



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

EL BAGHIR OSMAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:
Self-represented

Counsel for Respondent:
ALD/OHR

Introduction

1. On Sunday, 27 January 2019, the Applicant, a Senior Reviser at the P-5 level, step 7, with a permanent appointment working with the Department for General Assembly and Conference Management, 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 terminate his permanent appointment on 31 January 2019 at the close of business.

2. On 28 January 2019, the Registry acknowledged receipt of the application for suspension of action and served it on the Respondent, directing him, upon the instructions of the undersigned Judge, to file a reply by 3:00 p.m. on 30 January 2019.

Consideration

3. In accordance with art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure, the three statutory substantive conditions for granting a suspension of action during the pendency of management evaluation are: *prima facie* unlawfulness, urgency and irreparable harm.

4. The Tribunal notes that, pursuant to art. 13.3 of the Rules of Procedure, it shall consider the application for suspension of action within five working days of service of the application on the Respondent and that the day of service is not to be counted for this purpose (see art. 34(a) of the Rules of Procedure). The Tribunal must therefore consider the application before 4 February 2019. In the present case, the termination of the Applicant's permanent appointment is set to take effect on 31 January 2019 at the close of business and, if the Tribunal does not decide on the application for suspension of action before then, the purpose of this application would be lost because it cannot suspend the termination decision if it has already been implemented under art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure.

5. In *Villamorán* 2011-UNAT-160, the Appeals Tribunal held that the Dispute Tribunal may suspend the contested decision pending its consideration of the application for suspension of action 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 have been met in the following circumstances,

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 Applicant states that, on 14 November 2018, he was notified of the decision to terminate his permanent appointment by 31 January 2019 at close of business. The Tribunal further notes that:

a. By correspondence dated on 30 December 2018 and 1 January 2019, to the Management Evaluation Unit, the Applicant requested a management evaluation of the decision to terminate his appointment;

b. On 17 January 2019, the Applicant filed an application on the merits to this termination decision;

c. On 18 January 2019, the Applicant filed a motion for interim measures requesting the termination to be suspended during the Tribunal's consideration of the application on the merits; and

d. By Order No. 16 (NY/2019) dated 22 January 2009, this motion was rejected as, under its Statute, the Tribunal cannot suspend a termination decision as an interim measure during its proceedings.

7. The Tribunal finds that, while the Applicant could have filed the present application at an earlier stage, considering that he is self-represented and under the particular circumstances of the case and also taking into account the gravity of his situation, namely the possible termination of his permanent appointment, the delay is not self-inflicted.

8. Furthermore, the Tribunal observes that management evaluation of this decision is apparently currently pending as, on 2 January 2019, the Management Evaluation Unit informed the Applicant that it had received his request for such evaluation. Also, the Tribunal notes that the Respondent has not had an opportunity to reply to the application for suspension of action, that the Tribunal does not have all the relevant information before it, and that it might need additional time to reflect on the matter.

9. Accordingly, the Tribunal finds that that the requirements for an interim order pending the Tribunal's determination of the suspension of action as per *Villamorán* are met.

IT IS ORDERED THAT:

10. Without prejudice to the Tribunal's determination of the application for suspension of action under art. 2.2 of the Tribunal's Statute, the implementation of the contested decision shall be suspended until the Tribunal has rendered its decision on this application, or until further order.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 28th day of January 2019