



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/033

Order No.: 149 (NY/2018)

Date: 31 July 2018

Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Pallavi Sekhri, Officer-in-Charge

RUSSO-GOT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON WITHDRAWAL OF AN
APPLICATION FOR SUSPENSION OF
ACTION**

Counsel for Applicant:
Natalie Dyjakon, OSLA

Counsel for Respondent:
Kong Leong Toh, UNOPS

Introduction

1. On Monday, 30 July 2018, shortly before close of business day, at 4:16 p.m., the Applicant, a Project Manager at the P-3 level with a fixed-term appointment working with the United Nations Office of Project Services (“UNOPS”), filed an application 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 “abolish his current post of Project Manager at the P-3 level and to subsequently not renew his fixed-term contract beyond close of business (COB) 31 July 2018”. The Applicant also challenges the decision of the Administration to not make good faith efforts to assist him in finding an alternative suitable position after it decided to abolish his post.

2. Together with his application, referring to arts. 19 and 36 of the Dispute Tribunal’s Rules of Procedure and the Appeals Tribunal’s judgment in *Villamorán* UNAT/2011/160, the Applicant also filed a motion requesting that the contested decision be suspended pending the Tribunal’s consideration of the suspension of action proceedings, submitting that his contract will end on 31 July 2018.

3. Due to the apparent extreme urgency of the matter, by email of 30 July 2018, the New York Registry transmitted the present application and motion to the Respondent at 5:58 p.m. informing him that he had until 12 p.m., Tuesday, 31 July 2018, to submit his reply.

4. The application was assigned in the late afternoon of 30 July 2018 to the undersigned Judge as the only Presiding Judge in New York for the month of July 2018. Due to the impending deadline for implementation of the non-renewal of the Applicant’s contract at COB 31 July 2018, the Tribunal prepared the interlocutory order for suspension, (pending consideration of the application for suspension

pending management evaluation), under article 2.2 of the Statute on an expedited basis. However, such order was not issued as the Respondent filed his reply at 10:34 a.m., 31 July 2018, submitting that:

[...] As the Respondent is not able to ascertain the facts of this case by that deadline, the Respondent wishes to inform the Tribunal that the Respondent has voluntarily suspended the implementation of the contested decision pending management evaluation.

5. After several attempts by the Tribunal to seek Applicant's Counsel's confirmation of the suspension of the implementation of the contested decision or decisions, Counsel finally filed the Applicant's request for withdrawal of proceedings with the Registry at 2:00 p.m. on 31 July 2018, advising that the Applicant was withdrawing the proceedings, as "the Respondent confirmed that it has suspended the implementation of the contested decision pending management evaluation. Accordingly, the Applicant hereby withdraws his Application in Court File Number UNDT/NY/2018/033."

6. Whilst neither party has given any details or particulars as to the implementation of the contested decision/s, the Tribunal understands the Respondent's concession to mean that the Administration has suspended the contested decision pending management evaluation, to the satisfaction of the Applicant. Respondent Counsel's undertaking on behalf of the Secretary-General is a confirmation that the *status quo* will be preserved pending the management evaluation. Accordingly, there is no need for the Tribunal to issue an order suspending implementation of the contested decision pending management evaluation as this suspension has already been granted by the Administration.

7. Since the Applicant has requested the withdrawal of his application, there is no longer any determination for the Tribunal to make on the motion for interlocutory measures or application for suspension of action pending management evaluation.

IT IS ORDERED THAT:

8. The Applicant having requested withdrawal of the application for suspension of action and interlocutory measures, the contested decision having been suspended, there is no further determination to be made by the Tribunal. Case file number UNDT/NY/2018/033 is hereby closed.

(Signed)

Judge Ebrahim-Carstens

Dated this 31st day of July 2018