



**Before:** Judge Rachel Sophie Sikwese

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

TURK

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

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

---

**Counsel for the Applicant:**

Self-represented

**Counsel for the Respondent:**

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Fatuma Mninde-Silungwe, AAS/ALD/OHR, UN Secretariat

## **Introduction**

1. On 11 February 2022, the Applicant, a former P-4 Political Affairs Officer, with the United Nations Assistance Mission for Iraq (“UNAMI”), filed an application for suspension of action with the United Nations Dispute Tribunal (“UNDT”) to challenge the Respondent’s decision to separate him from service of the Organization.

2. The Respondent replied to the application on 16 February 2022, and preliminarily argues that the application is not receivable.

## **Summary of relevant facts**

3. The Applicant joined UNAMI on 19 April 2015 as a Political Affairs Officer at the P-4 level on a fixed-term appointment (“FTA”).<sup>1</sup>

4. On 28 October 2021, the Applicant received a letter from UNAMI Human Resources (“HR”) informing him that the Secretary-General proposed the downward reclassification of two posts in the mission’s budget for 2022 and one of the posts had been identified in Office of Political Affairs. The budget proposal would be considered by the General Assembly for implementation effective 1 January 2022. In anticipation of the General Assembly’s approval of UNAMI’s budget, a Comparative Review Process (“CRP”) was to be conducted because the number of remaining P-4 Political Affairs Officer positions in the Office of Political Affairs in the new mission structure would be less than the number of serving staff performing the functions at the P-4 level.<sup>2</sup>

5. On 24 November 2021, a CRP was conducted in order to determine the order of preference for staff retention.<sup>3</sup>

6. On 2 December, UNAMI/HR sent the Applicant notification of the non-

---

<sup>1</sup> Application para. VII(1).

<sup>2</sup> Ibid., para. VII(2).

<sup>3</sup> Ibid., para. VII(3).

renewal of his FTA.<sup>4</sup>

7. On 7 December 2021, the Applicant filed a management evaluation request contesting the decision of UNAMI not to extend his FTA beyond 31 December 2021. On 28 December 2021, the Management Evaluation Unit (“MEU”) provided the Applicant with the outcome of the management review upholding the contested decision.<sup>5</sup>

8. On 7 January 2022, the Applicant filed a management evaluation request contesting the non-renewal of his FTA and submitted additional information on 17 and 27 January 2022, respectively. The management evaluation request was deemed not receivable as the MEU could not conduct a *de novo* review.<sup>6</sup>

9. On 3 February 2022, the Applicant filed another management evaluation request challenging the reclassification of the P-4 level position that he encumbered at UNAMI.<sup>7</sup>

10. The Applicant received the response to his management evaluation request on 14 February 2022.<sup>8</sup>

## **Submissions**

### ***Receivability***

#### *The Respondent’s submissions*

11. The Respondent submits that in accordance with arts. 2.2 of the Dispute Tribunal’s Statute and 13.1 of the Rules of Procedure, the Dispute Tribunal is competent to hear and pass judgement on an application to suspend, during the

---

<sup>4</sup> Ibid., para. VII(4).

<sup>5</sup> Reply, annex 1, page 1.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

pendency of management evaluation, the implementation of a contested administrative decision that is subject to on-going management evaluation.

12. In the present case, the Applicant received the response to his management evaluation request on 14 February 2022, therefore, the Dispute Tribunal lacks jurisdiction to grant the application and it should be dismissed.

### **Considerations**

13. Article 2.2 of the UNDT Statute stipulates that;

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.

14. Article 13.1 of the UNDT Rules of Procedure stipulates:

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.

15. 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. The Appeals Tribunal in *Tadonki* 2010-UNAT-005, *Onana* 2010-UNAT-008 and *Kasmani* 2010-UNAT-011 found that the Dispute Tribunal had exceeded the limits of the jurisdiction conferred on it by art. 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.

16. The Tribunal notes that the management evaluation was completed on 14

February 2022.

**ORDER**

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

*(Signed)*

Judge Rachel Sophie Sikwese

Dated this 18<sup>th</sup> day of February 2022

Entered in the Register on this 18<sup>th</sup> day of February 2022

*(Signed)*

Eric Muli, Legal Officer, for

Abena Kwakye-Berko, Registrar, Nairobi