UNAT-844, para. 18. Also, the Appeals Tribunal held in *Heurtematte* 2024-UNAT-1430, para. 59 that “the Organization has considerable discretion to adjust its governmental or business model without the Tribunals interfering and certainly without them substituting their decisions for those of the Organization”.

b. “Termination is a separation initiated by the Administration and the Organization may terminate a staff member for the abolition of posts or reduction of staff”, referring to *Guzman*, 2014-UNAT-455, para. 28. Further, the Dispute Tribunal stated in *Etuwewe* Order No. 260 (NBI/2025), para. 16 that “it is not the role of the Tribunal to second-guess the decisions made by the organization in determining the value to be accorded different positions within its structure. Those implementing the decisions on the ground are better placed to make decisions as to which positions are more important to their operations”.

c. The DSRSG “lawfully terminated the Applicant’s appointment for the purpose of reduction of staff”. The Secretary-General had “instructed missions to reduce expenditures by 15 percent due to the Organization’s

liquidity crisis”, and “UNMIK rationally decided to vacate the Applicant’s position following a functional review, which concluded that her position overlapped with another position at the P-4 level and that the functions could be adequately performed at the lower level”.

d. “The contested decision was procedurally correct and in line with [ST/AI/2023/1]”. The Staff Management Group constituted in accordance with sec. 2 of ST/AI/2023/1 (“SMG”) “scored and ranked the Applicant in accordance with criteria in sections 4.4 to 4.9 of [ST/AI/2023/1]”, but the Applicant “could not be retained in service despite her score and rank because there was no comparable positions against which she could be placed”. “The contingency plan provided for the sole P-5 Special Assistant, Political Affairs, position within UNMIK to be vacated [*sic*]”.

e. “The Applicant has not established that there are ‘serious and reasonable doubts’ about the lawfulness of the contested decision”, referring, *inter alia*, to *Minaeva* Order No. 056 (GVA/2020), para. 20. The application is “replete with misunderstandings and inaccuracies”.

f. The Applicant’s contention that “there was ‘no written notice’ is incorrect” and “contradicted by Applicant’s own evidence, Annex 2 of her Application”. This “establishes that the Applicant received the required 30 days’ notice”, and she “was notified the contested decision on 21 November 2025 with an effective date of 20 December 2025 in accordance with Staff Rule 9.2 of ST/SGB/2024/1 effective 24 April 2024”.

g. The Applicant’s contention that “the restructuring is premature and ‘action preceded [the General Assembly’s] review’ is misleading”. “UNMIK has not abolished posts” but “reduced its staff in response to the Organization’s liquidity crisis”. “With arrears amounting to US\$2.066 billion and expected collection shortfall about US\$880 million, the Organization does not have the financial liquidity to meet the approved peacekeeping budget for 2025-2026 and was required to limit all expenditures to 85 percent of the approved peacekeeping budget”. That “the post encumbered by the

Applicant ‘remains authorized’ does not mean that [the] Organization has the financial ability to continue to employ her or that the Organization is required to continue to encumber the position”.

h. The Applicant’s assertion that “staffing implementation: 29% reduction vs. 15% target” is arbitrary is also incorrect”. “The 15 percent reduction target applies to overall budgeted expenditures”, and to meet this target”, UNMIK “had to reduce civilian personnel by 29 percent because savings from terminations will only [begin] towards the end of 2025”. “With only half of the budget year remaining, UNMIK needed to reduce staffing by 29 percent to reduce expenditures by 15 percent of the overall annual budget”.

i. The Applicant’s assertion that “no mitigations were applied is also incorrect”. The “implementation of mitigating measures allowed UNMIK to limit the number of involuntary separations”.

j. The Applicant’s contentions that “the comparative review process (CRP) was ‘opaque’ and that there was no ‘consultation and transparency’ are disingenuous”. “The Applicant was a member of the SMG, and fully aware of the CRP”, and “[d]espite being actively involved in the process, she fails to identify with any specificity what was ‘opaque’ about the process”.

k. The Applicant’s assertion that “her termination is retaliatory because of her activities as a staff representative is unsubstantiated”. “It is trite law that ‘the burden of proof lies with the party who presents a claim’, and “speculation is not evidence”. Further, as the Appeals Tribunal held, “an elected high-level official [...] of the Staff Union [...] do[es] not enjoy special protection from termination or enjoy higher priority for retention than other staff members” (see, *Hassanin* 2017-UNAT-759, para. 54).

l. The Applicant’s “references to ‘ST/IC/2025/17’ and ‘SMC XIII’ appears to be non-existent/erroneous references”.

15. To begin with, the Tribunal notes that, as stated by the Respondent, the Appeals Tribunal has consistently held that the United Nations has a broad scope

of authority in deciding to restructure its organization and reduce its staff (see, for instance, *Abdeljalil* 2019-UNAT-960, para.19). Also, the Dispute Tribunal's judicial review is limited in that unless the decision found unreasonable or tainted by ulterior motives, it shall not replace the decisionmaker but rather assess how the decision was reached (see, for instance, the Appeals Tribunal seminal judgment in *Sanwidi* 2010-UNAT-084, paras. 38-42).

16. In the present case, UNMIK launched the downsizing exercise in response to a documented 15 percent cut of its expenditures effectuated by the Secretary-General in light of the ongoing liquidity crisis at the United Nations. The first question is therefore whether, based on this 15 percent expenditure cut, it was reasonable for UNMIK to undertake a 29 percent reduction of its staff. The Tribunal finds that such staff reduction does not appear excessive.

17. The legal framework regarding termination of appointments due to downsizing, namely staff rule 9.6(c) and ST/AS/2013/1, allow the Administration to do so by either reducing staff and/or abolishing their posts. Accordingly, it was lawful for UNMIK to terminate the Applicant's fixed-term appointment by vacating her post without the General Assembly first abolishing it. This is also commonsensical—even if the General Assembly authorises a post, it cannot be sustained without available funding.

18. According to the Respondent, a “functional review” was therefore undertaken, after which it was decided to vacate the Applicant's P-5 level post. The Respondent explains that “UNMIK identified the Applicant's position in the contingency plan for three reasons”:

- a. “First, its primary functions were not required for mandate delivery at the time of the review. The position was budgeted to support the SRSG. The SRSG position, however, had been vacant since August 2025”;
- b. “Second, it had overlapping functions. There were two Special Assistant positions within the office of the SRSG (OSRSG), one at P-4 level and the other at P-5 level (the Applicant's post)”; and

c. “Third, the P-4 Special Assistant was fully capable of supporting and assisting an incoming SRSG”.

19. The Tribunal is convinced by the Respondent’s above submissions, although also noting that he has submitted no documentation to corroborate the findings of “functional review” in evidence. The Tribunal further notes that, as a staff member at the P-4 level is typically less costly than one at the P-5 level (depending on the step level of the respective staff members), it would therefore only be reasonable to maintain the P-4 level post rather than the P-5 level post.

20. Since the Applicant’s post was to be vacated, she entered the comparative review process in accordance with sec. 4 of ST/AI/2023/1. Therein, she scored 48 points, but this made no difference in the specific circumstances as she ranked “1 out of 1 for SPECIAL ASSISTANT, POLITICAL AFFAIRS, P-5” in accordance with the SMG’s emails to her of 17 and 20 November 2025. In light of the uniqueness of the Applicant’s post of a P-5 level Special Assistant, Political Affairs, the Tribunal finds that it makes sense that UNMIK could not find another suitable post for her in the Mission in accordance with sec. 5.2 of ST/AI/2023/1, although also noting that the Respondent has not provided the record as otherwise mandated by sec. 5.3(c) of ST/AI/2023/1 in evidence.

21. Although some Respondent’s reasons for (a) vacating the Applicant’s post and (b) not subsequently retaining her in UNMIK are undocumented, given the urgent nature of the present proceedings and the *prima facie* threshold of review, the Tribunal, nevertheless, accepts them since they appear reasonable and credible in the specific context. The Tribunal, however, also notes that this finding is without prejudice to any later determinations of the Dispute Tribunal in a possible case on the merits regarding the contested decision.

22. As for the appropriateness of the Applicant’s notice period, the Tribunal notes that in the DSRSG’s 21 November 2025 termination letter, she provided the Applicant with a 30-day notice of the termination of her fixed-term appointment on 20 December 2025. This was therefore in full compliance with staff rule 9.7(a).

23. Regarding the Applicant's claim that the contested decision was retaliatory, the Tribunal notes that under the consistent jurisprudence of the Appeals Tribunal, allegations of ulterior motives "have to be established on the balance of probabilities by the person alleging same" (see, for instance, para. 64 of *Chawla* 2024-UNAT-1423). In this regard, the fact that she served as an FSU representative on the SMG does not by itself render the contested decision lawful. Thus, the Appeals Tribunal has held that staff representatives "do not enjoy special protection from termination or enjoy higher priority for retention than other staff members" (see *Hassanin*, para. 54). In the lack of any further submissions and/or documentation, the Applicant's retaliation claim is therefore dismissed.

24. Consequently, for the purpose of reviewing the current urgent application, the Tribunal finds that the Applicant was provided with an objective and reasonable justification for the contested decision. As demonstrated by the different communications listed above under the facts, the Tribunal further finds that the decision-making process was reasonably transparent and fair in the circumstances.

25. The Applicant has therefore failed to demonstrate that the contested decision was *prima facie* unlawful. Given the cumulative nature of the conditions to be met for the granting of a suspension of action, the Tribunal does not find it necessary to consider whether the contested decision is urgent or whether it would cause irreparable damage (*Evangelista* UNDT/2011/212; *Dougherty* UNDT/2011/133).

Conclusion

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

(Signed)

Judge Sun Xiangzhuang

Dated this 11th day of December 2025

Entered in the Register on this 11th day of December 2025

(Signed)

Liliana López Bello, Registrar, Geneva