



**Before:** Judge Boolell  
**Registry:** Nairobi  
**Registrar:** Jean-Pelé Fomété

JANNOUN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**INTERIM ORDER ON AN APPLICATION  
FOR SUSPENSION OF ACTION**

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**Counsel for Applicant:**  
Alexandre Tavadian, OSLA

**Counsel for Respondent:**  
Steven Dietrich, ALS/OHRM, UN Secretariat  
Bérengère Neyroud, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant is a staff member of the United Nations Economic and Social Commission for Western Asia (“ESCWA”).
2. On 22 January 2013, he filed the current application for suspension of action, pursuant to art. 13 of the Rules of Procedure of the Tribunal, seeking to suspend ESCWA’s decision to cancel the vacancy announcement for the Chief of Security post. According to the Applicant, the cancellation of the vacancy announcement is imminent.
3. The Application was served on the Respondent the same day and he was given the opportunity to file comments, if any, by 25 January 2013. The Tribunal, by Order No. 021 dated 23 January 2013, ordered suspension of the administrative decision for five working days pending review of the Respondent’s submissions.
4. In a reply dated 25 January 2013, the Respondent argued that the application was moot because ESCWA had not decided to cancel the job opening and that the recruitment process was ongoing. In light of the Respondent’s reply, the Applicant filed a Motion for disclosure of documents pursuant to art. 18.3 of the Tribunal’s Rules of Procedure. Specifically, the Applicant requested that all communication in connection with the cancellation of the vacancy announcement between Ms. Zorana Maltar, Officer-in-Charge, ESCWA Division of Human Resources Section, and Mr. David Iyamah, Chief of Administrative Services Division, ESCWA, and the Office of Human Resources Management (OHRM) in New York be disclosed.
5. By Order No. 025 (NBI/2013), the Tribunal granted the Applicant’s motion and ordered the Respondent to produce the requested evidence. In his response to Order No. 025, the Respondent informed the Tribunal that he does not currently have the requested documents in his possession and that the consultation between ESCWA and OHRM with respect to the job opening took place via teleconference.

6. On 29 January 2013, the Tribunal held an oral hearing. The Applicant and his counsel participated via teleconference. The Respondent's counsel attended in person. Mr. David Iyamah, Chief of Administrative Services Division, ESCWA gave testimony pursuant to art. 17.1 of the Tribunal's Rules of procedure.

### **Facts**

7. In May 2010, the Applicant was appointed to the post of Deputy Chief of Security, ESCWA, in Beirut at the P-3 level. Since 23 May 2012, he has been on a Special Post Allowance ("SPA") for the P-4 Chief of Security post.

8. In June 2012, he applied for the post of Chief of Security, ESCWA, at the P-4 level. On 16 October 2012, he was informed that he had been placed on a roster of pre-approved candidates.

9. On 12 December 2012, he requested management evaluation of the decision not to select him for the post of Chief of Security, ESCWA ("the contested decision"). The outcome of this request for management evaluation is still pending.

10. On 22 January 2013, he filed a second request for management evaluation contesting the decision by ESCWA to cancel the vacancy announcement. He also filed the current application for suspension of action seeking suspension of the same decision.

### **Considerations**

11. Under art. 13 of the Rules of Procedure of the Tribunal ("the UNDT Rules"), the Tribunal has five days from the service of an application on the Respondent to consider an application for interim measures.

12. Art. 36 of the UNDT Rules provides in relevant part that:

1. All matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Dispute Tribunal on

the particular case, by virtue of the powers conferred on it by article 7 of its statute.

13. In *Villamorán* 2011-UNAT-160, the United Nations Appeals Tribunal (“the Appeals Tribunal”) held that:

While the Secretary-General correctly contends that Article 36 of the UNDT Rules is limited to addressing matters that are not expressly provided for in the UNDT Rules and that Article 13 of the UNDT Rules expressly provides for the suspension of a contested administrative decision, it does not follow from these contentions that the UNDT cannot rely on Article 36 to ensure that the provisions of the Statute and the Rules are given full effect.

14. The Appeals Tribunal then proceeded to rule that:

Where the implementation of an administrative decision is imminent, through no fault or delay on the part of the staff member, and takes place before the five days provided for under Article 13 of the UNDT Rules have elapsed, and where the UNDT is not in a position to take a decision under Article 2(2) of the UNDT Statute, i.e. because it requires further information or time to reflect on the matter, it must have the discretion to grant a suspension of action for these five days. To find otherwise would render Article 2(2) of the UNDT Statute and Article 13 of the UNDT Rules meaningless in cases where the implementation of the contested administrative decision is imminent.

15. In the current case, the Application was served on the Respondent on 22 January 2013 and he was instructed to provide a reply, if any, by Friday, 25 January 2013. Additionally, the Tribunal ordered the suspension of the implementation of the contested administrative decision for five working days i.e. until 29 January 2013 to complete its consideration of the application.

16. Upon the Tribunal’s review of the Respondent’s reply on Monday, 28 January 2013, it became apparent that a hearing would be necessary to augment the scant response provided to ensure that justice would be done to both parties. Thus, a hearing was held on 29 January 2013. During the hearing, a number of revelations were made by Mr. Iyamah, including the existence of an email from the United Nations Department of Safety Services (“DSS”), which had allegedly precipitated the

bid to cancel the vacancy announcement. Mr. Iyamah undertook to search for and provide a copy of said email to the Tribunal.

17. The Tribunal now finds itself in the unenviable position of being at the tail end of the five day deadline prescribed by art. 13 and the Appeals Tribunal in *Villamorán* although material evidence, which was in the possession of the Respondent all along, was intentionally withheld until the eleventh hour.

18. Does this mean that the Dispute Tribunal is bound to give a hasty and illogical decision on the application for suspension of action within five days even though doing so will mean the sacrifice of equity?

19. This Tribunal concludes that this cannot and should not be the way that a properly constituted judicial body, whose sole mandate is the provision of justice, should operate. In this respect, the Tribunal notes the ruling in *Villamorán* regarding the Dispute Tribunal's reliance on art. 36 in relation to a suspension of action to ensure that the provisions of the Statute and the Rules are given full effect.

20. Further, art. 19 of the UNDT Rules grants the Tribunal the authority to issue any order or give any direction "which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties".

21. In addition to articles 19 and 36, art. 35 of the UNDT Rules allows the Tribunal to shorten, extend or waive a time limit fixed by the Rules. Admittedly the power given to the Tribunal by Articles 19, 35 and 36 should be used sparingly and in exceptional cases.

22. The present case in the view of the Tribunal presents exceptional circumstances. The Respondent's reply was very scanty as has been indicated earlier. That necessitated a hearing. In the course of the hearing a new piece of evidence that the Tribunal considers as vital was brought to light and it relates to directives allegedly given by the DSS to cancel the vacancy and this document was never made

part of the pleadings. Regrettably, neither was it made available to the Tribunal on 28 January 2013 when Order No. 025, on the production of evidence, was issued.

23. The said document was submitted to the Nairobi Registry at 1534 hours on 29 January when the close of business at the Nairobi duty station is 1630 hours. This obviously does not give the Tribunal adequate time to deliberate on the totality of the evidence and provide a well-reasoned ruling.

**THEREFORE**

24. Pursuant to articles 19, 35 and 36 of the UNDT Rules, the Tribunal concludes that it has the discretionary authority to allow itself more appropriate time to reflect on the evidence received today, 29 January 2013 and to finalise its decision in the matter. In the circumstances it grants a further suspension of action in this matter until Friday, 1 February 2013.

*Signed*

Judge Vinod Boolell

Dated this 29<sup>th</sup> day of January 2013

Entered in the Register on this 29<sup>th</sup> day of January 2013

*Signed*

Jean-Pelé Fomété, Registrar, Nairobi