



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/023

Order No.: 025 (NBI/2015)

Date: 21 January 2015

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

AL-BUSTANJI

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:

Steven Dietrich, ALS/OHRM
Alister Cumming, ALS/OHRM

Introduction

1. The Applicant is a Driver in the Transport Section at the United Nations Assistance Mission for Iraq (UNAMI). He serves at the GL3 level on a fixed-term appointment.

2. On 15 January 2015, he filed an Application for Suspension of Action, pending management evaluation, in respect of a decision by the UNAMI Chief of Mission Support (CMS) and the Chief of Administrative Services (CAS) to terminate his appointment.

3. The Respondent filed a Reply to the Suspension of Action Application on 20 January 2015. He appended the Management Evaluation Unit's response to the Applicant's request for management evaluation dated 12 January 2015.

Facts

4. In June 2014, UNAMI in cooperation with the Department of Field Support ("DFS") at United Nations Headquarters undertook a comprehensive Civilian Staffing Review (CSR) exercise. As a result of the CSR exercise, UNAMI decided to abolish a number of positions under the UNAMI Security Section, Mission Support and the substantive sections.

5. On 3 December 2014, the Applicant received a letter from the UNAMI CMS notifying him that based on his ranking by the Comparative Review Panel, the Mission was not "in a position to retain [him] in 2015".

6. The General Assembly took the final decision on UNAMI's 2015 budget on 29 December 2014 and approved the proposed abolishment of posts in the Transport Section of UNAMI.

7. The Applicant requested management evaluation of the decision to terminate his appointment on 10 December 2014.

8. Thereafter, on 15 January 2015, he sought a Suspension of Action pending the outcome of his management evaluation request.

Considerations

9. Applications for suspension of action are governed by arts. 2.2 and 10.2 of the Statute of the Dispute Tribunal and arts. 13 and 14 of the Tribunal's Rules of Procedure.

10. Article 2.2 governs applications for suspension of actions pending management evaluation whereas art. 10.2 governs, inter alia, suspensions of action at any time during the proceedings.

11. The three statutory prerequisites contained in the Statute for the grant of the interim relief of suspension of action, 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.

12. 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.

13. The wording of art. 2.2 makes it clear that the Tribunal has no authority to order suspension of action on a decision once the management evaluation has been completed.

14. The Appeals Tribunal in *Tadonki* 2010-UNAT-005¹, *Onana* 2010-UNAT-008² and *Kasmani* 2010-UNAT-011³ found that the Dispute Tribunal had exceeded the limits of the jurisdiction conferred on it by article 2.2 of its Statute when it ordered the suspension of the execution of the contested decision beyond the date on which the management evaluation was completed.

15. The suspension of the execution or implementation of an administrative decision constitutes an exception that cannot be extended beyond

¹ At para. 10.

² At para. 19.

³ At para. 11.

the limits and prohibitions established by the Statute since, otherwise, the legislative texts, spirit, and goals underlying them would be ignored or violated⁴.

16. In the present case, the Tribunal notes that the management evaluation was completed on 12 January 2015, thus rendering moot this Application for suspension of action.

Conclusion

17. In view of the foregoing, the Application for suspension of action is rejected.

(Signed)

Judge Nkemdilim Izuako

Dated this 21st day of January 2015

Entered in the Register on this 21st day of January 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

⁴ *Igbinedion* 2011-UNAT-159 at para. 20.