



**Before:** Judge Alexander W. Hunter, Jr.

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

KEH

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**ORDER**

**ON SUSPENSION OF ACTION  
PENDING MANAGEMENT  
EVALUATION**

---

**Counsel for Applicant:**  
Daniel Trup, OSLA

**Counsel for Respondent:**  
Esther Shamash, UNDP

## **Introduction**

1. On 22 January 2019, the Applicant, a Director, with the United Nations Development Programme (“UNDP”) at the D-2 level on a permanent appointment, 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 requesting a suspension of action of an alleged decision by the Administration to separate him from service on 30 January 2019.

2. 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 25 January 2019.

3. On 25 January 2019, the Respondent filed a reply stating that the Applicant has filed the application preemptively as there has been no decision to terminate the Applicant’s appointment.

## **Facts**

4. The Applicant is a permanent appointment holder who has worked for the Organization for 26 years. Between 2015 and 2017, the Applicant served as Country Director at the D-2 level for UNDP Afghanistan.

5. In September 2017, the Applicant returned to New York and undertook two temporary positions, first with UNDP Regional Bureau for Asia Pacific Group, and then as part of UNDP Bureau for Policy and Programme Support, serving in the capacity as Deputy Director at the D-2 level.

6. On 30 July 2018, the Applicant was notified that, following a further reorganization, he would be placed in the UNDP’s transition pool for a period of six months. The purpose of UNDP’s transition pool is to keep staff members who are not currently serving in any capacity on payroll with full benefits while they apply for

positions. The notification advised the Applicant that he should actively apply for posts, failing which, in the absence of an agreed separation, he would be terminated from service.

7. In the period between 30 July 2018 and 23 November 2018, the Applicant actively searched for positions within the Organization, including writing to all UNDP Regional Bureaus in order to request the availability of short-term assignments and applying for a number of available positions. The Applicant has not been selected for any position to date.

8. The six-month placement in the UNDP transition pool is shortly to expire.

### **Consideration**

#### *Legal framework*

9. 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.

10. 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.

11. Examination of the above-mentioned three cumulative conditions requires the existence of an administrative decision that produces direct legal consequences affecting a staff member's terms of appointment (see *Lee* 2014-UNAT-481 and *Nguyen-Kropp/Postica* 2015-UNAT-509)

12. In the present case, the Applicant submits that he "has informally become aware that it is the intention of the Administration to terminate his permanent appointment". The Applicant further states that the matter is urgent because as of 30 January 2019, he will be separated from service. The Applicant contends that the decision to separate him from service is unlawful as it violates the contractual protections afforded to staff members with permanent appointments. In particular, the Applicant submits that the Administration breached its obligations in relation to giving him proper and priority consideration as a permanent staff member for available suitable posts.

13. The Respondent on the other hand states that the Applicant has filed the application preemptively as there has been no decision to terminate the Applicant's appointment. Accordingly, the Applicant has not been notified of any decision to separate him from service. The Respondent contends that a staff member cannot preemptively challenge a decision of which he has not yet been notified.

14. After consideration of the parties' submissions and of the supporting documentation, this Tribunal is of the view that there is no administrative decision carrying legal consequences to the Applicant's terms of appointment. There is no evidence that a decision to separate the Applicant from service has been made. The Applicant has not been notified that he will be separated from service on 30 January 2019 and the Respondent stated in his reply that there has been no decision to terminate the Applicant's appointment.

15. In the absence of an administrative decision, the Tribunal can only conclude that the application is not receivable *ratione materiae*, and it does not need to

examine if the three statutory requirements specified in art. 2.2 of its Statute are met in the case at hand.

**Conclusion**

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

The application for suspension of action is dismissed since there is no administrative decision to challenge.

*(Signed)*

Judge Alexander W. Hunter, Jr.

Dated this 28<sup>th</sup> day of January 2019