



**Before:** Judge Alexander W. Hunter, Jr.

**Registry:** New York

**Registrar:** Hafida Lahiouel

HAMID

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON CASE MANAGEMENT**

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**Counsel for Applicant:**  
Nicole Washienko, OSLA

**Counsel for Respondent:**  
Robert Nadelson, UNDP

## **Introduction**

1. On 11 February 2016, the Applicant, a former D-2 level staff member of the United Nations Development Programme (“UNDP”) in New York, filed an application contesting the following three administrative decisions:

a. To abolish her post of Director and Chief Technology Officer (“CTO”) in UNDP’s Office for Information Systems and Technology as a result of restructuring and reclassification processes (the “abolishment decision”);

b. To “require her to undergo a competitive process” for the new post of Director and CTO at the D-1 level in the Office of Information Management and Technology (“OIMT”) (the “recruitment decision”); and

c. Not to select her for the post of Director and CTO, OIMT (the “selection decision”).

2. The Applicant seeks compensation for pecuniary loss in the amount of two years’ net base salary, as well as compensation for “moral injury” in the amount of 12 months’ net base salary.

3. The Respondent filed his reply on 14 March 2016, submitting that the contested decisions were lawful and that the Applicant’s claims are without merit.

4. This case was assigned to the undersigned Judge on 1 July 2016.

### **Procedural history**

5. By Order No. 166 (NY/2016) dated 11 July 2016, the Tribunal directed the parties to consider informal resolution of the matter and, in the event no informal resolution was possible, file a joint submission addressing various issues by 26 July 2016. The parties were also directed to attend a case management discussion (“CMD”) on 28 July 2016.

6. On 26 July 2016, the parties submitted a joint request for an extension of time until 29 July 2016 to comply with Order No. 166 (NY/2016). The parties also confirmed that they were not in a position to resolve the dispute informally.

7. On 26 July 2016, on instructions of the undersigned Judge, the New York Registry sent an email to the parties, informing them that, in view of the joint request for an extension of time, the CMD of 28 July 2016 was postponed. The parties were requested to confer and propose a new CMD date in the second half of August 2016.

8. On 27 July 2016, the parties proposed to hold the CMD on 19 or 22 August 2016.

9. By Order No. 183 (NY/2016) dated 28 July 2016, the Tribunal granted the requested extension of time to file the joint submission, directing the parties to file the submission by 18 August 2016 and to attend a CMD on 22 August 2016.

10. On 17 August 2016, the Applicant filed a request for a further extension of time until 26 August 2016 to finalize the parties’ joint submission. The Applicant submits that the Respondent has no objection to the requested extension of time.

11. By Order No. 199 (NY/2016) dated 17 August 2016, the Tribunal granted the requested extension of time and directed the parties to file the joint submission by 26 August 2016 and to attend a CMD on 30 August 2016. The Tribunal also directed the parties to address in their joint submission the relevance of the recently-issued judgment in the matter of *El-Kholy* UNDT/2016/102.

12. On 26 August 2016, the parties filed a joint request for a further extension of time until 31 August 2016 to finalize their joint submission.

13. By Order No. 205 (NY/2016) dated 26 August 2016, the Tribunal suspended the proceedings until 16 September 2016 to allow the parties to attempt informal resolution of the matter.

14. On 16 September 2016, the parties filed a joint submission requesting the continuation of the suspension of proceedings for a further period of three weeks in order to allow them to continue to explore an amicable resolution of the matter.

15. By Order No. 218 (NY/2016) dated 20 September 2016, the Tribunal suspended the proceedings until 10 October 2016.

16. On 10 October 2016, the parties filed a joint submission requesting the continuation of the suspension of proceedings for a further period of one month.

17. By Order No. 238 (NY/2016) dated 10 October 2016, the Tribunal suspended the proceedings until 9 November 2016.

18. On 9 November 2016, the parties filed a joint submission requesting the continuation of the suspension of proceedings for a further period of twenty days to “enable them to settle all the details necessary for an informal resolution of the matter.”

19. By Order No. 257 (NY/2016) dated 10 November 2016, the Tribunal suspended the proceedings until 29 November 2016.

20. On 29 November 2016, the parties filed a joint motion seeking the continuation of the suspension of proceedings for a further period of two weeks to “enable them to settle all the details necessary for an informal resolution of the matter.”

21. By Order No. 266 (NY/2016) dated 30 November 2016, the Tribunal suspended the proceedings until 15 December 2016, by which date the parties were directed to file a joint submission stating whether they have reached an agreement.

22. On 15 and 16 December 2016, the parties filed two separate submissions stating that their settlement discussions were ongoing and asking for a further suspension of the proceedings until 3 January 2017. The parties explained that the filing of separate submissions was due to technical difficulties they have experienced in finalizing their joint submission.

23. On 11 January 2017, the parties filed a motion for further suspension of proceedings for 10 days advising the Tribunal that they have reached a “provisional agreement on a settlement” and that “the [p]arties still need to finalize the text of an [a]greement. For this reason, the [p]arties are requesting a further ten days’ extension so an [a]greement can be finalized, and duly signed.”

24. On the same day, the Tribunal issued Order No. 8 (NY/2017) granting, in part, the motion for further suspension of proceedings, stating,

24. The Tribunal reiterates that the parties have a duty to act diligently to finalize the settlement agreement as the Tribunal has already granted several time extensions providing the parties with ample time for completion. The Tribunal considers it, however, appropriate and in the interests of a fair and expeditious disposal of the

case to partly grant the joint request. The Tribunal will suspend the proceedings for a further period of five working days.

25. The Tribunal ordered both parties to submit by 19 January 2017 “a joint submission stating whether they have reached an agreement. If so, the Applicant shall file a motion withdrawing her application fully and finally, without liberty to reinstate”.

26. On 19 January 2017, the Respondent filed a submission pursuant to Order No. 8 (NY/2017), stating

10. ... there is general acceptance of the text of the agreement, which the Respondent is ready to accept. However, the Respondent understands that the Applicant's Counsel has been unable to reach the Applicant to obtain her agreement. Notwithstanding the present Order, the Respondent has been informed that the Applicant's Counsel wishes to file separately. As a result, regrettably, the Respondent is not able to comply with the Tribunal's Order for a joint submission stating whether the Parties have reached agreement.

11. The Respondent remains optimistic that an agreement is very likely, but the Respondent is unable to provide a definite answer at this time as to whether there is an agreement. For its part, the Respondent can therefore only reiterate a request for a further extension of time in the conviction that informal resolution is imminent.

### **Consideration**

27. As a preliminary matter, the Tribunal notes that the Applicant and her Counsel failed to comply with Order No. 8 (NY/2017) and did not make a submission as ordered by the Tribunal. This is regrettable and reflects poorly on Counsel's ability to perform as Counsel.

28. The Tribunal also notes that the parties submitted a total of 11 requests for extension of time to suspend the proceedings in the present case. Each request was made on the basis that a resolution was being discussed and that resolution was considered imminent. The Tribunal granted the last request upon strong assurances made by the parties that a settlement agreement was

being agreed upon and that the text of the agreement was being finalized. The Tribunal notes however that resolution is still not reached despite ample time having been granted to the parties to resolve the dispute and further notes arguments made several times over the last months that either Counsel for the Applicant or the Applicant could not be reached.

29. The Tribunal takes note of the Code of Conduct for Legal Representatives and Litigants in Person adopted by the General Assembly in its resolution 71/266, which requires, in its art. 4.2, that Counsel “shall act diligently and efficiently and avoid unnecessary delay in the conduct of the proceedings”. The Code of Conduct also provides in its art. 4.4 that “[l]egal representatives shall maintain the highest standards of professionalism and shall act in the best interests of the party they represent, subject always to upholding the interests of justice and ethical standards.”

30. The Tribunal is concerned by the delay in the present case and will not further extend suspension of proceedings.

31. Accordingly, in view of the above, the Tribunal considers that, in the interests of a fair and expeditious disposal of the case, it is appropriate to set the case for hearing and for the parties to provide the information listed below.

IT IS ORDERED THAT:

32. By **5:00 p.m.** on **Friday, 10 February 2017**, the parties are to file the information and documents listed in Order No. 166 (NY/2016) and shall identify two days during the week of 10 April 2017 for a hearing on the merits of the case.

*(Signed)*

Judge Alexander W. Hunter, Jr.

Dated this 20<sup>th</sup> day of January 2017