



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/030

Order No.: 109 (NBI/2011)

Date: 1 September 2011

Original: English

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**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

SLADE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON APPLICANT'S  
MOTION FOR  
WITHDRAWAL OF  
APPLICATION**

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**Counsel for Applicant:**

Seth Levine, OSLA

**Counsel for Respondent:**

Steven Dietrich, Nairobi Appeals Unit, ALS/OHRM

## **Introduction**

1. On 31 January 2011 and 29 March 2011, the Applicant requested management evaluation of the decision to discontinue payment of the Personal Transitional Allowance (PTA) by the United Nations Stabilization Mission in the Democratic Republic of Congo (MONUSCO) Administration (“the impugned decision”).

2. On 18 April 2011, the Management Evaluation Unit (MEU) informed the Applicant that since she had submitted the management evaluation request as part of a collaborative effort, representing thirty four (34) other staff members, the MEU’s Terms of Reference did not make provision for evaluating administrative decisions based on “class action” or representative claims. In order to consider the requests for management evaluation, the MEU would require all the said staff members to submit signed individual requests, setting out the basis for their challenge to the contested decision.

3. On 19 April 2011, the Applicant filed her individual request for management evaluation of the impugned decision. The Applicant filed an application for suspension of action of the impugned decision on 27 June 2011. On the same day, the United Nations Field Staff Union (FSU) filed an application to file a “friend-of-court” brief. The Applications were transmitted to the Respondent on 28 June 2011.

4. The Respondent’s Reply was filed on 29 June 2011. On 30 June 2011, the Respondent requested leave to amend his Reply. On 1 July 2011, the Tribunal issued Order No. 064 (NBI/2011) in which it granted, *inter alia*, the FSU’s Application to file a “friend-of-court” brief and the Respondent leave to file an amended Reply. The President of the FSU, Mr. James Butler, filed the “friend-of-court” brief on 4 July 2011 which was served on the Respondent on the same day.

5. The Tribunal heard the Application for suspension of action on 4 July 2011 during which testimony was received from the Parties and submissions from

the President of the FSU. On 5 July 2011, the Respondent filed a Reply to the FSU's "friend-of-court" brief.

6. On 8 July 2011, the Tribunal issued Order No. 71 (NBI/2011) in which it refused the Application for suspension of action for not having satisfied the three conditions required under the Statute and Article 13 of the Tribunal's Rules of Procedure for its grant. The Tribunal also informed the parties that a reasoned Judgment on this Application would be issued on 29 July 2011 and that it would formulate questions that ought to be further and properly addressed by the Parties and the *amicus curiae* in the hearing on the merits.

7. On 29 July 2011, the Tribunal issued Judgment No. UNDT/2011/136 in which it refused the Applicant's request for suspension of action and acknowledged that the impugned decision would impact on a large number of staff members. The Tribunal observed that this case serves as a test case in that regard and that the subject matter of this suit cannot properly be addressed and determined in a suspension of action application.

8. The Tribunal concluded that in the interests of justice and in exercise of its inherent powers and the provisions of Articles 19 and 36 of its Rules of Procedure, this case was transferred to the general cause list to be heard on the merits. The Tribunal also required the Parties to provide the Registry, by or before 1 September 2011, with further and substantive submissions on several legal issues.

9. In a letter dated 27 July 2011, Sheila Singh, Officer-in-Charge of MEU informed the Applicant as follows:

Subsequent to filing a request for management evaluation, on 27 June 2011 you submitted an application for a suspension of action in respect of the contested decision to the United Nations Dispute Tribunal (the "UNDT"). In its Order on the suspension of action application dated 8 July 2011 [Order No. 071 (NBI/2011)], the UNDT held that the subject matter of the suit could not be addressed and determined in a suspension of action application, and it transferred the matter to a general cause list to be heard on the merits. The UNDT also ordered an accelerated hearing of the matter. We consider that the UNDT's decision to remain seized of the

matter on the merits has rendered your request for management evaluation to be moot. Accordingly, we are proceeding to close your file.

10. On 24 August 2011, the Respondent filed a motion, requesting 30 days to respond to the Applicant's submissions on the merits, to start from the date of filing of the same.

11. On 31 August 2011, the Applicant filed a Motion entitled "Withdrawal of Application". The Applicant's submissions in the said Motion are summarized below:

a. The General Assembly envisaged and legislated for a formal process that had two distinct phases – firstly, management evaluation, followed, if and only if necessary, by litigation before the Tribunal.

b. Against that background, the MEU has acted precipitously in declaring the Applicant's request "moot" by virtue of Order No. 071 (NBI/2011).

c. Simply because the Tribunal decided that a suspension of action application was not the appropriate mechanism for determining a matter of such complexity and importance, it does not follow that the MEU may abdicate from its mandated role as the first-instance forum for redress. Nor does it follow from a direction by the Tribunal that the matter be placed in a general cause list with a view to expediting the hearing of the application on the merits that the Tribunal has somehow wrested jurisdiction from the MEU.

d. It would be contrary to the letter and spirit of the instruments by which the formal justice system came into being to hold that an MEU is an optional step on the way to litigation before the Dispute Tribunal.

e. If it were so, applicants would be denied the possibility of achieving redress through a quick and simple process. The Respondent, Secretary-General, would be prevented from justifying the contested decision outside of formal proceedings before the Tribunal and there would be a marked increase in proceedings before the Tribunal, the

adversarial nature of which ensures that positions become entrenched and resolution is less likely.

f. The Applicant has never filed an application on the merits and does not feel that the same is appropriate until the MEU has rendered its evaluation.

g. For the above reasons, the Applicant respectfully requests clarification that it was not the Tribunal's intention to wrest jurisdiction from the MEU, which should still fulfil its mandated role in rendering an evaluation of the contested decision in a timely manner and that absent an application on the merits, which has yet to be submitted, the Dispute Tribunal is not and cannot be seized of the substantive matter;

h. Alternatively, the Applicant requests an extension of the time in which to file an application on the merits.

### **Consideration**

12. Article 8(1) and (3) of the Statute of the Dispute Tribunal stipulate that an application shall be receivable if, *inter alia*, an applicant has previously submitted the contested administrative decision for management evaluation, where required, and that the Dispute Tribunal shall not suspend or waive the deadlines for management evaluation. General Assembly Resolution A/RES/63/253 (Administration of Justice at the United Nations) provides that the MEU is an *independent* organ of the UN Secretariat.

13. The Tribunal observes that the application before the Tribunal was filed on 27 June 2011, 68 clear days from the date of the request for management evaluation, 19 April 2011. The Officer-in-Charge of MEU responded to this latter request on 27 July 2011. Article 8(1)(d)(i)(b) of the Statute of the Dispute Tribunal requires an applicant to file an application within 45 days if he/she does not receive a response to the request for management evaluation. In light of the preceding, the Tribunal cannot fathom how the Officer-in-Charge of MEU arrived at the conclusion that "the UNDT's decision to remain seized of the matter on the merits has rendered [Applicant's] request for management evaluation to be moot".

14. Not only is the management evaluation process totally independent of the Tribunal's jurisdiction as stipulated above, the MEU failed to respond to the Applicant before the requisite deadline and she was well within her rights to not only file the request for suspension of action but also an application on the merits. In addition, in taking the decision above, the Officer-in-Charge of MEU is asserting that the Tribunal has impliedly waived the requirement for conducting a management evaluation and has therefore unilaterally closed the case. This implied waiver would be inconsistent with art. 8(3) of the Statute of the Dispute Tribunal and of the GA Resolution providing for the independence of the MEU. The Tribunal's decision to place the case in a general cause list with a view to expediting the hearing of the application on the merits does not in any way oust the jurisdiction of the MEU to conduct a management evaluation of the decision.

#### **ORDERS**

14. The Tribunal:

- a. Grants the Applicant's request for an extension of time in which to file an application on the merits. The application shall be filed by or before Monday, 19 September 2011.
- b. Grants the Respondent's motion requesting 30 days to respond to the Applicant's submissions on the merits, to start from the date of filing of the same.
- c. The Parties shall be informed of the hearing dates for the case in due course.

*(Signed)*

Judge Nkemdilim Izuako  
Dated this 1<sup>st</sup> day of September 2011

Entered in the Register on this 1<sup>st</sup> day of September 2011

*(Signed)*

Jean-Pelé Fomété, Registrar, UNDT, Nairobi