



UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NBI/2025/139
Order No.:	260 (NBI/2025)
Date:	8 December 2025
Original:	English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

ETUWEWE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Nisha Patel, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a P-3 Contract Management Officer with the United Nations (Peacekeeping) Mission in South Sudan (“UNMISS”), based in Juba.
2. On Friday, 28 November, the Applicant filed this application seeking to suspend a 25 November 2025 decision to terminate his fixed-term contract, effective 31 December 2025, following a Comparative Review Process (“CRP”).
3. The application was served, and the Respondent filed a reply on 3 December, in compliance with Order No. 249 (NB/2025).

Facts and Submissions

4. On 25 November, the Applicant received a notice of non-renewal of his contract from the UNMISS Special Representative of the Secretary-General which indicated:

As previously communicated, following the Secretary-General’s decision to implement the contingency plan under the 15 percent scenario, the Head of Entity has activated the downsizing policy in accordance with ST/AI/2023/1 on Downsizing and Restructuring. This activation initiated the comparative review, conducted by Staff-Management Group, of all staff members within scope to determine those who will be retained within the United Nations Mission in South Sudan (UNMISS) and those who may be flagged for priority consideration in other entities.

On the basis of the above and in accordance with section 5.7 of the Organization’s policy on downsizing or restructuring resulting in termination of appointments (ST/AI/2023/1), I regret to inform you that your **fixed-term appointment** will not be renewed and will expire on **31 December 2025** in line with Staff Rule 9.4.

5. The Applicant filed a request for management evaluation with the Management Advice and Evaluation Section (“MAES”) the same day, in which he avers that the decision was contrary to the UNMISS Contract Management Standard Operating Procedures (“CM SOP”).
6. In his reply, the Respondent argues that the decision was not *prima facie* unlawful, having been made pursuant to a lawful restructuring mandated by the

Secretary-General for UNMISS and “all peacekeeping missions funded under the peacekeeping budget” due to the liquidity crisis.

7. The Applicant, for his part, does not dispute that the decision was made pursuant to a restructuring exercise necessitated by the liquidity crisis facing the Organization.

8. Rather, the Applicant disputes the “anomalous decision” of the Acting Engineering Manager who had advised him that: “they believe Contracts Management can be done by Engineers,” and relies on a new contract Management SOP which states that “Contract management is a necessity to ensure oversight of Contracts ...” to challenge this.

9. The Applicant avers that “there are many other positions that could have been given up which do not have UN/UNMISS clearly mandated roles and responsibilities and were creations by the Engineering management, at even P-4 level.”

10. The Applicant highlights his exemplary career, having received “exceeds performance expectation and have never had any reports negatively filed against [him]” in more than ten years “pioneering in CM in Engineering single-handedly for several years.” He further laments that his separation “feels like a disappointing let down, rather than completing my service up to retirement in just 3 years’ time.”

Consideration

11. Under art. 2.2 of the Tribunal’s Statute and art. 13.1 of the Rules of Procedure, the Tribunal may 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.

12. Article 13 of the Tribunal’s Rules of Procedure reiterates this principle on suspension of action during a management evaluation.

13. The Applicant has filed a timely management evaluation request of the decision not to extend his fixed-term appointment. The decision has not been rendered, and therefore, the review is ongoing. Accordingly, it falls to the Tribunal to determine whether the contested decision satisfies the three prerequisites set out in Article 2(2).

14. These three requirements are cumulative. In other words, they must *all* be met in order for a suspension of action to be granted. If one prong is unsuccessful, the application must fail. *See, Wathanafa*, 2023-UNAT-1389; *Khambatta*, UNDT/2012/058; *Nwuke*, UNDT/2012/115; *Applicant*, UNDT/2011/158. The burden of proof rests on the Applicant. (*Masoomi* Order No. 100 (GVA/2022) at para. 11; *Nivin* Order No. 19 (GVA/2023) at para. 16.)

15. With regard to the first prong, unlawfulness, the Applicant does not contest the lawfulness of the UNMISS restructuring process per se, but only as it applied to him. The Applicant argues, in short, that there were other positions – people – that could have been downsized.

16. It is noted that it is not the role of the Tribunal to second-guess the decisions made by the organization in determining the value to be accorded different positions within its structure. Those implementing the decisions on the ground are better placed to make decisions as to which positions are more important to their operations. Absent a finding that such decision was *prima facie* unlawful, the Tribunal has no authority to reverse it.

17. To be clear, the requirement of *prima facie* unlawfulness demands “serious and reasonable doubts about the lawfulness of the contested decision.” *Hepworth* UNDT/2009/003, para. 10. This was also confirmed, *inter alia*, in *Corcoran* UNDT/2009/071, para. 45; *Berger* UNDT/2011/134, para. 10; *Chattopadhyay* UNDT/2011/198, para. 31. The Applicant has not raised any reasonable doubts about the lawfulness of the contested decision in this case, and certainly not serious doubts. There is no evidence that shows the decision to abolish the Applicant’s post was unlawful, and there is further no evidence to support the claim that.

18. Having determined that the Applicant has failed to establish that the decision was not *prima facie* unlawful, it is unnecessary for the Tribunal to discuss the remaining two prerequisites for suspension of action.

Conclusion

19. In view of the foregoing, the Application for suspension of action pending management evaluation is DENIED.

(Signed)

Judge Sean Wallace

Dated this 8th day of December 2025

Entered in the Register on this 8th day of December 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi