



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NY/2017/087  
Order No.: 185 (NY/2017)  
Date: 11 September 2017  
Original: English

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**Before:** Judge Ebrahim-Carstens  
**Registry:** New York  
**Registrar:** Morten Albert Michelsen, Officer-in-Charge

AGHA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON SUSPENSION OF ACTION**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Alan Gutman, ALS/OHRM

## **Introduction**

1. On 6 September 2017, the Applicant, a former staff member, filed an application at 5:26 p.m. under art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure seeking to suspend the decision, pending management evaluation, to continue the recruitment process for a Senior Security Officer post at the S-3 level ("the S-3 Post") at the United Nations Department of Safety and Security ("UNDSS"), JOB ID 77938, in New York. The Applicant alleges that the decision violates his right of reinstatement to the fixed-term contract he was previously encumbering with UNDSS.

2. On 7 September 2017, the Registry acknowledged receipt of the application and, as directed by the Tribunal, instructed the Respondent to file a reply no later than 8 September 2017 at 4:00 p.m.

3. On 8 September 2017, the Respondent duly filed his reply contending that the application be dismissed on the grounds that the management evaluation is no longer pending. In his reply, the Respondent enclosed a copy of the response of the Management Evaluation Unit ("MEU") dated 8 September 2017 in which the MEU determined that the Applicant's 7 September 2017 request was not receivable.

4. On 11 September 2017, the Applicant filed an additional submission in which he contended that although he had received a response from the MEU, "[t]he Tribunal is competent to issue a suspension of order to not to promote any junior officer against the forcibly vacated post on 24/02/2107 [,] like the UNDT gave a Suspension of action in case Adundo et al. vs SG under decision no 2012/077".

## Consideration

### *Legal framework*

5. Article 2.2 of the Statute of the Dispute Tribunal provides (emphasis added):

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.

6. 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.

7. It also follows that the suspension of action of a challenged decision under art. 2.2 may only be ordered when management evaluation for that decision has been duly requested and is still ongoing (*Igbinedion* 2011-UNAT-159, *Benchebbak* 2012-UNAT-256).

8. In this case, the MEU completed its review of the request for management evaluation on 8 September 2017 and concluded that it was not receivable. The MEU found that the Applicant lacked standing to challenge the contested decision, and the MEU lacks authority to review it. The MEU noted that the Applicant's last letter of appointment expired on 28 February 2017. The Applicant, therefore, no longer held a valid appointment with the United Nations after 28 February 2017, and thus was not a United Nations staff member as of 1 March 2017. Pursuant to staff rule 11.2(c) a

person wishing to avail themselves of the right to challenge an administrative decision must, by the terms of that rule, be a staff member. The MEU noted that the Job Opening for the S-3 Post which the Applicant seeks to challenge was posted on 21 April 2017, after the end of his fixed-term appointment. As the Applicant was not a staff member at the relevant date, the MEU concluded that the Applicant's request for a management evaluation was not receivable.

9. The Applicant's reference to *Adundo et al.* UNDT/2012/077 in his submission dated 11 September 2017 is not relevant to this matter. The judgment in that case was made pursuant to a motion for interim measures under art. 10.2 of the Statute, and appurtenant to a pending substantive matter filed by then current staff members. In terms of art. 10.2 of the Tribunal's Statute, the Dispute Tribunal may, at any time during pending proceedings, order an interim measure to provide temporary relief to either party provided the three requirements of *prima facie* unlawfulness, urgency and irreparable harm are met. This relief may include an order to suspend the implementation of the contested administrative decision.

10. In this case however, the Applicant submitted an application entitled, "Application for suspension of action pending management evaluation", which falls under art. 2.2 of the Statute. Even if in his submission of 11 September 2017, the Applicant refers to his other application filed with the Dispute Tribunal as "a different appeal in process with UNDT/084/17", there is no indication and no application for interim measures pending a substantive action. Thus, there is no doubt that this is an application for suspension of action pending management evaluation.

11. 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.

12. 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**

13. The application for suspension of action is dismissed.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 11<sup>th</sup> day of September 2017