



Before: Judge Sean Wallace
Registry: Nairobi
Registrar: René M. Vargas M., Officer-in-Charge

NABISUBI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nicole Wynn, AS/ALD/OHR, UN Secretariat
Victoria Nakaddu Mujunga, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a Team Assistant in the Internal Audit Division at the United Nations Office of Internal Oversight Services (“OIOS”). She serves at the GS-4 level on a fixed-term appointment (“FTA”) expiring on 30 June 2024.
2. On 17 May 2024, she filled an application for suspension of action (“SOA”), pending management evaluation in respect of the decision to terminate her appointment.
3. The application was served on the Respondent who filed his reply on 23 May 2024.

Facts

4. The Applicant’s performance appraisal from 1 April 2022 to 31 March 2023 rated by her First Reporting Officer (“FRO”) indicates that the Applicant “partially meets expectations”.
5. The Applicant rebutted the evaluation and developed with her new FRO a Performance Improvement Plan (“PIP”) from 1 June 2023 to 30 September 2023 during the 2023-2024 performance cycle.
6. On 21 September 2023 the rebuttal panel decided that “the overall rating should not be changed from Partially meets performance expectations”.
7. On 2 October 2023, the Applicant’s FRO concluded that she did not meet the expectations of the PIP.
8. From 15 November 2023 to 16 February 2024, the Applicant was placed on a second PIP with support from her FRO.
9. On 29 February 2024, the Applicant’s FRO concluded that the Applicant did not meet the majority of the goals for the PIP.

10. On 12 April 2024, OIOS' Human Resources Officer wrote to the Applicant notifying that "the decision has been taken by the USG to not renew [her] fixed term appointment beyond 30 June 2024".

11. On 25 April 2024, the Applicant filled an application for rebuttal of her FRO's performance rating.

12. The Human Resources and Talent Management Unit at the United Nations Regional Service-Centre, Uganda, wrote to the Applicant on 26 April 2024, regarding check out actions to be taken.

13. On 2 May 2024, the Applicant requested management evaluation of the contested decision.

14. By correspondence dated 7 May 2024, the Chief of the Management Advice and Evaluation Section informed the Applicant that "pursuant to Staff Rule 11.2(d), the management evaluation in [her] case is to be completed within 45 calendar-days of receipt of complete request, i.e., by 16 June 2024".

Consideration

15. 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.

16. Art. 2.2 of the Tribunal's Statute provides that the Tribunal shall be competent to suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. These three requirements are cumulative. In other words, they must all be met in order for a suspension of action to be granted. Furthermore, the burden of proof rests on the Applicant.

17. The Tribunal recalls that the threshold required in assessing this condition is that of "serious and reasonable doubts" about the lawfulness of the impugned decision (*Hepworth* UNDT/2009/003, *Corcoran* UNDT/2009/071, *Miyazaki*

UNDT/2009/076, *Corna* Order No. 90 (GVA/2010), *Berger* UNDT/2011/134, *Chattopadhyay* UNDT/2011/198, *Wang* UNDT/2012/080, *Bchir* Order No. 77 (NBI/2013), *Kompass* Order No. 99 (GVA/2015)).

18. The Tribunal notes that the implementation of the administrative decision is not imminent. The contested decision cannot be implemented before the expiration of the Applicant's FTA, on 30 June 2024. The management evaluation of the contested decision is due 45 days following the Applicant's request, on 16 June 2024.

19. The Applicant's FTA will be renewed if her rebuttal process is not completed by the expiration of her appointment per section 15.4 of ST/AI/2021/4, (Performance Management and Development System) ("Performance Management AI").

20. The Applicant has failed to establish that the non-renewal of her FTA beyond 30 June 2024 is *prima facie* unlawful. The Applicant's performance evaluation was unsatisfactory, and she failed to successfully complete two performance improvement plans. Unsatisfactory performance is a one of the reasons for the non-extension of her FTA. Accordingly, the contested decision is *prima facie* lawful and the Applicant has no right or expectancy of renewal of her FTA.

21. Given the cumulative nature of the conditions to be met for the granting of a suspension of action, the Tribunal does not find it necessary to consider whether the contested decision is urgent or whether it would cause irreparable damage (*Evangelista* UNDT/2011/212; *Dougherty* UNDT/2011/133).

22. In view of the foregoing, the application for suspension of action pending management evaluation is rejected.

Case No. UNDT/NBI/20

Order No. 58 (NBI/2024)

(Signed)

Judge Sean Wallace

Dated this 27th day of May 2024

Entered in the Register on this 27th day of May 2024

(Signed)

Eric Muli, Legal Officer for René M. Vargas, Officer-in-Charge, Nairobi