



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/077

Order No.: 200 (NBI/2014)

Date: 1 September 2014

Original: English

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**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

COLEMAN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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

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**Counsel for the Applicant:**

Marisa MacLennan, OSLA

**Counsel for the Respondent:**

Susan Maddox, ALS/OHRM

Cristiano Papile, ALS/OHRM

## **Introduction**

1. The Applicant is a Transport Assistant at the GS-3 level in the United Nations Mission in Liberia (UNMIL). On 27 August 2014, she filed an Application for suspension of the decision dated 23 June 2014 to extend her Administrative Leave Without Pay (ALWOP) from 14 July 2014.

2. The Respondent filed a Reply to the Application on 29 August 2014 in which it was asserted, inter alia, that the Application was not receivable.

## **Facts**

3. The Applicant joined the United Nations in June 2004. Her appointment was renewed on a number of occasions and is due to expire on 30 June 2015.

4. On 27 December 2013, the UNMIL National Staff Association (NASA) staged a sit-in action outside the UNMIL base. During this time, different forces were deployed to observe, including the Jordanian Police Unit, Nigeria forces, and Liberian National Police.

5. The Applicant participated in the sit-in action although the extent and nature of her participation is in dispute and became the subject of an investigation. The Respondent claims, inter alia, that the Applicant disarmed a Pakistani Military Officer of his firearm and restricted an UNMIL Security Officer from carrying out her official duties.

6. On 2 January 2014, the Applicant received a letter which informed her that she was the subject of an investigation into misconduct, and that she was being placed on Administrative Leave with Pay (ALWP) for three months, or until the completion of the investigation, effective 6 January 2014.

7. By a letter dated 2 April 2014 she was informed that she was being placed on ALWOP, effective upon her receipt of the letter. The letter further stated if the Applicant wished to have continued health coverage, it would be at her own expense.

8. On 30 June 2014, the Applicant reported to the UNMIL base where she was given a one year contract to sign and a letter, dated 23 June 2014, informing her that his ALWOP was being extended for an additional three months from 14 July 2014, or until the completion of the disciplinary process, if any, whichever came earlier.

9. The Applicant requested management evaluation of the decision on 22 August 2014.

10. The Applicant filed the present Application on 27 August 2014.

11. The Application was filed on the Respondent on 27 August 2014 with a deadline to file a Reply by 29 August 2014. On 27 August 2014, Counsel for the Respondent requested the Tribunal to determine the Application on the basis of the parties' written pleadings. Counsel for the Applicant had no objection. The Tribunal is satisfied that it has sufficient evidence and submissions to make findings on the papers without the need for an oral hearing.

12. The Respondent filed a Reply on 29 August 2014.

### **Receivability**

13. It was argued by the Respondent that the Application was not receivable for the following reasons:

- a. The decision to extend the Applicant's placement on ALWOP has already been fully implemented and, as such, it cannot legally be the subject of a suspension of action.
- b. The Respondent cited *Nwuke*, UNDT/2012/002 as authority that where a contested decision has been fully implemented, suspension of action cannot be granted.
- c. Also cited in support were these three orders rendered in the matters of *Applicant*, Order No. 087 (NBI/2014), *Applicant*, Order No. 097 (NBI/2014) and *Applicant*, Order No. 167 (NBI/2014) where the applicants challenged the renewal of their placement on

ALWOP were all rejected as the decisions to place the applicants on ALWOP had already been implemented.

- d. There is a distinction between the implementation of a decision and the completion of its consequences. Once the renewal of the Applicant's ALWOP was administratively implemented on 30 June 2014, there was nothing further to be done to implement the decision and, in this sense, the decision was fully implemented. The fact that the Applicant may feel the *consequences* of that decision for some time does not mean that the decision has not been fully implemented.

14. In response, the Applicant argued that while the UNDT has found that a suspension of action cannot be obtained to restore a situation or reverse an unlawful act which has already been implemented, it has also found that a decision with "ongoing legal effects" is receivable because it can only be deemed to be implemented in its entirety at the end. In support of her submission the Applicant cited *Gallieny* Order No. 060 (NY/2014) and *Calvani* UNDT/2009/092.

15. On the issue of receivability, the Tribunal finds and holds that the latest ALWOP on which the Applicant was placed and which became effective on 14 July 2014 is without a doubt still ongoing and has not been fully implemented. Its full implementation will happen only sometime in October 2014 if it is not discontinued by the Respondent or set aside by the Tribunal.

16. The Respondent's argument that the decision has been fully implemented is rejected as a basis for lack of jurisdiction of this Tribunal to entertain this Application. The Application is receivable.

#### **Applicant's case**

17. The Applicant's case may be summarized as follows:

*Prima facie unlawfulness*

a. Staff rule 10.4 stipulates that a staff member shall be placed on ALWP except when the Secretary-General decides that exceptional circumstances exist which warrant the placement of a staff member on ALWOP.

b. In this case, the Applicant has been on administrative leave for over 200 days, or over seven months, the majority of which has been without pay.

c. The Administration continues to maintain that the ALWOP is not a disciplinary measure, it appears to follow that as more information was gathered, the decision was made to convert then extend the leave from with pay to without pay. The increase in severity and punitive nature of stripping the Applicant of her salary has the *de facto* effect of serving as a disciplinary measure.

d. Staff rule 10.4(b) envisions an estimated three months as the duration of the investigative process. Several investigations were undertaken and multiple witnesses interviewed with regard to the Applicant's participation in the sit-in strike of UNMIL NASA on 27 December 2013. It was submitted on behalf of the Applicant that it is not practicable to extend her ALWOP for an additional three months after the initial period, when, in the present case, she is being kept in the dark as to the status of the investigation well into the third period of administrative leave.

e. Staff rule 10.4(c) provides that in "exceptional circumstances" the Secretary-General can take away all or part of a staff member's pay while on administrative leave. However, there is no clear articulation of what these "exceptional circumstances" may be for the purpose of placement on ALWOP.

f. The Applicant was not shown the *prima facie* evidence against her and has not been given a copy of, nor had the opportunity to respond to, the investigation report concerning her conduct.

g. The Guidelines for placement of staff members on administrative leave with pay pending investigation and the disciplinary process cannot be relied upon by the Respondent as they are not based on a properly promulgated instrument via administrative issuance.

h. The Applicant's situation does not meet the circumstances or risks described in the Guidelines under paragraph 3, such as the staff member posing a danger, posing a security risk, or destruction of evidence. No such allegations have been made of the Applicant, but subsequent to a onetime 27 December 2014 incident involving the Applicant allegedly participating in the protest and disarming a UNMIL soldier, there is no information put forth that the Applicant continues to be a risk to do the same at this point in time, that she remains any danger to the United Nations or other staff members, or that there is any information on which to believe she would tamper or destroy related evidence. At this point, the investigation has concluded. This notion was similarly expressed in *Cabrera* (UNDT/2011/081) where the Tribunal found that there were no "live" issue

#### *Urgency*

i. The decision to place the Applicant on administrative leave without pay is a decision with continuing legal effect meaning that it gives rise to the required urgency following *Calvani* UNDT/2009/092 and *Ba* UNDT/2012/025.

j. In the case of *Ba*, a decision to place a staff member on administrative leave with pay was suspended. Regarding the urgency of the decision, the learned judge found that the continuing legal effect of the unlawful decision meant that at any stage during its continuance, there was an element of urgency. He went on to state that the urgency derives from

the nature of the effect on the applicant, and is also on-going. For each day that the administrative leave continued, the applicant suffered a renewed assault on her reputation and her career prospects.

k. In this case, the Applicant's lack of income, combined with the fact that her husband does not have an income either, has created a dire situation in her ability to care for the twenty people in her family, including basic needs such as food and housing. The current Ebola crisis in Liberia has also created an emergency situation for citizens of the country.

l. In addition, the uncertainty created by the indefinite nature of her placement on ALWOP is a source of enormous stress. Given the apparent absence of any progress in the investigation in over a year, the Applicant has no confidence that her situation could improve in the foreseeable future.

m. In *Calvani*, the learned judge considered that there were effectively two decisions to be considered, the decision to place the applicant on administrative leave and the decision to make that ALWOP. The Applicant's situation can be contrasted with that in *Calvani* where the learned judge felt that a risk of hindering the investigation meant that there was no particular urgency in relation to reinstating the applicant to the functions of his post.

n. It is the Administration which continues to extend the leave, while the Applicant has remained hopeful that there would be some completion to their actions which would warrant discontinuation. Therefore, the matter is urgent but the urgency is not self-created.

*Irreparable harm*

o. The Dispute Tribunal held in *Corna* Order No. 80 (GVA/2010), that the harm is irreparable if it can be shown that suspension of action is the only way to ensure that the Applicant's rights are observed.

p. In *Tadonki* UNDT-2009-016, it was held that a wrong on the face of it should not be allowed to continue simply because the wrongdoer is able and willing to compensate for the damage he may inflict. Monetary compensation should not be allowed to be used as a cloak to shield what may appear to be a blatant and unfair procedure in a decision-making process.

q. The Dispute Tribunal found in *Calvani* 2009-UNDT-092 that damage to reputation and family distress caused by a sudden termination of salary, upon administrative leave without pay was irreparable.

r. A decision which leaves the Applicant without salary and health care coverage indefinitely must be seen as causing irreparable harm as it negatively affects her financial, professional and personal life. The consequences of the decision described above also give rise to an irreparable harm. The realities of trying to support a family in Monrovia, during a time of heightened risk with the Ebola outbreak, with no income source for a period of over six months are daunting. The health and wellbeing of not only the Applicant but also those she supports is put in jeopardy.

s. The Applicant also submits that the Tribunal granted two applications for suspension of action for staff members in virtually identical situations: *Freeman* Order No. 197 (NBI/2014) and *Howard* Order No. 198 (.).

### **Respondent's case**

18. The Respondent's case may be summarized as follows:

#### *Prima facie unlawfulness*

a. Staff Rule 10.4(a) provides that a staff member may be placed on administrative leave, subject to conditions specified by the Secretary-General, at any time pending an investigation and until the completion of the disciplinary process. Staff Rule 10.4(c) provides that administrative leave shall be with full pay unless, in exceptional circumstances, the



Secretary-General decides that ALWOP is warranted. Furthermore, section 4 of ST/AI/371, as amended, provides that administrative leave may be contemplated if the conduct in question might pose a danger to other staff members or to the Organization, or if there is a risk of evidence being destroyed or concealed and if redeployment is not feasible.

b. In compliance with these provisions, the Applicant was placed on administrative leave pending an investigation into her conduct, because:

- i. there was sufficient *prima facie* evidence to indicate that the Applicant, in the context of a violent protest that disrupted UNMIL's operations, had disarmed a military officer of his firearm and had restricted a Security Officer from carrying out her duties.
- ii. The Applicant's conduct was serious in nature and posed a serious risk to the safety and security of United Nations personnel.
- iii. The Applicant's redeployment would not satisfactorily alleviate the safety, security and reputational risk posed by the Applicant's presence in the workplace.
- iv. The Applicant's actions, if established, were sufficiently
- v. serious that they could lead to her separation or dismissal.

c. Staff Rule 10.4(b) provides that a staff member placed on administrative leave shall be given a written statement of the reasons for such leave and its probable duration which, so far as practicable, should not exceed three months. In compliance with this provision, by letters dated 2 January 2014, 2 April 2014 and 23 June 2014, the Applicant was informed of the reasons for her placement on administrative leave. While the Applicant's initial placement on administrative leave was for three months, as detailed below, it was not practicable, in this case, not to

extend it beyond that period. This, too, was in compliance with Staff Rule 10.4(b).

d. Regarding the Applicant's contention that her placement on ALWOP is unlawful because there is "no clear articulation" of what constitutes "exceptional circumstances" for the purpose of placement on ALWOP, the Respondent submits that staff rule 10.4(c) specifically provides that the Secretary-General may decide whether such exceptional circumstances are met. Accordingly, the Respondent submits that the determination of whether "exceptional circumstances" exist in a given case is within the discretionary powers of the Respondent.

e. In this case the "exceptional circumstances" requirement was met in compliance with the applicable rules because: there is ample evidence of the Applicant's participation in the alleged actions; and the Applicant's alleged actions are extremely serious and could, if established, lead to her separation or dismissal.

f. The Respondent submits that, between the Applicant's initial placement on ALWP and her subsequent placement on ALWOP, the investigation report concerning her conduct was finalized. After the finalization, it was evidence that the *strength* of the evidence against the Applicant, combined with the *seriousness* of her conduct, mandated the conversion of her administrative leave with pay to ALWOP.

g. The Respondent further submits that, given the seriousness of the Applicant's actions and the evidence of her patent involvement in the matter, it would have been permissible to place her on ALWOP immediately following the 27 December 2013 incidents (i.e., *without* waiting for the issuance of the investigation report). The fact that this was not done, and that the Respondent preserved the Applicant's salary for a further three months, cannot be held against the Respondent. The decision to wait for the investigation to be issued served both the interests of the Organization (by minimizing further disruption to mission operations

during a critical time) and the interests of the Applicant (by ensuring the continuation of her salary during that period).

h. Furthermore, the fact that a disciplinary process has not yet been initiated against the Applicant does not constitute evidence that her placement on ALWOP is *prima facie* unlawful. The review involved in issuing allegations of misconduct is, of necessity, a more thorough and involved matter than the review involved in determining whether to place a staff member on ALWOP. This reflects the fact that, unlike placement on ALWOP, the issuance of allegations of misconduct is a matter that requires a full and thorough review of all of the evidence collected.

i. Regarding the Applicant's contention that she ought to have been given an opportunity to comment on the investigation report prior to her placement on ALWOP, the Respondent submits that the Organization's legislative instruments do not provide that a staff member be given the opportunity to review and comment on the evidence against him or her prior to placement on ALWOP.

j. The Organization's legislative instruments specifically mandate that such evidence be shared with the staff member if and when he or she is formally alleged to have engaged in misconduct. In this case, a decision has not yet been made regarding whether to pursue this matter as a disciplinary case against the Applicant and, accordingly, she is not yet entitled to receive a copy of the investigation report and supporting documentation. The Respondent respectfully submits that a requirement to seek a staff member's comments on the evidence prior to placement on ALWOP would effectively require the disciplinary process to be carried out before a staff member could be placed on ALWOP. This would defeat the purpose of administrative leave as an early intervention measure to address concerns about security, safety and other concerns that would not be effectively addressed with a staff member's continued presence in the workplace.

k. The Respondent submits that the Applicant was interviewed in connection with the investigation into the events of 27 December 2013 and, therefore, did have the opportunity to provide her account of events. Furthermore, in the notification letters sent to her by DFS, she was notified of the reasons for her placement on administrative leave and, subsequently, ALWOP. As the Tribunal held in *Ba*, UNDT/2012/025 the investigators made it clear to the Applicant what their investigation was about and the references made thereto in the Administrative Leave Letter could have left the Applicant in no doubt as to the reasons behind her placement on ALWOP.

l. Regarding the Applicant's contention that her placement on ALWOP has the *de facto* effect of serving as a disciplinary measure, the Respondent submits that, contrary to a disciplinary measure – which is final unless reviewed by the Tribunal – the Applicant's placement on ALWOP includes an internal review mechanism, in that, if the reasons for her placement on ALWOP are not ultimately found to warrant her separation or dismissal, all pay withheld will be restored to her without delay. As such, the Applicant's placement on ALWOP is a *preventive*, rather than a *punitive* measure. Moreover, the Respondent submits that a finding that a staff member's placement on ALWOP constitutes a *de facto* disciplinary measure would be contrary to the letter of the Organization's legislative issuances because it would effectively mean that every placement on ALWOP, regardless of the reasons therefor, would be *prima facie* unlawful.

m. Regarding the Applicant's contention that the duration of her ALWOP is too lengthy, the Respondent notes that the legislative instruments of the Organization specifically contemplate that administrative leave may extend beyond three months.

n. In this case, given the nature of the matter under investigation and the number of implicated staff members, the investigation was complex and required interviews with many staff members. The report and

supporting documentation are voluminous. While the investigation has concluded, consideration is presently being given to whether to pursue this matter as a disciplinary case. In the circumstances, the Respondent respectfully submits that the continuation of the Applicant's ALWOP beyond three months is proper.

o. Regarding the Applicant's contention that the Respondent should not rely on the "Guidelines for placement of staff members on administrative leave with pay pending investigation and the disciplinary process", the Respondent notes that, although the Applicant's placement on ALWOP meets the criteria set forth in those Guidelines, the Guidelines were not determinative of her placement on ALWOP. Rather, and as set out above, the Applicant's placement on ALWOP complied with the relevant provisions of the Staff Rule 10.4 and of ST/AI/371, as amended.

p. The Respondent submits that the Guidelines reflect the Organization's policy in the application of staff rule 10.4 and ST/AI/371, as amended, on the placement of staff members on administrative leave. Through their application, the Guidelines ensure the fair and equitable treatment of similarly situated staff members. The fact that the Guidelines may not have the force of a Staff Regulation or Staff Rule cannot mean that, simply because a decision to place a staff member on administrative leave complies with those Guidelines, it is *de facto* unlawful. It is submitted that such an outcome would be pervert the proper administration of the Organization. Rather, it is submitted that the fact that a placement on administrative leave is in compliance with the Guidelines may be taken as a *prima facie* indicator of the decision's legality.

#### *Urgency*

q. The Applicant did not contest her initial placement on administrative leave, which was notified to her on 3 January 2014, nor did she contest her subsequent placement on ALWOP, dated 2 April 2014. Moreover, she has waited more than six weeks to contest the renewal of his ALWOP, which was notified to her on 30 June 2014.

r. The Respondent recalls the Tribunal's holding in *Evangelista*, UNDT/2011/212, in which the Tribunal stated that the applicant could not seek the Tribunal's assistance as a matter of urgency when she has had knowledge of the decision for more than six weeks. Any urgency in this case is, accordingly, of the Applicant's own making.

*Irreparable harm*

s. In relation to the Applicant's contention as to the harm that will result of the decision to renew her placement on ALWOP is not reversed, the Respondent submits that the placement of a staff member on ALWOP, by definition, results in the payment of the staff member's salary being suspended. If this were considered to irreparably harm a staff member's rights, then every placement on ALWOP would automatically meet this branch of the tripartite test.

t. The Respondent submits that the withholding of a staff member's salary is a financial measure. Any damage to the Applicant resulting from the decision to place her on ALWOP may be directly compensated by damages.

u. The Respondent submits that the Applicant alleged that she is responsible for 20 other family members and that her husband is not providing income at the present time, and she is having difficulty meeting her rent obligations and monthly living expenses but has provided no evidence to support these assertions.

**Consideration**

19. Applications for suspension of action are governed by arts. 2.2 and 10.2 of the Statute of the Dispute Tribunal and art. 13.1 of the Tribunal's Rules of Procedure. The three statutory prerequisites contained in art. 2.2 of the Statute, that is, *prima facie* unlawfulness, urgency and irreparable damage, must be satisfied for an application for suspension of action to be granted where the contested decision is the subject of a management evaluation.

20. Staff rule 10.4 is the legislation relied upon by the Respondent to place the Applicant on administrative leave and provides as follows:

a) A staff member may be placed on administrative leave, subject to conditions specified by the Secretary-General, at any time after an allegation of misconduct and pending the initiation of an investigation. Administrative leave may continue throughout an investigation and until the completion of the disciplinary process.

(b) A staff member placed on administrative leave pursuant to paragraph (a) above shall be given a written statement of the reason(s) for such leave and its probable duration, which, so far as practicable, should not exceed three months.

(c) *Administrative leave shall be with full pay except when the Secretary-General decides that exceptional circumstances exist which warrant the placement of a staff member on administrative leave with partial pay or without pay.*

(d) Placement on administrative leave shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure. If administrative leave is without pay and either the allegations of misconduct are subsequently not sustained or it is subsequently found that the conduct at issue does not warrant dismissal or separation, any pay withheld shall be restored without delay.

(e) A staff member who has been placed on administrative leave may challenge the decision to place him or her on such leave in accordance with chapter XI of the Staff Rules. (Emphasis added).

21. From the foregoing, it is apparent that the Secretary-General may place a staff member on administrative leave at any time after an allegation of misconduct is made against him or her pending the start of an investigation into the alleged misconduct and until the completion of a disciplinary process.

22. In the instant case, the Applicant was placed on administrative leave a few days after the commencement of investigations into certain events of 27 December 2013 instigated by UNMIL NASA in which she was alleged to have participated. The said placement on administrative leave which was for a period of three months was made with pay.

23. One of the core issues before this Tribunal in the present case is whether there were any exceptional circumstances that justified the decision of the Secretary-General's agents to convert the Applicant's placement on ALWP to

ALWOP when they decided to extend it for another three months from 2 April until the beginning of July 2014 and for a further three months thereafter from 2 July until the beginning of October 2014. In this regard, the starting point is to examine why a staff member whose alleged misconduct is under investigation is removed from the workplace during the said investigation.

24. Section 4 of ST/AI/371 (as amended) provides a clear answer in stating that “as a general principle, administrative leave may be contemplated if the conduct in question may pose a danger to other staff members or to the Organization, or if there is a risk of evidence being destroyed or concealed and if redeployment is not feasible.”

25. In the letter dated 2 April 2014, which conveyed the first extension of the Applicant’s administrative leave, she was informed by the Under-Secretary-General for Field Support (USG/DFS) that based upon a review of the evidence set out in the investigation report into allegations of misconduct against her; it had been decided that she be placed on ALWOP. On 30 June 2014, the Applicant received a letter, dated 23 June 2014, which stated that her ALWOP was being extended for an additional three months from 14 July 2014, or until the completion of the disciplinary process, if any, whichever came earlier.

26. The reasons given for the conversion of the Applicant’s ALWP to ALWOP were that the Respondent had assessed that there was sufficient *prima facie* evidence that she engaged in serious misconduct by disarming an UNMIL military personnel of his firearm and restricted an UNMIL Security Officer from carrying out her official duties in the course of events that took place on 27 December 2013. Also that the nature of the conduct she is alleged to have engaged in is sufficiently serious that it could, if proven, lead to his dismissal.

27. The Respondent submitted that whilst “exceptional circumstances” are not defined by the Staff Rules and Regulations, “where the conduct at issue is one that can lead to dismissal” should be the correct standard for justifying the conversion from ALWP to ALWOP.



28. This argument is untenable for two reasons. The first is that there is no gain-saying that a proven misconduct on the part of a staff member can lead to the disciplinary action of separation or dismissal. This fact was well known to the Respondent on 2 January 2014 when he first sent the Applicant on ALWP. In other words, from the very beginning when investigations into the Applicant's alleged conduct of 27 December 2013 were initiated and she was placed on ALWP, and up until 2 April 2014 when the element of pay was removed from her administrative leave and until the filing of this Application when another three-month ALWOP is running against the Applicant, nothing had changed.

29. Further, the Organization's legislation has remained the same and considering the rationale for administrative leave, the Applicant has remained outside the workplace and cannot affect or influence any investigations, tamper with investigative material or constitute nuisance.

30. Again, the claim by the Respondent that upon concluding and reviewing the investigation report, on 13 March 2014, he decided that the ALWP be extended to ALWOP until the completion of any subsequent disciplinary process, clearly amounts to pre-judging the Applicant and engaging in disciplinary action against her. In essence, the Respondent has prejudged an alleged misconduct outside of the applicable rules and has defeated the purpose of the administrative leave procedure and the clear provisions of staff rule 10.4 (d) that placement on administrative leave shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure.

31. The Tribunal at this stage wishes to address the matter of the time that has elapsed since 2 April 2014 when the Applicant was advised that a review of the investigation report had been undertaken and a decision taken to place him on ALWOP. In his submissions, the Respondent has stated that he had placed the Applicant on ALWOP for three months without making up his mind as to whether he wanted to pursue disciplinary action against her. Upon the expiry of that three-month period, he has embarked on a second three-month period of ALWOP and is yet to decide whether the disciplinary process will be resorted to.

32. Staff rule 10.4 (b) provides that as far as practicable, administrative leave should not exceed three months. Having diligently concluded investigations into the alleged misconduct of the Applicant, produced the investigation report and reviewed the said report within two and a half months; why has the Respondent or his agents been unable to decide five and a half months later whether to close the case or to proceed with disciplinary action? The circumstances of this extension of ALWOP, without doubt, point to a veiled disciplinary action.

33. With regard to the argument that the Secretary-General has discretionary powers to decide what constitutes “exceptional circumstances”, the Tribunal must underscore the fact that, as it held in the case of *Contreras* UNDT/2010/154<sup>1</sup> the word “discretion” is not synonymous with the word “power” and that in public administration, discretion must be exercised judiciously. In other words, the exercise of discretionary power is not absolute and any exercise of discretion by a public officer must be exercised carefully and with a sense of accountability.

34. The Tribunal in view of the foregoing considerations, finds and holds that the decision to convert the Applicant’s ALWP to ALWOP cannot be attributed to any exceptional circumstances and that the requirement of *prima facie* unlawfulness has been satisfied in this Application.

35. Having carefully reviewed the parties’ submissions, the Tribunal is convinced that the elements of urgency and irreparable harm have also been met. Each new day in the circumstances in which the Applicant is placed, escalates the urgency and desperation of her situation. With regards to hardship, the Tribunal particularly takes judicial notice of the ongoing Ebola virus disease outbreak currently ravaging almost every county in Liberia and warranting a countrywide state of emergency and finds that the deprivation of a staff member and her family of six of a source of income or medical coverage at such a critical time to be especially insensitive, lacking in humanitarian considerations, and irresponsible of the UNMIL Administration.

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<sup>1</sup> At para. 74.

**Conclusion**

36. The Tribunal grants the Application for suspension of action and hereby orders that the decision to deprive the Applicant of her salaries while she is on administrative leave pursuant to staff rule 10.4 be suspended until the management evaluation filed by the Applicant has been completed.

37. The Applicant must be on notice that the grant of this interim Order may be necessarily discharged upon receipt of the response from the Management Evaluation Unit.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 1<sup>st</sup> day of September 2014

Entered in the Register on this 1<sup>st</sup> day of September 2014

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi