



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

SEXTON

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**ORDER**

**ON SUSPENSION PENDING THE  
CONSIDERATION OF AN  
APPLICATION FOR SUSPENSION OF  
ACTION UNDER ART. 2.2 OF THE  
DISPUTE TRIBUNAL'S STATUTE**

---

**Counsel for Applicant:**  
Aleksandra Jurkiewicz, OSLA

**Counsel for Respondent:**  
ALS/OHRM, UN Secretariat

## **Introduction**

1. On Friday, 26 October 2018, at 4:40 p.m., the Applicant, a Publishing Assistant at the G-4 level with the Department for General Assembly and Conference Management (“DGACM”) in New York, represented by the Office of Staff Legal Assistance (“OSLA”), filed an application requesting urgent relief under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure seeking to suspend, pending management evaluation, the decision by the DGACM not to renew the Applicant’s fixed-term appointment beyond the expiration date of 31 October 2018.

2. On the same day, the application was registered and assigned to the undersigned Judge and served on the Respondent at 6:13 p.m., directing, upon the instructions of the assigned Judge, that a reply be filed by 4:00 p.m. on Tuesday, 30 October 2018.

## **Consideration**

3. Article 13.3 (Suspension of action during a management evaluation) of the Tribunal’s Rules of Procedure provides that the Tribunal “shall consider an application for interim measures within five working days of the service of the application on the respondent”.

4. Considering that the application was served upon the Respondent after the Tribunal’s working hours on Friday, the Tribunal deems Monday 29 October 2018 as the day of service upon the Respondent. Accordingly, the Tribunal has until Monday, 5 November 2018, to consider the application served on the Respondent on 29 October 2018.

5. In *Villamorán* 2011-UNAT-160, the Appeals Tribunal upheld this Tribunal’s *Villamorán* Order No. 171 (NY/2011) finding that the Dispute Tribunal was within its competence to order a suspension of the contested decision pending a

determination of the application for suspension of action on the basis of the aforesaid Rules of Procedure and without having to make a finding as to whether the requirements of a suspension of action under art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure had been met. The Appeals Tribunal, *inter alia*, found that:

43. Where the implementation of an administrative decision is imminent, through no fault or delay on the part of the staff member, and takes place before the five days provided for under Article 13 of [the Dispute Tribunal's, "UNDT"] Rules have elapsed, and where the UNDT is not in a position to take a decision under Article 2(2) of the UNDT Statute, i.e. because it requires further information or time to reflect on the matter, it must have the discretion to grant a suspension of action for these five days. To find otherwise would render Article 2(2) of the UNDT Statute and Article 13 of the UNDT Rules meaningless in cases where the implementation of the contested administrative decision is imminent.

6. The Tribunal notes that the implementation of the administrative decision is imminent and will take effect on 31 October 2018, and thus the matter is urgent. In light thereof and on the facts before it the Tribunal accepts the Applicant's submission that the urgency is not self-created as new underlying facts have recently arisen such that the Applicant, having initially filed a management evaluation request on 5 October 2018, was constrained to file an amended management evaluation request on 26 October 2018. Furthermore, not only the interests of justice, but the balance of convenience test dictate the grant of urgent relief in this case, pending the consideration of the application for suspension of action pending management evaluation.

7. The Tribunal finds it appropriate to order that, as from the time and date of service of the present Order on the parties, no further steps regarding the non-renewal decision shall be undertaken until the determination of the suspension of action (*Nunez* Order No. 17 (GVA/2013); *Quesada-Rafaraso* Order No. 20 (GVA/2013); *Charles* Order No. 61 (NY/2013); *Kallon* Order No. 80 NY/2013); *Gandolfo* Order No. 97 (NY/2013)).

IT IS ORDERED THAT:

8. The Respondent shall not undertake, as from the date and time of service of the present Order, any further steps regarding the non-renewal decision until the determination of the present suspension of action application.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 29<sup>th</sup> day of October 2018