



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/055  
Order No.: 107 (NY/2021)  
Date: 11 November 2021  
Original: English

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**Before:** Judge Joelle Adda  
**Registry:** New York  
**Registrar:** Nerea Suero Fontecha

PASCAL

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**  
**ON AN APPLICATION FOR**  
**SUSPENSION OF ACTION**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Clémentine Foizel, ALD/OHR, UN Secretariat

## **Introduction**

1. On 8 November 2021, the Applicant filed an application for suspension of action requesting the suspension of the “administrative decision to terminate [his] permanent employment with immediate effect after 21 years of service to the Organization”.

2. On 10 November 2021, upon the instructions of the Tribunal, the Respondent replied that the application is not receivable because the contested decision was already implemented on 8 October 2021.

## **Consideration**

3. In accordance with art. 2.2 of the Dispute Tribunal’s Statute and art. 13.1 of the Rules of Procedure, the Tribunal may suspend the implementation of a contested administrative decision during the pendency of management evaluation.

4. For an application for suspension of action to be receivable, a basic requirement is therefore that the relevant decision is yet to be implemented. If the decision, lawful or not, has already been implemented—in a case concerning suspension of action under art. 2.2 of the Dispute Tribunal’s Statute and art. 13.1 of its Rules of Procedure—the Tribunal is not authorized to suspend it, because neither the Statute nor the Rules of Procedure allows the Tribunal to reverse an already implemented contested administrative decision in this context. Instead, if an applicant seeks the Dispute Tribunal to rescind an administrative decision that has already been implemented (or order specific performance), s/he must request this as relief in an application on the merits with reference to art. 10.5(a) of its Statute.

5. In the present case, the Applicant indicates in his application for suspension of action that the contested administrative decision was implemented on 8 October 2021. This information is confirmed by the Respondent in his reply. In line herewith, in the letter of termination dated 8 October 2021, which the Applicant appends to his application, is stipulated that the termination of the Applicant’s appointment was “effective immediately”.

Also, the Respondent submits in evidence a personnel action form dated 9 October 2021 in which next to “Action Type” is indicated “Separation / Termination”.

6. The Applicant argues that his termination is “a decision that has ongoing implementations and legal effect” on his contractual status with reference to *Calvani* UNDT/2009/092. The Tribunal disagrees therewith. Termination is rather a single administrative act by which the Administration decides to end the employment relationship between the staff member and the Organization. In this regard, the Tribunal refers to staff rule 9.1, where “termination of appointment” is listed as one of six circumstances by which a separation from service can be enacted, and also staff rule 9.6, where termination is defined as “a separation from service initiated by the Secretary-General”. Once the termination of a staff member’s appointment has been effectuated, there is no longer a contractual employment relationship between her/him and the Organization—an administrative decision concerning termination of appointment is therefore not continuous.

7. Accordingly, the Tribunal finds that the contested administrative decision was implemented before the Applicant’s filing of the application for suspension of action.

8. In the application for suspension of action, the Applicant also takes issue with the Administration’s denying him of “all entitlements and privileges as a long serving United Nations staff including accumulated Home leave ... which ... was already approved and the lump sum for travel funds was already credited to [his] account in preparation for travel (which [he] now must reimburse [to] the Organization)”.

9. The Tribunal notes that, under art. 2.2 of the Dispute Tribunal’s Statute and art. 13.1 of the Rules of Procedure, another basic requirement for an application for suspension of action to be receivable is that a response to a request for management evaluation must be pending.

10. The Tribunal, however, notes that the Applicant makes no mention of any decisions regarding his entitlements and privileges in his request for management evaluation dated 5 November 2021, which he also appended to his application. Consequently, no challenges regarding the Applicant’s entitlements and privileges are pending management evaluation in the present case.

**Conclusion**

11. The application for suspension of action is rejected as not receivable.

*(Signed)*

Judge Joelle Adda

Dated this 11<sup>th</sup> day of November 2021