UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NY/2021/001
Order No.:	2 (NY/2021)
Date:	4 January 2021
Original:	English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

MENDEZ

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:
Robbie Leighton, OSLA

Counsel for Respondent:
UN Secretariat

Introduction

1. On 4 January 2021, the Applicant, a staff member with the United Nations Ombudsman and Mediation Services, 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 not to renew her fixed-term appointment beyond 31 December 2020.

2. Together with the application for suspension of action, the Applicant also files a motion for suspension of the contested decision during the pendency of the Tribunal's consideration of this application (a so-called *Villamoran*-type request).

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. In *Villamoran* 2011-UNAT-160, the Appeals Tribunal upheld this Tribunal's *Villamoran* 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 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.

5. The Applicant submits that the Administration decided not to renew her fixed-term appointment beyond 31 December 2020 on the basis that her post was expected to be abolished in the new budget starting on 1 January 2021. However, the Applicant submits that in the approved budget for 2021, which was adopted on 31 December 2020, it was decided that her post would not be abolished until after she reached the

mandatory retirement age. The Applicant also submits that, on 28 December 2020, she requested sick leave until 15 January 2021.

6. In order for the Tribunal to seek and consider the Respondent's reply to the present suspension of action application, the Applicant's *Villamoran* request is granted.

IT IS ORDERED THAT:

7. Without prejudice to the Dispute Tribunal's decision on the application for suspension of action under art. 2.2 of its Statute and art. 13 of its Rules of Procedure, the Respondent shall not undertake, as from the date and time of service of the present Order, any further steps regarding the contested decision to separate the Applicant.

8. The Respondent shall submit his reply by **4:00 p.m. on Wednesday, 6 January 2021 (New York Time).**

(Signed)

Judge Joelle Adda

Dated this 4th day of January 2021