



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

LAMOTHE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON SUSPENSION OF ACTION  
PENDING MANAGEMENT  
EVALUATION**

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**Counsel for Applicant:**  
Natalie Dyjakon, OSLA

**Counsel for Respondent:**  
Zarqaa Chohan, UNICEF

## **Introduction**

1. On Friday, 28 December 2018, the Applicant, an Emergency Officer with the United Nations International Children's Emergency Fund ("UNICEF") at the P-2 level in New York, filed an application for suspension of action pending management evaluation under art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure, seeking to suspend UNICEF's decision to:

- a. Abolish his post and not renew his fixed-term contract beyond 31 December 2018;
- b. Not make good faith efforts to assist him in finding an alternative position after the decision to abolish his post; and
- c. Recruit for the post of Emergency Officer, P-2 level, New York Headquarters, no. 103033.

2. Together with his application, referring to arts. 19 and 36.1 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 decisions be suspended pending the Tribunal's consideration of the suspension of action proceedings, submitting that he will otherwise be separated when his contract ends on 31 December 2018.

3. Considering that the Applicant requested immediate suspension of the contested decisions pending the Tribunal's consideration of the application for suspension of action pending management evaluation, and there being no available Judge in New York at the time, the application was redirected to the Geneva Registry on the same day.

4. On Monday, 31 December 2018, by Order No. 206 (GVA/2018), the Tribunal suspended the implementation of the contested decisions until the determination of the present application for suspension of action, without prejudice to any receivability consideration arising. The Tribunal also ordered that the venue of the case be changed to New York for further processing and adjudication of the application upon the return of the now Presiding Judge from leave.

5. On the same day, the case was registered and assigned to the undersigned Judge in New York, and the Respondent was directed to submit his reply by 3 January 2019.

6. On 3 January 2019, the Respondent filed a reply stating, *inter alia*, that the application was not receivable, that all good faith efforts had been made to assist the Applicant in finding a suitable position, and also that the Applicant had received a response to his management evaluation request on 2 January 2019, attaching a copy of said response to his reply.

## **Consideration**

### *Legal framework*

7. Article 2.2 of the Statute of the Dispute Tribunal provides:

... 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.

8. Article 13.1 of the Tribunal's Rules of Procedure states:

... The Dispute Tribunal shall order a suspension of action 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.

9. In accordance with art. 2.2 of the Dispute Tribunal's Statute, 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 case of particular urgency, and where its implementation would cause irreparable damage. The Dispute Tribunal can suspend the contested decision only if all three requirements of art. 2.2 of its Statute have been met.

10. 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 and pending (*Igbinedion* 2011-UNAT-159, *Benchebbak* 2012-UNAT-256).

11. In the present case, the Applicant received the response to his management evaluation request on 2 January 2019. Since an application under art. 2.2 of the Tribunal's 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.

**Conclusion**

13. In light of the foregoing, the Tribunal ORDERS:

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

*(Signed)*

Judge Ebrahim-Carstens

Dated this 4<sup>th</sup> day of January 2019