



UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NBI/2019/107  
Order No.: 101 (NBI/2019)  
Date: 22 July 2019  
Original: English

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**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

HANDY

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION FOR  
SUSPENSION OF ACTION PENDING  
MANAGEMENT EVALUATION**

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**Counsel for the Applicant:**

Nathalie Puchalka, OSLA

**Counsel for the Respondent:**

Nusrat Chagtai, AAS/ALD/OHR

## **INTRODUCTION**

1. The Applicant is a Political Affairs Officer at the United Nations United Nations Multidimensional Integrated Stabilisation Mission in the Central African Republic (MINUSCA). He serves on a fixed term appointment at the P4 level and is based in Bangui.

### **The Application**

2. On 16 July 2019, the Applicant moved, pursuant to art. 13 of the Rules of Procedure, to suspend the Respondent's decision to separate him from service upon expiry of his current contract on 31 July 2019. The Applicant alleges impropriety in the decision-making process in that the Respondent has given no reason for not renewing his appointment, other than it was not related to his performance. He contends that the impugned decision has been made on the basis of extraneous factors, and is in fact retaliatory in response to complaints and management evaluation requests filed by him. The Applicant also moves the Tribunal to refer the Director of Mission Support for accountability pursuant to art. 10.8 of the Statute of the Dispute Tribunal (the Statute).

3. The Application was served on the Respondent on the day it was received by the Registry, and the latter filed his Reply on 18 July 2019. The Respondent does not oppose the Applicant's request that the impugned decision be suspended pending management evaluation. The Respondent objects to the application for the DMS to be referred to the Secretary-General for accountability on grounds that it is premature; that such a determination can only be made once the matter being adjudicated has been decided on the merits.

### **Considerations**

4. Applications for suspension of action are governed by art. 2 of the Statute and art. 13 of the Rules of Procedure of the Tribunal. Article 13 provides as follows:

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 on-going 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 Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

5. Tribunal finds that the requirements stipulated in the controlling provisions are fulfilled, for reasons articulated in the application. Noting, moreover, that the Respondent does not object to the suspension of the impugned decision pending management evaluation, the Tribunal will grant the motion.

6. The Tribunal agrees with the Respondent that the motion for accountability to be imposed pursuant to art.10.8 of the Statute is premature. Whereas it is not explicit that the referral may happen only at the stage of handing down a judgment, the Tribunal is of the opinion that, in principle, referrals for accountability should not happen on a prima facie basis. However, the present motion is not sufficiently substantiated.

7. The Tribunal strongly believes that while the Management Evaluation Unit carries out its review of the Applicant's request, the parties should engage in meaningful consultations towards having this matter resolved. In the interest of efficient use of the Tribunal's resources and the expeditious conduct of these (and potentially future) proceedings, the Tribunal pursuant to articles 10.3 of the Statute and 15.1 of the Rules of Procedure of the Dispute Tribunal, strongly urges the parties in this matter to consult and deliberate, in good faith, on having this matter informally resolved.

## **ORDER**

8. This application for suspension of action is **GRANTED**.

9. The application for the referral for accountability is **REFUSED**.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 22<sup>nd</sup> day of July 2019

Entered in the Register on this 22<sup>nd</sup> day of July 2019

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi