UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/023
Order No.: 62 (NY/2017)
Date: 30 March 2017
Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION AND REQUEST FOR ANONIMITY

Counsel for Applicant:
Daniel Trup, OSLA

Counsel for Respondent:
Miryoung An, ALS/OHRM
Susan Maddox, ALS/OHRM

Introduction

1. On 23 March 2017, the Applicant, a former staff member with the United Nations, filed an application requesting that "[t]he decision to issue a letter threatening to contact [his] new employer regarding allegations of misconduct" be suspended. As part of his application, the Applicant requests to have "his name anonymised in any final order".

2. On 24 March 2017, the Registry transmitted the application for suspension of action to the Respondent, requesting him to file a response by 28 March 2017.

3. On 24 March 2017, Counsel for the Applicant filed a revised application with additional averments motivating the request for anonymity and redaction. Considering the urgency of, and the strict time limits for disposal of an application for suspension of action under art. 2.2 of the Dispute Tribunal's Statute, the Applicant's request for amendment was immediately granted.

4. In his response, duly filed on 27 March 2017, the Respondent requests the Tribunal to reject the application on the grounds that it is not receivable. Even if receivable, the Respondent contends that it does not satisfy any of the three basic cumulative conditions for suspending the impugned decision during management evaluation, notably *prima facie* unlawfulness, urgency, and irreparable harm.

5. On 28 March 2017, the Respondent filed a "Submission of additional information regarding the matter of the application for suspension of action" and appended a letter of the same date (28 March 2017) from the Management Evaluation Unit ("MEU") to the Applicant. The Respondent submitted that:

> Should the Tribunal permit, the Respondent respectfully submits the attached letter, dated 28 March 2017, to the Applicant from [the MEU] informing the Applicant of its determination that the letter to the Applicant dated 2 March 2017, which is the focus of the Application, did not constitute a "final decision with direct legal consequences to the terms of [the Applicant's] appointment" and that such a decision

> had not been made. Additionally, with the attached letter, the MEU informed the Applicant of its finding that the matter is not receivable.

6. The Respondent made no legal submission regarding the letter, but simply appended the letter to a coversheet with a heading as stated above.

Background

7. The essential facts in this case are common cause between the parties. The Applicant was a staff member with the United Nations until he resigned from his position to assume a job with an employer outside of the United Nations common system ("the new employer") in February 2017.

8. On 21 March 2017, the Applicant received an e-letter, dated 2 March 2017, from the Chief of the Disciplinary Unit, Administrative Law Section, Office of Human Resources Management, Department of Management ("the Chief"). In this letter, referring to a letter dated 2 February 2017 from the Chief of the Human Resources Policy Section, Office of Human Resources Management to the Applicant, the Chief wrote him that "you were issued allegations of misconduct and were provided with a copy of the documentation referred in this matter". Of relevance, the Chief also stated that:

> Effective […] February 2017, you resigned from service with the Organization. Given that this matter had not been resolved at the time of your separation, the attached note will be placed on your Official Status File [reference to annex omitted]. In accordance with ST/AI/292 (Filing of adverse material in personnel records), a copy of which is also enclosed, you are hereby requested to provide, within two weeks of receiving this letter, any comments you might wish to make in relation to the note.
>
> In addition, it is proposed that the matter will be referred to [the new employer] for their consideration. Please also provide, within two weeks of receiving this letter, any comments you wish to be taken into consideration regarding the proposal to refer the matter to [new employer].
>
> You may refer to the documentation, previously provided to you, to assist you in providing comments on the note to be placed on your Official Status File. Please note that a copy of the documentation

> provided to you will not be placed on your Official Status File; only the note will be placed on your file.
>
> Please be advised that, after the two-week period, the note will be placed on your Official Status File, together with any comments provided. No other documents relating to this matter will be placed on your Official Status File.
>
> If a decision is made to refer this matter to [the new employer], you will be informed.

Request for anonymity

9. In his application for suspension of action, the Applicant submits that any ongoing investigation would be confidential and that publishing his name with any detailed summary of the facts of the case would disclose prejudicial information about an incomplete investigation and disciplinary process into allegations upon which he has not yet commented. He, therefore, requests redaction of the detailed factual circumstances, and to have his name anonymized in the order.

10. The Respondent refers to the Appeals Tribunal's judgment in *Buff* 2016-UNAT-639 in which it held that:

> … our jurisprudence shows that the names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and accountability, and the personal embarrassment and discomfort are not sufficient grounds to grant confidentiality.

11. The Respondent further refers to *Pirnea* 2014-UNAT-456, where the Appeals Tribunal held that "sometimes fortunately and other times unfortunately that the conduct of individuals who are identified in the published decisions, whether they are parties or not, becomes part of the public purview" and "if confidentiality attached to the staff member's identity in each case, there would be no transparency regarding the operations of the Organization, which would be contrary to one of the General Assembly's purposes and goals for the internal justice system".

12. The Respondent also contends that the Applicant did not provide any exceptional circumstances to grant anonymity, given the principle of transparency in

effect in proceedings before the Tribunal. First, the Applicant's concerns about disclosure of "prejudicial information about an incomplete investigation process into allegations that the Applicant has not yet commented on" do not warrant anonymity. Furthermore, the investigation was completed in June 2016. In addition, the case before the Tribunal does not concern sanctions arising from the Applicant's misconduct, but the Organization's invitation for the Applicant's comments on a proposal for referring the matter to his new employer. As such, contrary to the Applicant's contention, publishing his name in an order would not entail disclosure of his possible misconduct. Even in a case where a disciplinary sanction was imposed, the Tribunal took a consistent position in cautioning against granting anonymity without a satisfactory reason, referring to *Yisma* Order No. 63 (NY/2011), para. 11.

13. The Respondent, therefore, requests that the Applicant's request for anonymity in a published order should be rejected as he has not shown any "greater need than any other litigant for confidentiality", including those litigants who challenge misconduct before the internal justice system. The Applicant's possible embarrassment or discomfort in discussing his actions at the United Nations is not a good cause to grant the request for anonymity (referring to *Williams* Order No. 146 (UNAT/2013)).

14. The Tribunal notes that art. 11 of its Statute states that "the judgments of the Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal". Unlike in many domestic courts, generally the case record and filings made before the Dispute Tribunal are not available to the public. The only public documents are judgments and orders that are published on the Tribunal's website. The parties and their counsel are expected to maintain the confidentiality of all written pleadings and documentation relating to the case by ensuring that they are not disclosed to third parties.

15. The granting of anonymity by international tribunals dealing with international civil servants has been the subject of some debate and divergent

practices among various tribunals. Some of the concerns expressed regarding the redaction of applicants' names were that:

> [i]ncreased granting of anonymity will inevitably encourage those with grudges to bring meritless claims and specious accusations under cover of anonymity, wasting Tribunal resources and risking injustice at no reputational cost to the concealed applicant. Increased anonymity will also counter productively foster the impression that resort to the tribunal is a dangerous or shameful act. This is an easily avoidable trap. The commendable healthiness and greater sense of dignity is found in the traditional, openly adversarial system where named applicants know the stakes and conduct themselves in the case accordingly.[1]

16. In the United Nations context, both the Dispute Tribunal and the Appeals Tribunal in their published rulings generally identify the applicants bringing cases before them. The Dispute Tribunal has previously stated that, even though motions for confidentiality must be decided on a case-by-case basis, the granting of same without sufficient reason has the potential to not only invite requests of this kind in every matter, but to negate a key element of the new system of administration of justice—its transparency (*Yisma* Order No. 63 (NY/2011), as also referred to by the Respondent; *Abubakr* UNDT/2011/219; *Rafii* UNDT/2012/205). Transparency is a key element of the new system of justice, but it is an element that must be balanced against the necessity to do justice in individual cases, including by granting certain measures of confidentiality in respect of a party's identity where it is found to be justified for privacy, security or other compelling reasons. It is essentially a question of weighing the public interest against the private interest. The Tribunal's default position is that of transparency, unless the Tribunal determines that a competing interest outweighs it.

17. As the Dispute Tribunal stated in *Abubakr*, unless there are unusual or exceptional circumstances, particularly arising from the evidence presented at a hearing before the Tribunal, motions for confidentiality and redaction should be

[1] Peter C. Hansen, *The World Bank Administrative Tribunal's External Sources of Law: The Next Chapter (2006–2010) (Part II)*, 11 The Law and Practice of International Courts and Tribunals, 449, 479 (2012).

discouraged. For instance, in *Oummih* UNDT/2013/045, the Tribunal found that an applicant's name should be redacted only in exceptional circumstances showing valid reasons to grant special treatment to the applicant as compared to other staff members filing applications. The Tribunal further found in *Oummih* that "a case of conflict between a staff member and her supervisor […] can in no way be considered exceptional" as to justify a redaction of the applicant's name.

18. The Tribunal finds that the facts in this case are clearly distinguishable from the cases cited by the Respondent. The disciplinary process in this case is incomplete and the Applicant's alleged misconduct remains unproven. The Applicant has left the employment of the Organization, and is now gainfully employed elsewhere. In terms of ST/IC/2016/26 (Practice of the Secretary-General in disciplinary matters and cases of criminal behavior, 1 July 2015 to 30 June 2016): not every case indicating possible misconduct results in disciplinary or other measures being taken; when a review by the Office of Human Resources Management reveals that there is insufficient evidence to pursue a matter as a disciplinary case, or when a staff member provides a satisfactory explanation and response to the formal allegations of misconduct, the case is closed. In terms of sec. 15 of the aforesaid ST/IC/2016/26, if a staff member separates from the Organization before an investigation or the disciplinary process is concluded, in the vast majority of cases, the file is closed but a record is made and placed in the former staff member's official status file so that the matter "can be further considered if and when the staff member rejoins the Organization".

19. In other words, the staff member must be presumed innocent until proved otherwise. The aim of an application of this nature is simply preservation of the *status quo,* this matter is not at the merits stage. There will no doubt be facts in dispute if the matter proceeds further. The Tribunal finds that the inclusion of the Applicant's name, and the publication of detailed identifying facts in any published rulings of the Tribunal, is and would be in breach of his fundamental rights to the presumption of innocence until proven guilty, the right to privacy and job security, particularly in view of the incomplete disciplinary process.

20. Considering that the present case concerns a pending disciplinary process and the particular circumstances of the case, the Tribunal will grant the Applicant's request for anonymity and has made the relevant redactions in the present Order.

Applicant's submissions

21. The Applicant's principal contentions may be summarized as follows:

Receivability and prima facie *unlawfulness*

a. It is trite law that the key characteristic of an administrative decision subject to judicial review is that the decision must produce direct legal consequences affecting a staff member's terms or conditions of appointment. Pursuant to the Appeals Tribunal in *Bauzá Mercére* 2014/UNAT/404, "what constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision";

b. The issue is the unilateral decision of the Administration to assume a legal authority it does not have. Specifically, it assumed the right to notify another employer of incomplete disciplinary matters, and then used this unlawful legal authority to threaten the Applicant to reply to its e-letter, which had one intention, notably to illicit a response, and the *modus operandi* of the Administration was to threaten him that it will consider notifying his new employer with regard to an incomplete disciplinary investigation;

c. The act or decision to issue such a threat on 2 March 2017, and to assume an authority that finds no basis in the legal framework of the Organization, can be seen as an unlawful and unscrupulous abrogation of the Administration's obligation to comply with its Staff Rules and Regulations. There is no doubt that such action constitutes *per se* a decision capable of review;

d. It is widely accepted in the civil law tradition that an administrative act that attains a degree of flagrant illegality can be challenged and suspended as a *voie de fait*. The concept describes the situation where the administration decides "to act completely outside its sphere" or where the administrative action "cannot be subsumed within any administrative power". It denotes a gross and flagrant violation, rather than just an abuse of discretion or an erroneous interpretation of the law. In these situations and depending on the level of illegality, the judge may either annul the decision or simply order that the action be disregarded or declared "non-existent". A *voie de fait* clearly arises from the present case, where the Administration: (i) has issued threats to a former staff member notifying him of the possibility of contacting his current employer and disclosing his disciplinary record; and (ii) has clearly acted outside "its sphere" by assuming an authority that it does not have, i.e. the authority to refer confidential employment-related information to external entities as an alternative disciplinary measures. What the Administration is proposing is for the Applicant to respond back in relation to the suggested note to file and why he thinks that contacting his new employer is essentially not a good idea. Such an intent to seek the views of the Applicant regarding contacting his current employer is, by its definition, rhetorical. The Applicant, and indeed any staff member, would be unlikely to agree that notifying his/her current employer of an incomplete investigation would be a good thing to do. Effectively this farcical attempt at due process masks the essentially unlawful character of the decision;

e. Implicit in the 2 March 2017 e-letter is the Administration's decision that it retains the legal authority to contact the Applicant's new employer and that such authority can be exercised and threatened if the Applicant does not adhere to what is demanded of him in relation to the communication. Whilst the e-letter is silent on what action would be taken, it is obvious to any reader of the document that should the Applicant not reply, the Administration would contact the new employer and notify them of the incomplete investigation.

Such a decision notifying the Applicant of an unlawful action is in itself irregular and subject to challenge;

f. In *Melpignano* 2015/UNDT/075, the Dispute Tribunal concluded that the main characteristic of a preparatory decision is “that they do not by themselves alter the legal position of those concerned”. Within this context, a preparatory decision takes place within an existing body of established rules and procedures. The decision to threaten him with contacting his new employer cannot be regarded as a preparatory decision. The Administration has communicated an altered legal position in which it retains authority to sanction a staff member with notification to another employer. Such a position ignores the following: That no conclusion of the investigative/disciplinary process has actually occurred. The Applicant has never been notified that the Administration found clear and convincing evidence of his misconduct and that an appropriate sanction should be administered. Within Chapter X of the Staff Rules and Regulations, no provisions exist that entitle the Administration to administer a sanction of notification to another employer; and, within the Staff Rules and Regulations, no provisions or procedures exist that permit the Administration to initiate such contact and share what it deems important to another employer. By issuing the 2 March 2017 e-letter to the Applicant, the Administration has therefore overreached and unilaterally changed his terms and conditions of appointment by introducing an administrative measure that has no basis in any rules or regulations by which both parties were bound;

g. By determining that it retains the authority to contact his new employer should it choose to do so, the Administration has unilaterally changed the Staff Rules without statutory consent. In doing so, the Applicant is effectively being threatened to comply with the 2 March 2017 e-letter through fear that the Administration will carry out this action. The Applicant would contend that this unilateral change and threat to contact the new employer triggers real legal consequences and changes the relationship

between the ex-staff member and the Administration. The contested decision is not only final, but directly effects the Applicant as he is now required to engage in a referral process by providing a response. Since the Applicant contests the legality of this process and he is not in a position to anticipate what exact procedure will be followed, the request for suspension can only be made at this stage. This stage is appropriate because the decision has not been implemented. Waiting until referral occurs would frustrate the purpose of the request;

Urgency

h. The Applicant has been given two weeks to reply to the 2 March 2017 e-letter in the circumstances in which the Administration has no legal authority to put forward the recommended course of action;

Irreparable damage

i. The Dispute Tribunal has found that harm to professional reputation and career prospects, or harm, or sudden loss of employment may constitute irreparable damage (see *Corcoran* UNDT/2009//071 and *Calvani* UNDT/2009/092);

j. The irreparable harm for the Applicant is two-fold. The first relates to the continuing fear and anxiety caused to the Applicant as a result of not knowing whether the Administration will carry out this unlawful action and contact his new employer. The second, if the Administration is to exercise this threat, the Applicant would suffer direct damage to his reputation with his new employer and possibly his current and future employment;

k. It cannot be right to wait until the Administration carries out such an unlawful action in order to challenge the decision. By the time the Administration has contacted the new employer, the damage would have been done and cannot be rectified. There is no procedure for the manner in which

the Applicant would be notified in advance that the Administration would take such course of action or what would be communicated. Only that the consequence of such a communication would be to amplify the irreparable harm that the Applicant continues to suffer as a result of the Administration's decision.

Respondent's submissions

22. The Respondent's principal contentions may be summarized as follows:

Receivability and prima facie *unlawfulness*

a. No decision has been made to refer the matter to the new employer. The letter was issued in order to seek the Applicant's comments on a proposal that the matter should be referred to the, new employer which is evident in the letter. The letter informed the Applicant that "[i]f a decision is made to refer this matter to [the new employer, the Applicant] will be informed". The decision was not made and accordingly, the Applicant was not informed of a decision;

b. Contrary to the Applicant's contention, the letter did not state that if the Applicant did not respond, the Organization would contact the new employer. The Applicant may have misunderstood that part of the letter advising him that "after the two-week period, the note will be placed on [his] Official Status File, together with any comments provided". This does not mean that the United Nations would contact the new employer regardless of his response to the letter. The letter rather specifically informed the Applicant that he would be informed if a decision was made to refer this matter to the new employer;

c. Given the foregoing, the Applicant's characterization of the 2 March 2017 e-letter as a "decision to issue [...] a threat [that the Organization will consider notifying his new employer with regard to an incomplete disciplinary

investigation]" is not correct. First, contrary to the Applicant's contention, the investigation was complete by June 2016. Further, a decision has not yet been made to notify the new employer of the disciplinary matter. Finally, a decision to "consider" a matter does not constitute an administrative decision until a final decision is made;

d. What constitutes an appealable administrative decision has been the subject of jurisprudence by the former Administrative Tribunal and by the Appeals Tribunal (referring to *Harb* 2016-UNAT-643, para. 25 and *Andati-Amwayi* 2010-UNAT-058, paras 17-19). The Appeals Tribunal, in *Andati-Amwayi*, held that:

> … in other instances [than appointment, or contract of employment of an individual staff member], administrative decisions might be of general application seeking to promote the efficient implementation of administrative objectives, policies and goals. Although the implementation of the decision might impose some requirements in order for a staff member to exercise his or her rights, the decision does not necessarily affect his or her terms of appointment or contract of employment. [...] What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequence of the decision.

e. Having noted the above jurisprudence, the Appeals Tribunal in *Harb*, further summarized that,

> [i]n short, as held by this Tribunal in Lee, the key characteristics of an administrative decision subject to judicial review is that the decision must produce direct legal consequence affecting a staff member's terms and conditions of appointment; the administrative decision must have a direct impact on the terms of appointment or contract of employment of the individual staff member?

f. The issuance of the 2 March 2017 e-letter dated lacks the key characteristics of a challengeable administrative decision, as the letter itself does not affect the terms and conditions of the Applicant's former

appointment or his former contract. The Applicant appears to have recognized this by stating that the 2 March 2017 e-letter dated had "one intention- to illicit a response". The Applicant further stated that the letter was "to threaten the Applicant that it will consider notifying his new employer with regard to an incomplete disciplinary investigation". Contrary to the Applicant's contention that the letter "unilaterally changed his terms and conditions of appointment by introducing an administrative measure that has no basis", no administrative measure was introduced by the letter;

g. Contrary to the Applicant's contention, the Administration has not communicated "an altered legal position in which it retains authority to sanction a staff member with notification to another employer" in the letter. Again, no "legal position" has been taken about the proposed referral and the letter can be only viewed as a preparatory step in initiating internal consideration of the proposed matter. Again, the letter did not state that the matter would be referred to the new employer, regardless of whether he submitted comments, referring also to the Appeals Tribunal in *Nguyen-Kropp and Postica* 2015-UNAT-509, para. 33;

h. The Applicant sought relief that the decision to "initiate a referral process, including the request to provide a response" be suspended. Initiating a process to consider a matter cannot be a challengeable administrative decision. In *Nguyen-Kropp and Postica*, para. 34, the Appeals Tribunal held that "initiating an investigation is merely a step in the investigative process and it is not an administrative decision which the UNDT is competent to review";

i. The Applicant mischaracterised a possible referral to the new employer "as an alternative disciplinary measure" and challenged that the Administration "assume[d] a legal authority it does not have". However, the proposal to refer the matter to the new employer was considered in light of the Administration's authority to declassify confidential information. The 2

March 2017 e-letter sought comments on the possibility of the Organization exercising its authority under ST/SGB/2007/6 (Information sensitivity, classification and handling) concerning confidential information entrusted to or originating from the United Nations;

j. First of all, the information pertaining to a disciplinary process originates from the United Nations and the information is subject to ST/SGB/2007/6. No legal instrument of the Organization allows a subject staff member to own or exercise absolute control over information about a disciplinary referral. Rather, ST/SGB/2007/6 opens a possibility that reasonable discretion may be exercised in considering a referral of a disciplinary matter to an employer outside of the United Nations;

k. ST/SGB/2007/6 generally declares the overall approach of being "open and transparent" with regard to the information emanating from the Organization (sec. 1.1) and designates categories of "sensitive information" which may be classified as "confidential" or "strictly confidential" (sec. 2.2) and later declassified (sec. 4). As a general rule, confidential information, for which no date or event of declassification was specified, is subject to discretionary declassification at any time, by the originator or its recipient if the information is received from an outside source, by the Secretary-General or by such officials as the Secretary-General so authorizes (ST/SGB/2007/6, sec. 4.2);

l. No specific criteria are given in terms of the considerations that should be taken into account when determining the declassification. In addition, specific rules exist in disclosing original versions of the reports of the Office of Internal Oversight Services ("OIOS") to a Member State in accordance with paras. l(c) and 2 of General Assembly resolution A/RES/59/272 (Review of the implementation of General Assembly resolutions 48/218 B and 54/244), adopted on 23 December 2004;

m. Given the foregoing, strict confidentiality of a disciplinary matter is not absolute under the current legal framework. While the confidential nature of disciplinary matters should be duly respected, discretion may be exercised in order to declassify confidential information pertaining to a disciplinary process within the· restrictions set out in the legal framework relating to disciplinary matters, e.g., protection of the privacy and safety of individuals concerned, and procedural fairness issues;

n. In this case, an internal view has been raised that obtaining new employment and resigning from the United Nations during a disciplinary process does not necessarily give a staff member immunity to his or her liability arising from his or her conduct. Ensuring accountability of staff is one of the primary goals of the United Nations. Contrary to the Applicant's contention, a possible referral of this matter to the Applicant's new employer is not beyond the authority of the Organization;

Urgency

o. Given that no administrative decision was taken, there is no need to further consider the requirement of particular urgency. Furthermore, the Application did not specify a reason why the matter is of particular urgency. The two-week period was given to the Applicant for submission of his comments, and not for the decision as to the proposed referral to his new employer. After the two weeks, the Respondent would consider the comments, if any, also taking into account other considerations pertaining to confidentiality requirements and accountability aspects of the matter to determine an appropriate course of action. This obviously takes more time than the two-week period specified in the 2 March 2017 e-letter;

p. The record shows no indication of particular urgency, which would lead to an urgent referral of this matter to the new employer. The evidence in this case was already collected by the fact-finding panel and provided to the

Applicant together with the allegations of misconduct memorandum before his resignation. There is no indication that the United Nations would not give due consideration to the Applicant's comments, if any, on the proposed referral before a final decision is made;

q. Based on the foregoing, the Respondent respectfully submits that the element of urgency is not established;

Irreparable harm

r. Given that there is no administrative decision to contest in this case, no consideration is necessary as to whether there is irreparable harm. Contrary to the Applicant's contention about the "continuing fear and anxiety", the 2 March 2017 e-letter clearly informed the Applicant that, if a decision is made to refer this matter to his new employer, he would be informed. This relieves the Applicant from the alleged fear and anxiety as a result of not knowing whether the Administration will contact same ;

s. The second harm alleged by the Applicant, namely, direct damage to his reputation with his new employer and possibly his current and future employment, is speculative, depending on the outcome of any process at his new employment, if any. It appears that the Applicant assumed that action would be taken by his new employer following a possible referral. Such action, if taken should not be labelled as irreparable harm to his reputation, but be regarded as him taking responsibility/accountability, which constitutes the very basis for the proposal for referring the matter to the new employer.

Consideration

23. In this case, neither party has made issue with the fact that the MEU completed its management evaluation of the contested decision on 28 March 2017. However, the Dispute Tribunal is enjoined to examine by itself (*sua sponte*) its own jurisdiction or competence to adjudicate a certain matter (see, for instance, *O'Neill*

2011-UNAT-182; *Christensen* 2013-UNAT-335; *Tintukasiri et al.* 2015-UNAT-526; *Harb* 2016-UNAT-643; *Babiker* 2016-UNAT-672).

24. Article 2.2 of the Dispute Tribunal's Statute states:

> 2. 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.

25. Thus, in accordance with art. 2.2, 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 cases of particular urgency, and where its implementation would cause irreparable damage. The Tribunal can suspend the contested decision only if all three requirements of art. 2.2 of its Statute have been met during the pendency of the management evaluation.

26. It also follows that the suspension of action of a challenged decision may only be ordered when management evaluation for that decision has been duly requested and is still ongoing or pending (*Igbinedion* 2011-UNAT-159; *Benchebbak* 2012-UNAT-256).

27. In this case, it follows from the information submitted by the Respondent on 28 March 2017, that there is no longer an ongoing or pending management evaluation.

28. Since an application under art. 2.2 of the Statute is predicated upon an ongoing and pending management evaluation, and as the management evaluation in this case is no longer pending and has been completed, there is no longer any basis for the Applicant's request for suspension of action, and the application is dismissed.

29. Consequently, it is not necessary for the Tribunal to examine if the three statutory requirements specified in art. 2.2 of its Statute, namely *prima facie* unlawfulness, urgency and irreparable damage, are met in the case at hand.

Order

30. There being no ongoing management evaluation, the application for suspension of action is dismissed.

(*Signed*)

Judge Ebrahim-Carstens

Dated this 30th day of March 2017