



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko, Acting Registrar

WILSON III

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Stephen Margetts, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant is a Human Resources Operations Manager with the Kuwait Joint Support Office (KJSO) for the United Nations Assistance Mission for Afghanistan and Iraq (“UNAMI”).

2. In his Application dated 5 September 2013, he is requesting the suspension of action of two administrative decisions pending management evaluation, namely,

- a. His removal from Post No. 64588 and placement on Post No. 54326, and
- b. His placement on a Performance Improvement Plan (PIP).

3. The Respondent filed a Reply to the Application on 10 September 2013 in which he argued, *inter alia*, that:

- a. The Application is not receivable;
- b. The actions complained of are not administrative decisions under art. 2.2 of the Tribunal’s Statute and specifically the implementation of a PIP is not an administrative decision; and
- c. The Applicant has failed to establish the elements required under art. 2.2 of the Tribunal’s Statute.

Facts

4. On 5 May 2013, Ms. Dorothy Mutune, a Human Resources Officer with KJSO, addressed an email to Ms. Padma Nandkumar, UNAMI’s Chief of Administrative Services (CAS). The email was copied to several other KJSO staff members including the Applicant. In the email, Ms. Mutune claimed that Ms. Nandkumar had “humiliated, demeaned, intimidated, harassed, belittled and bullied” her because of certain differences they had regarding the recruitment procedures for a Political Affairs Officer post and payment of Daily Subsistence

Allowances (DSA) to Auditors. Ms. Nandkumar responded to the email on the same day denying Ms. Mutune's assertions.

5. On 6 May 2013, Ms. Nandkumar wrote an email to Mr. Clifford Dias, the Chief Administrative Officer/Head of Office of KJSO who is the Applicant's First Reporting Officer (FRO), copied to the Applicant and several other KJSO staff, in which she stated that it was her understanding that Mr. Dias had erroneously put in place new procedures requiring staff members on initial assignment to UNAMI to be responsible for their own entry visas to Kuwait and Iraq. She also advised him to seek guidance from UNAMI Mission Support and the Department of Field Support (DFS) before undertaking to change procedures related to UNAMI operations.

6. On 9 May 2013, the Applicant invited Ms. Nandkumar to attend weekly Human Resources meetings in which Mission concerns could be raised and solutions found and reported. Ms. Nandkumar agreed to attend the meetings.

7. On 12 May 2013, the Applicant addressed a memorandum to Mr. Rodney Gage, the Team Leader, HR, DMU, in which he expressed concern about the redeployment of posts encumbered by staff members either for budgetary reasons or because of downsizing. According to the Applicant, staff members affected by such situations had raised concerns about non-payment of their salaries and other entitlements. In the memorandum, the Applicant also stated as follows,

I am concern[ed] about a few of these post management issues that require[] my immediate attention once you become a aware of them:

1. Staff members sitting on a post without a valid contract or whose contract was allowed to expire without indication from the Mission of the intent to renew the appointment or new hires with PA not completed before payroll cut of date.
2. Staff Members with a valid contract/appointment but post was redeployed for recruitment and or reassigned to another Staff.

The above issues trigger the following actions:

1. Immediate request for salary advance [or] else the Staff risk not getting paid since the staff [are] either dropped from the automated payroll or [do] not make it to payroll on time.

2. Salary advance is paid at 80% of current salary and this penalizes the Staff who may or may not be able to take care of his/her financial obligations unless an appeal is made to payroll.

8. On 14 May 2013, the Applicant's FRO signed off on his Special Performance Report in which he appraised the Applicant's performance as "frequently exceeds performance expectations".

9. On 28 May 2013, the Applicant and Ms. Nandkumar exchanged a series of emails on the question of certification of documents.

10. On 10 June 2013, Ms. Nandkumar assigned to Mr. Gaitre Singh the responsibility of approving Movements of Personnel (MOPs). On 13 June 2013, the Applicant wrote to Ms. Nandkumar requesting for confirmation that indeed Mr. Singh was authorized to approve the said MOPs. The Applicant and Ms. Nandkumar then engaged in an exchange of emails on the issue. In one of the exchanges, Ms. Nandkumar informed the Applicant as follows:

I do not understand your question. Are you questioning the judgement of the CMS in assigning this task to an experienced staff member who has worked for several years within the UN Secretariat within the Accounts Division. Further, this assignment of function does not automatically instruct payments since payments through an MOP are substantiated by other documents such as Leave records and internal memos as well as PT'8 which are approved by an approving officer...So I would appreciate if you do not find the need to question such decisions by the CMS.

Thank you

11. On various dates between May and July 2013, the Applicant was involved in various email exchanges regarding the issue of whether completion of performance appraisals was a requirement for contract renewals in UNAMI. In one email dated 17 June 2013, Ms. Nandkumar stated that the completion of an e-PAS was not necessary for contract extensions. In an email dated 3 July 2013, the Applicant informed Ms. Nandkumar and other KJSO staff members that his instructions from FPD was to extend for only three months appointments of staff members who had not completed their e-PASes.

12. On 15 July 2013, Ms. Haseena Yasin, Chief, Mission Support, UNAMI sent an email to the Applicant in which she informed him that there were problems with his management style and his communication. In the email, Ms. Yasin referred to a transcript of a teleconference conversation which she had had with the Applicant and which she considered to be threatening. The transcript is reproduced below:

Exhibit #1 for the record: Transcript of conversation

Teleconference--on 2/7/2013 at 20:17 between the CMS of UNAMI (Haseena Yasin) and KJSO HR Operations Manager (Thomas Y. Wilson III)

Haseena: I think there was an e-mail today again about (sic) asking for a Staff member's performance report before extension of contract and I believed this is what triggered my memory. We have had this discussion many times before that the request for extension form will give you what you need and there is no need for an e-performance document; and therefore I was a bit surprised to see your e-mail come in again for something we had already discussed.

Thomas: That is correct. We forwarded all communication from the mission to FPD informing them that we received specific instructions from the Mission to extend appointments using the request for contract extension form and spoke with Masaki who then informed Chaste. Our instruction from FPD is not to extend contracts for more than 90 days for administrative purposes until the e-performance is received.

Haseena: Please send me the e-mails from Masaki.....

13. On 18 July 2013, the Applicant's FRO, Mr. Dias, signed off on a request for extension of the Applicant's appointment up to 13 October 2014. In the request form, Mr. Dias indicated that the Applicant had "exceeded performance expectations" for the performance period 1 April 2012 to 31 March 2013.

14. The Applicant was informed that he was under consideration for the position of Chief Civilian Personnel Officer at the United Nations Stabilization Mission in Haiti ("MINUSTAH") by Ms. Louazna Khalouta, Officer in Charge, Administrative Services, MINUSTAH, on 31 July 2013.

15. On 28 August 2013, the Applicant was informed that Ms. Yasin had requested a change of his post number to a temporary post effective September 2013. The Applicant responded to the email on the same day and requested to be

appraised of his contractual status when his appointment expired on 31 October 2013.

16. On 31 August 2013, Ms. Jacinta Muhoho, the CCPO of UNAMI issued her End of Mission Assignment report. The relevant parts of her report which impact on the Applicant's case are summarized below.

- a. The impact of reassignment of international staff and change of duty stations in 2011 had adverse effect on some sections as a result of unexpected change of UNAMI posture and operation in 2012.
- b. At the beginning of 2012 the UNAMI HR sections was inundated with requests for within mission reassignments of staff from one location to another prior to completion of one year.
- c. This resulted in proration of assignment grants paid to staff members on initial reassignment and loss of points towards mobility.
- d. The UNAMI HR teams faced challenges due to inconsistent instructions from UNAMI management pertaining to HR actions which caused indecision and delays.
- e. The UNAMI Chief of Mission Support's instructions on implementation of certain HR actions were revised by the Officer in Charge of Mission Support throwing HR practitioners into dilemma and which in turn resulted in implementation delays. A case in point was the standard operating procedures on checking process and Iraqi visa issuance.
- f. There was constant fault-finding on HR activities and impolite communication by the CAS to HR individuals and team members which frustrated the overall HR activities, demoralized the HR teams and hampered provision of quality HR services to UNAMI HR clients.

17. On 1 September 2013, the Applicant was informed by Mr. Dias that the KJSO Steering Committee had decided that a Performance Improvement Plan be developed for him in order to address the concerns of UNAMI. The Applicant responded on the same day and stated as follows:

Thanks for the message. I will send a recap of our discussion today for the record. It is very clear from the information provided to me that the intend (sic) of this last minute action to justify the non-renewal of my contract and or UNAMI desire to take the Chief Contracts Management post which I had inquire (sic) about is a sad reality of the very principle of retaliation and abuse the UN Systems of administration of Performance Management was designed to prevent.

A Supervisor who writes a PIP because he is being pushed to do so by the SRO (CMS of UNAMI) and admits that he reluctantly accepted to do so to grant her wishes as she is one of the Clients is not only highly unacceptable but an abuse of authority.

If services were not provided as UNAMI suggest, where is the accountability for KJSO the Service Provider? When has KJSO become an individual? Why was this information not provided until today? What has been your role as my immediate Supervisor in providing the feedback from the Mission since you claimed the instruction to write a PIP came from one of the CMSes on the Steering Committee and not based on your personal observation. UNAMA CMS I will point out does not share the same views of the UNAMI CMS but I do provide similar services to both Missions.

How can you justify acting on the instructions of the CMS who works out of Baghdad when you as the FRO do not have the same observation. Performance improvement is a concerted effort on the part of a Supervisor to seek to improve the performance of a Staff and should not be used a punitive measure. The -email to the CMS concerning respect for KJSO Staff was reviewed and edited by you before transmittal. Is [it] wrong to ask that one of the most fundamental principles on which we all in the UN must work be respected? Since my arrival here all, I have asked is “: respect for everyone regardless of social status, rank or political connection.”

The [c]onstant insults from the CAS of UNAMI (Padma) condoned and supported by the CMS of UNAMI with unweaving (sic) support is beyond reproached (sic). I wish to seek the intervention of a neutral party and further request MEU to review the decision taken shortly.

I will provide a transcript of our discussion which I advised you were recorded.

18. On 4 September 2013, the Applicant requested for a Management Evaluation of the decision to remove him from Post No. 74588 and place him

temporarily on Post No. 54326 until 31 October 2013 and of the decision to place him on a PIP.

19. The Applicant filed the present Application for suspension of action of the decisions on 5 September 2013. The Application was served on the Respondent on 6 September 2013.

20. On 6 September 2013, the Tribunal issued Order No. 205 (NBI/2013) in which it granted an interim suspension of the contested administrative decision for five working days pending receipt and review of the Respondent's submission.

21. The Respondent filed a Reply to the Application on 10 September 2013. The Tribunal heard the Application on 11 September 2013.

22. On 13 September 2013, the Tribunal issued Order No. 207 (NBI/2013) in which it ordered the suspension of the decisions to remove the Applicant from Post No. 64588 and to place him on a PIP pending management evaluation. The Tribunal also informed the Parties that a reasoned order would be issued in due course.

Applicant's Submissions

23. The Applicant's primary contentions are summarized as follows:

Prima Facie Unlawfulness

- a. The decisions complained of are unlawful because they are based on retaliation and constitute abuse of authority.
- b. The decisions were motivated by a disagreement between himself and UNAMI when he advised that contracts of UNAMI staff could not have been extended without performance reports. UNAMI Management disagreed with him.
- c. He notified UNAMI Management that he had been instructed by the Field Personnel Division in New York to stop the extension of contracts until the performance reports were completed.

- d. Ms. Yasin then contacted FPD to inform them that she could review contracts for operational reasons without performance reports. FPD's response was that a blanket waiver was not acceptable without performance reports except in certain cases.
- e. Ms. Yasin wrote to the Applicant and informed him that she had only exempted a few staff members. The disagreement arose because Ms. Yasin had in fact exempted everyone and not a few as she had claimed. She told him that he was lying when he stated that she had exempted everyone.
- f. The Applicant's office wrote to Ms. Yasin and told her that it was disrespectful to allege that he was lying. Ms. Yasin wrote back to state that his manner of communication was not acceptable in the United Nations.
- g. On 18 July 2013, Mr. Dias signed a recommendation for extension of the Applicant's fixed-term appointment through to October 2014 and sent it to UNAMI for approval as the post is nominally "owned" by the Applicant. Ms. Yasin, the UNAMI CMS had asked for Mr. Dias' approval to be put on the recommendation for renewal form as the Section Chief. There are two forms for the Applicant's contract extension, one with and the other without the performance rating and one with the removal of Mr. Dias as the Section Chief of the KJSO.
- h. The decision by Ms. Yasin to remove the Applicant from the Chief Contracts Management Officer Post No. 74588 and place him on the SSI Post 54326 temporarily shows that the intention is not to renew his contract. This is because Post No. 54326 is currently under recruitment in Inspira.
- i. On 28 August 2013, he wrote to Mr. Dias to inquire about his contractual status beyond 31 October 2013 and he is yet to receive a written response.

- j. On 1 September 2013, he received a hastily prepared PIP which has the intention of downgrading his performance record in breach of Staff Rule 101.2 because the UNAMI CMS and CAS were using their power to intimidate Mr. Dias and to arbitrarily negatively influence his career and employment prospects. Mr. Dias had informed him that it was not his intention to place the Applicant on PIP but was coerced into doing so.

Irreparable damage

24. The Applicant submitted that if the PIP given to him by his supervisor under duress is allowed to stand, his career will be irreparably harmed. It will also cause him stress and damage his morale after all his efforts and excellent performance.

25. With respect to the change of his post number, the Applicant submits that the net result is that his contract is only being renewed for 18 days. He will suffer harm because he will only be able to access 80% of his current salary.

Urgency

26. The Applicant submitted that the action was initiated to remove him from his post and to end his career with the United Nations. The PIP was issued to negate his contract extension request. If the PIP is allowed to stand, he will be denied the opportunity to move to another mission and this will bring an end to his career with the United Nations.

27. For these reasons, the Applicant prayed that this Application for Suspension of Action be granted pending his Management Evaluation Request filed on 4 September 2013.

Respondent's submission

28. The Respondent submitted that the complaint concerning implementation of a PIP is not receivable since, pursuant to section 10.1 of ST/AI/2010/5 (Performance Management and Development System), when a performance

shortcoming is identified, the first reporting officer should proactively assist the staff member to remedy the shortcoming by implementing remedial measures such as a PIP.

29. The Respondent submits that the Applicant cannot seek the tribunal's intervention in the implementation of the PIP for three reasons:

- a. The implementation of a PIP is part of an on-going process. It is not a final administrative decision that impacts on the Applicant's terms of appointment.
- b. He has failed to exhaust all the remedies under ST/AI/2010/5 prior to bringing a claim before the Tribunal.
- c. He may only appeal an administrative decision that stems from a final performance appraisal.

30. It is the Respondent's submission that the complaint concerning the change of post is not receivable since staff members have no right in their terms of appointment to be appointed against any specific post. The Respondent further submits that the placement of the Applicant against one post rather than another has no impact on his terms of appointment and is not receivable.

31. The Respondent's primary contentions on the merits of the case may be summarized as follows:

Prima Facie Unlawfulness

- a. KJSO provides joint transactional support for the United Nations Assistance Mission for Afghanistan (UNAMA) and for UNAMI under the policy and decision making authority of their respective Mission Support Offices. Contrary to the Applicant's claims, UNAMI Management provides consistent support to KJSO and works with KJSO to maximize the quality of services provided to UNAMI staff members. In his role as Human Resources Operations Manager the Applicant is accountable to the CMS of UNAMI for any shortcomings in the work of KJSO concerning

clients in UNAMI, including issues of timely service and proper interpretation of UN policies and procedures.

b. The PIP was initiated in accordance with the rules. Ms. Yasin, CMS of UNAMI identified shortcomings in the Applicant's performance and made efforts to address the shortcomings with him.

c. Although UNAMI Management has raised concerns in regard to the Applicant's performance, UNAMI Management did not have input into the Applicant's Special Performance Report that was signed off in May 2013. For these reasons, the concerns expressed by UNAMI Management were not taken into account in this performance report. Instead, the report was prepared by the Applicant's FRO, Mr. Dias, and Mr. Stephanie Scheer, Chief of Mission Support for UNAMA.

d. On 28 August 2013, the Applicant's performance was discussed at a KJSO Steering Committee meeting and UNAMI Management suggested that remedial measures be put in place in order to address the issues with the Applicant's performance. At this meeting, the FRO was asked to develop a PIP for the Applicant intended to address the concerns and provide guidance for improvement in the Applicant's performance.

e. In accordance with these discussions, a PIP was implemented in accordance with section 10.1 of ST/AI/2010/5.

f. There is no basis for the Applicant's claim that he is being retaliated against. This is a matter of his supervisors assessing his performance as they are bound to do and ensuring that remedial action is taken where shortcomings are identified.

g. The source of funding for the Applicant's position was changed for operational reasons.

h. The Applicant was recruited as a Human Resources Operations Manager. Upon his recruitment, he was placed against Post No. 74588 which had been approved by the General Assembly for the position of

Contracts Management Officer. The CMS of UNAMI has the delegated authority to allocate the post resources according to operational needs. As such, although there was no specific budget allocation for the position of Human Resources Manager, it was within the discretion of the CMS of UNAMI to apply the funding from 74588 to this position.

i. Currently, UNAMI is forming a much-needed contracts management unit pursuant to a directive from the Department of Field Support. There is therefore a need to recruit a Contract Management Officer. In order to proceed with the recruitment of a Contracts Management Officer post, it was necessary to change the source of financing for the Applicant's position. Accordingly, the source of funding was changed from 74588 to post 54326.

j. The change of post number for funding purposes has nothing to do with the Applicant's performance and has no impact on his contractual status. It is an operational issue.

Urgency

32. There is no urgency in the Application. The PIP is currently being implemented. If the PIP is effective, the Applicant's performance will again be rated as "satisfactory". In these circumstances, the Applicant will have benefited from the PIP.

33. Any suspension of the PIP process will result in concerns regarding the Applicant's performance lingering instead of being addressed and resolved. As a result, the best course for all concerned is for the PIP to proceed.

34. There is no basis for the Applicant's assumption that the PIP process will be unsuccessful and that ultimately a decision will be taken not to renew his appointment on the basis of his performance.

35. The Applicant has failed to take into account the provisions of section 15.6 of ST/AI/2010/5 which provide that where unsatisfactory performance is a reason

for non-renewal, a staff member's appointment should be extended for the period of the rebuttal process.

36. There is no urgent need for the Applicant's position to be funded against Post No. 54326. Post No. 74588 is a post approved for a Contracts Management Officer position, not a Human resources Operations Manager. There is no greater security for the Applicant being engaged against Post No. 74588 than there is against Post No. 54326.

37. The Applicant's fixed-term appointment will not expire before 31 October 2013. Pursuant to Staff Rule 11.2 (d), the response to the Applicant's request for management evaluation is due within 45 days of the date it was filed, that is, on or before 19 October 2013. Any order issued by the tribunal will only be in effect during the pendency of the management evaluation. Any order will expire and be of no effect on or before 19 October 2013, 12 days prior to the expiration of the Applicant's appointment.

Irreparable harm

38. The Applicant claims that he will suffer "downgrading of his exceptional performance record" if the PIP is to continue. The PIP is on-going and it is yet to be determined whether or not the Applicant's performance will be rated as either satisfactory or unsatisfactory.

39. The Applicant has not suffered any irreparable harm or any harm at all.

40. For the foregoing reasons, the Respondent requests that the Application be rejected.

Considerations

Receivability

41. Counsel for the Respondent submitted that the complaint concerning implementation of a PIP is not receivable. He also submitted that the complaint concerning the change of post is not receivable since staff members have no right in their terms of appointment to be appointed against any specific post. He further

submitted that the placement of the Applicant against one post rather than another has no impact on his terms of appointment.

42. The Respondent's argument that the implementation of a PIP is part of an on-going process and cannot therefore be suspended is untenable. The initiation of a PIP is an on-going process and is not completed by its initiation. The Tribunal can therefore suspend the PIP process pending management evaluation in accordance with art. 13 of the Tribunal's Rules of Procedure. The same applies to the decision to place the Applicant on Post No. 54326. It is for the Tribunal to determine whether the said decisions may have been motivated by extraneous or other illegal motives. The Application is receivable.

Prima facie unlawfulness

(a) Placement of the Applicant on a PIP

43. It is the Applicant's contention that the decision to place him on a PIP constitutes retaliation and abuse of authority and was motivated by a disagreement between himself and UNAMI's senior managers when he advised that contracts of UNAMI staff could not be extended without performance reports. The Applicant provided oral and documentary evidence to prove that he had been instructed by the Field Personnel Division in New York to stop the extension of contracts until the performance reports were completed.

44. The Respondent, on the other hand, contends that the PIP was initiated in accordance with the rules after the CMS of UNAMI; Ms. Yasin identified shortcomings in the Applicant's performance. The Respondent argued that although UNAMI Management had raised concerns in regard to the Applicant's performance, it did not have input into the Applicant's Special Performance Report that was signed off in May 2013. For these reasons, the concerns expressed by UNAMI Management were not taken into account in this performance report. The Respondent further submitted that on 28 August 2013, the Applicant's performance was discussed at a KJSO Steering Committee meeting and UNAMI Management suggested that remedial measures be put in place in order to address the issues with the Applicant's performance.

45. Sections 7.1, 7.2 and 10.1 of ST/AI/2010/5 provides that,

7.1 During the course of the year, the first reporting officer and the staff member should hold conversations and dialogue, formally and informally, and may have exchange of e-mails and/or other written communication on the progress of the performance goals set for the year. These conversations or written communications should address recognition for good performance and any shortcomings as they become apparent at any time during the cycle.

7.2 The first reporting officer should conduct a midpoint review, usually six months after the creation of the work plan, after discussing with the staff member the progress to date of the goals/key results set in the work plan. The review should indicate the progress made, and justify any updates to the work plan goals/key results. The first reporting officer should also note the progress made in demonstrating the competencies and the progress on the personal development plan. Staff members may note the progress made on the goals set in the work plan, the competencies and the personal development plan.

10.1 *During the performance cycle, the first reporting officer should continually evaluate performance. When a performance shortcoming is identified during the performance cycle, the first reporting officer, in consultation with the second reporting officer, should proactively assist the staff member to remedy the shortcoming(s).* Remedial measures may include counselling, transfer to more suitable functions, additional training and/or the institution of a time-bound performance improvement plan, which should include clear targets for improvement, provision for coaching and supervision by the first reporting officer in conjunction with performance discussions, which should be held on a regular basis. (Emphasis added).

46. Contrary to the afore-mentioned provisions which require consultation between the FRO and SRO and the affected staff member, the decision to place the Applicant on a PIP was as a result of a KJSO Steering Committee meeting held on 28 August 2013. Having considered the entire case record, the Tribunal notes that the KJSO instructed the Applicant's FRO, Mr. Dias, to put the Applicant on a PIP. This perverse instruction was given after Mr. Dias had appraised the Applicant as having exceeded performance expectation and requested an extension of the Applicant's contract on 18 July 2013. The KJSO

Steering Committee had no competence to involve itself in the performance appraisal of a specific staff member as such was the responsibility of the Applicant's FRO and SRO. The Tribunal finds, therefore, that the decision to place the Applicant on a PIP was unlawful.

(b) Removal of the Applicant from Post No. 64588 and placement on Post No. 54326.

47. The Applicant submitted that the decision by Ms. Yasin to remove him from the Chief Contracts Management Officer Post No. 74588 and temporarily place him on the SSI Post 54326 shows that the intention is to bring his contract to an end because Post No. 54326 is currently under recruitment in Inspira. He had testified that on 28 August 2013, he wrote to Mr. Dias to inquire about his contractual status beyond 31 October 2013 and is yet to receive a written response. The Applicant further submitted that as a result of the change of his post number, his contract was in essence being extended for only 18 days and that he would only be able to access 80% of his salary.

48. The Respondent's pleadings on this score are that the source of funding for the Applicant's position was changed for operational reasons, specifically, that in order to proceed with the recruitment of a Contracts Management Officer post, it was necessary to change the source of financing for the Applicant's position. The Respondent submitted that the change of post number has no impact on the Applicant's contractual status.

49. The Tribunal, having considered the entire circumstances surrounding the impugned decisions, is convinced that the decisions to place the Applicant on a PIP and to change his post number were motivated by the disagreement between him and UNAMI managers when he advised them against the extension of contracts of UNAMI staff without performance reports. The Respondent has provided no documentation to support why it became suddenly urgent to recruit a Contracts Management Officer! The Respondent also failed to respond to the Applicant's pleadings and testimony that the temporary post that he is now encumbering is under recruitment in Inspira. The Tribunal is convinced that this is

a case of retaliation and abuse of authority against the Applicant by Ms. Yasin and the KJSO Steering Committee.

50. The rule of law is the cornerstone of the system of internal justice of the Organization and a core concern and objective of the United Nations activities and programmes everywhere. Managers within the Organization cannot misuse the staff rules in a manner such as in the present case to circumvent the rules of natural justice. In this case, the KJSO Senior Managers and particularly Ms. Yasin constitute themselves to be Judges in their own cause. Having failed in their efforts to bully the Applicant into renewing contractual appointments by one year without complying with FPD's instructions, they have chosen to retaliate against him by purporting to utilise the Staff Rules. This displays a regrettable lack of tolerance on their part.

51. There is a conflict of interest in the present case on the part of UNAMI Managers who, clearly, smarting from a disagreement with the Applicant on the issue of inappropriate renewal of appointments, turn around and start making administrative decisions detrimental to the Applicant's terms of appointment without regard to due process. Not only were these actions and decisions on their part unethical, they exhibit bias and a lack of integrity on the part of the KJSO Steering Committee and particularly Ms. Yasin. These Senior Managers abused their authority to achieve their own personal ends, which is, to retaliate against the Applicant who was only upholding the Staff Rules and Regulations of the United Nations.

52. The Tribunal will not countenance a situation where the very fundamental tenets provided in the Preamble to the Charter of the United Nations are trampled on by anyone even if they are Senior Managers. The requirement of *prima facie unlawfulness* is satisfied by the Applicant.

Irreparable damage

53. With respect to irreparable harm, a staff member's career consists of more than the financial remuneration that comes with a job. It includes reputation, respect and self-esteem. These cannot be compensated by a monetary award. If

the impugned decisions are allowed to stand, the Applicant's career will be irreparably harmed. The Respondent additionally failed to rebut the Applicant's contentions that he will also suffer harm because he would only be able to access 80% of his current salary.

Urgency

54. With respect to urgency, the Applicant submitted that this matter is urgent because the impugned decisions were initiated to remove him from his post and to end his career with the United Nations. He also submitted that the net result is that his contract is only being renewed for 18 days and that on 28 August 2013, he wrote to Mr. Dias to inquire about his contractual status beyond 31 October 2013 and is yet to receive a written response.

55. The Respondent, on the other hand, submitted that the Applicant's fixed-term appointment will not expire before 31 October 2013 and that pursuant to Staff Rule 11.2 (d), the response to the Applicant's request for management evaluation is due within 45 days of the date it was filed, that is, on or before 19 October 2013. Any order issued by the tribunal will only be in effect during the pendency of the management evaluation.

56. The Tribunal has considered the parties' arguments and finds that this matter is urgent.

Conclusion

57. The Tribunal wishes to direct FPD's attention to assist in addressing the HR challenges facing UNAMI as detailed in the outgoing CCPO of UNAMI's End of Mission Assignment Report of 31 August 2013.

58. The Tribunal, having considered the parties pleadings, testimonies and oral and written submissions, finds that the Applicant has satisfied the requirements for the grant of a suspension of action as required by art. 2.2 of the Tribunal's Statute and orders:

- a. Suspension of the decision to remove the Applicant from Post Number 64588 pending management evaluation.
- b. Suspension of the decision to place the Applicant on a Performance Improvement Plan pending management evaluation.

Signed

Judge Nkemdilim Izuako

Dated this 25th day of September 2013

Entered in the Register on this 25th day of September 2013

Signed

Abena Kwakye-Berko, Acting Registrar, Nairobi