



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2017/126  
Order No.: 211 (NBI/2017)  
Date: 8 December 2017  
Original: English

---

**Before:** Judge Goolam Meeran

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

KEBEDE

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:**  
ECA

## **Introduction**

1. On 6 December 2017, the Applicant, a G-4 level Inventory and Supply Assistant with the United Nations Economic Commission for Africa (“ECA”), in Addis Ababa, Ethiopia, filed an application for suspension of action pending management evaluation of the decision to place, in his official status file, the report of a rebuttal panel.

2. The application was accompanied by seven annexes, including a copy of his request for management evaluation and several emails between him and ECA’s Human Resources Services Section (“HRSS”) on the composition of the rebuttal panel.

## **Considerations**

3. On 17 July 2017, the Applicant, who disagreed with the rating of “partially meets performance expectations” in his 2016/2017 e-PAS, submitted a rebuttal statement to the ECA Chief of Human Resources Services Section (“C/HRSS”).

4. The Rebuttal Panel, which was established on 18 August 2017, concluded that since the Applicant had refused to discuss his performance during his interview, it was not in a position to state whether the overall rating of “partially meets performance expectations” should be retained or changed. The Panel indicated that its report would be placed in the Applicant’s official status file as an attachment to the completed e-PAS and communicated to the Office of Human Resources Management (OHRM) and the local human resources office.

5. The Rebuttal Panel Report was transmitted to the Applicant on 30 November 2017. On 4 December 2017, he filed an application for suspension of action to prevent the placing of the report of the Rebuttal Panel in his official status file. By Order No. 206 (NBI/2017), the Tribunal refused the application on the ground that it was premature since the Applicant had not submitted a request for management evaluation.

6. On 6 December 2017, the Applicant submitted a request for management evaluation.

### **Consideration**

7. Requests for suspension of action pending management evaluation are to be decided in accordance with art. 2.2 of the Statute of the Dispute Tribunal and art. 13 of the Tribunal's Rules of Procedure. Article 2.2 provides:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

8. Article 13 of the Rules of Procedure provides:

1. The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.
2. The Registrar shall transmit the application to the respondent.
3. The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

9. While it is clear that the Tribunal is under a duty to transmit a copy of the request for suspension of action to the Respondent and to issue a decision within five days thereof, there is no requirement, either under art. 2.2 of the UNDT Statute or art. 13 of the Rules of Procedure, for the Tribunal to defer consideration of the request until receipt of the Respondent's response. In fact, service on the

Respondent is all that is required under the Rules. The request for suspension of action stands or falls on its merits as presented at the time.

10. A request under art. 2.2 of the Statute is also predicated upon an ongoing and pending management evaluation of an administrative decision that may properly be suspended by the Tribunal and any order to suspend a contested administrative decision ends on the date on which the management evaluation is completed. Further, the Tribunal must proceed on the basis of an impression regarding whether the Applicant satisfies the three cumulative requirements in art. 2.2 of the Statute and art. 13 of the Tribunal's Rules of Procedure, namely that the decision appears to be prima facie unlawful, that the matter appears of particular urgency, and that the implementation of the decision would appear to cause irreparable damage.

11. In considering an application for urgent injunctive relief, the Tribunal is not required to make a conclusive finding but merely to apply the statutory test by forming and expressing an opinion based on the material presented in support of the application. Whether this preliminary indication is upheld when the substantive issues of fact and law are subsequently considered will depend on the evidence, arguments and submissions of the parties. However, the benefit afforded by the suspension of action procedure is to indicate a preliminary view which may assist either party to consider its position.

12. Since an application for suspension of action is a request for urgent injunctive relief it is important that the action that needs to be suspended is described with clarity and precision and that the reasons in support thereof, together with any annexes deemed to be necessary, be presented in a manner that facilitates an expeditious disposal of the application.

13. Where the application lacks clarity the Tribunal has a duty to do its best to ascertain the nature of the impugned decision and the relief being sought. The United Nations Appeals Tribunal ("UNAT") held in *Massabni* 2012-UNAT-238<sup>1</sup> that:

---

<sup>1</sup> See also *Zachariah* 2017-UNAT-764

25. The duties of a Judge prior to taking a decision include adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content, as the judgment must necessarily refer to the scope of the parties' contentions. Otherwise, the decision-maker would not be able to follow the correct process to accomplish his or her task, making up his or her mind and elaborating on a judgment motivated in reasons of fact and law related to the parties' submissions.

26. Thus, the authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and subject to judicial review, which could lead to grant, or not to grant, the requested judgment.

27. It follows from the above that the UNDT did have a legal basis to define the administrative procedure and decisions subject to review [...].

14. Although the Applicant refers to a number of issues that give him cause for concern the Tribunal will deal solely with the decision for suspension identified in Section V of the application viz. the placing of the rebuttal report as an attachment to the completed e-PAS for 2016/2017.

15. Section 15 of ST/AI/2010/5 (Performance management and development system) concerns the rebuttal process.

15.4 The rebuttal panel shall prepare, within 14 days after the review of the case, a brief report setting forth the reasons why the original rating should or should not be maintained. In the event that an overall rating or comments should not be maintained, the rebuttal panel should designate the new rating or modify the narrative on performance evaluation. The report of the rebuttal panel shall be placed in the staff member's official status file as an attachment to the completed e-PAS or e-performance document and communicated to OHRM, or the Field Personnel Division of the Department of Field Support, as appropriate.

15.5 The performance rating resulting from the rebuttal process shall be binding on the head of the department/office/mission and on the staff member concerned, subject to the ultimate authority of the Secretary-General as Chief Administrative Officer of the Organization, who may review the matter as needed on the basis of the record. Any change in the final rating, and the date of the decision, shall be communicated to OHRM with an annotation that the rating was changed as a result of a review of the performance

management and development rebuttal and the final rating recommended by the rebuttal panel.

16. It is clear from article 15.4 that the Administration is obliged to place the report of the rebuttal panel on a staff member's official status file. In *Oummih* 2014-UNAT 420<sup>2</sup>, UNAT held that: "Under the applicable legislative framework as set out in ST/AI/2002/3 and ST/AI/2010/5, it was mandatory for the Administration to keep in the personnel file both the impugned appraisal and reports, and the rebuttal outcome."

17. This application fails at the first hurdle in that the material before the Tribunal cannot reasonably support an opinion that the decision to follow the strict provision of article 15.4 appears to be prima facie unlawful. In the circumstances, it is not necessary to consider the remaining two elements of urgency and irreparable harm.

## **ORDER**

This application for suspension of action is refused.

*(Signed)*

Judge Goolam Meeran

Dated this 8<sup>th</sup> day of December 2017

Entered in the Register on this 8<sup>th</sup> day of December 2017

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi

---

<sup>2</sup> Paragraph 16.