



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/012

Order No.: 033 (NY/2022)

Date: 25 March 2022

Original: English

**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

LAWAL

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON APPLICATION FOR SUSPENSION  
OF ACTION**

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**Counsel for Applicant:**

Robbie Leighton, OSLA

**Counsel for Respondent:**

Jérôme Blanchard, LPAS/UNOG

Note: This order has been corrected.

## **Introduction**

1. On 23 March 2022, the Applicant, a staff member of the United Nations Office for Disaster Risk Reduction, filed an application requesting, under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure, the suspension pending management evaluation of the decision not to renew her fixed-term appointment beyond its expiration on 31 March 2022.

## **Factual background**

2. The Applicant’s 2019-2020 performance evaluation identified several performance shortcomings. A Performance Improvement Plan (“PIP”) was implemented from 22 March 2021 to 20 August 2021.

3. In June 2021, the Applicant’s performance appraisal for the 2020-2021 cycle was rated as “partially meets performance expectations”.

4. A second PIP was implemented from 27 September 2021 to 27 January 2022.

5. On 18 February 2022, the Applicant was notified of the decision not to renew her fixed-term appointment beyond its expiration on 31 March 2022 for unsatisfactory performance.

6. On 23 March 2022, the Applicant sought management evaluation of the decision not to extend her fixed-term appointment and filed the present application.

## **Consideration**

7. Under 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 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 have been met.

### *Urgency*

8. Urgency is relative and each case will turn on its own facts, given the exceptional and extraordinary nature of such relief. If an applicant seeks the Tribunal's assistance on an urgent basis, she or he must come to the Tribunal at the first available opportunity, taking the particular circumstances of her or his case into account (*Evangelista* UNDT/2011/212). The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the applicant (*Villamorán* UNDT/2011/126; *Dougherty* UNDT/2011/133; *Jitsamruay* UNDT/2011/206).

9. The Applicant states in respect of the urgency of her application that "she will be separated at the end of the month. She was provided with less than 45 days' notice of separation. Given the amount of notice provided to the Applicant regardless of how quickly she filed an MER [assumedly an abbreviation for management evaluation request] suspension would have been required given the usual deadline for management evaluation response. The Applicant has acted diligently in filing her MER and this suspension request which would have been filed yesterday but for illness on the part of her Counsel for which she should not be penalized".

10. In response, the Respondent recalls that the Applicant was informed of the contested decision on 18 February 2022, more than a month before she filed the present application and the request for management evaluation and therefore the urgency is self-created.

11. The Tribunal notes that a suspension of action application only requires a *prima facie* review by the Tribunal. Therefore, as stated above, the applicant must come to the Tribunal at the first possible opportunity to seek the interim preservation of his or her rights to enable him or her to prepare a fully reasoned submission on the merits.

12. The Applicant in this case, who is represented by professional counsel, fails to provide any reason why she took more than a month to submit the present application and the argument that due to her Counsel's illness, she was unable to submit the application a day earlier is unpersuasive.

13. Therefore, the Tribunal considers that, in this case, the urgency was self-created.

*Prima facie unlawfulness and irreparable harm*

14. As the Applicant has not satisfied the requirement of urgency, the application fails and there is no need to examine the conditions of *prima facie* unlawfulness and irreparable harm.

IT IS ORDERED THAT:

15. In light of the above, the application for suspension of action is rejected.

*(Signed)*

Judge Joelle Adda

Dated this 25<sup>th</sup> day of March 2022