



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/005

Order No.: 020 (NY/2023)

Date: 10 March 2023

Original: English

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**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Isaac Endeley

GUTIERREZ RODRIGUEZ

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:**  
Ana Giulia Stella, OSLA

**Counsel for Respondent:**  
Prue Smith, UN Women

## **Introduction**

1. On 7 March 2023, the Applicant, a staff member with UN Women, filed an application for suspension of implementation of the decision to not renew his fixed-term appointment beyond 15 March 2023 due to unsatisfactory performance.

2. On 9 March 2023, upon the order of the Tribunal, the Respondent filed his reply stating that the Applicant has failed to establish that the three requirements for suspension of action were met in this case.

## **Factual background**

3. On 15 March 2021, the Applicant joined UN Women in Bogota, Colombia as an Operations Manager, under a fixed-term appointment expiring on 15 March 2023.

4. On 27 April 2022, the Applicant and his supervisor met to discuss his 2021 performance and 2022 performance management plan. The supervisor provided him with feedback as to his performance, specifically including areas where improvement is required and seeking his comment and feedback. The Applicant also received his feedback from his supervisor related to the 2021 performance evaluation cycle, via the “End-of-Cycle Performance Assessment 2021”. In this feedback, the supervisor highlighted areas for improvement related to awareness and sensitivity to gender issues, inclusive collaboration and creative problem solving. The Applicant received a “partially meets expectations” rating for “Awareness and sensitivity regarding gender issues” and a “partially meets expectations” rating for “Inclusive collaboration”.

5. The Applicant did not rebut or otherwise challenge or reject the “End-of-Cycle Performance Assessment 2021”.

6. A decision was made to place the Applicant on a performance improvement plan (“PIP”) from 1 June 2022 to 30 November 2022 due to the Applicant’s unsatisfactory performance. The PIP was developed and agreed between the Applicant and his supervisor, and the Applicant signed the PIP, indicating his agreement to it.

7. On 20 December 2022, the Applicant received the PIP evaluation which indicated that he had not met the targets. On the same day, the Applicant was notified that his fixed-term appointment would not be renewed past 15 March 2023 due to his unsatisfactory performance.

8. On 17 February 2023, the Applicant filed a request for a management evaluation of the contested decision.

9. On 7 March 2023, the Applicant filed the present application.

## **Consideration**

### *Legal framework*

10. 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 only suspend any contested administrative decision if all three requirements have been met.

### *Particular urgency*

11. The Dispute Tribunal has consistently held that urgency is relative and that each case regarding suspension of action will turn on its own facts, given the exceptional and extraordinary nature of such relief (see, for instance, *Farhadi* Order No. 131 (GVA/2017)

and *Montecillo* Order No. 54 (NY/2019)). 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 (see, for instance, *Evangelista* UNDT/2011/212, *Farhadi* Order No. 131 Case No. UNDT/NY/2019/081 (GVA/2017) and *Nsubuga* Order No. 85 (NBI/2019)).

12. 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 (see, for instance, *Villamorán* UNDT/2011/126, *Dougherty* UNDT/2011/133, and *Jitsamruay* UNDT/2011/206).

13. In the present case, the Applicant submits that he was notified on 20 December 2022 that his fixed-term appointment will not be renewed due to unsatisfactory performance.

14. The Applicant filed the present application on 7 March 2023, eleven weeks after this notification. The Applicant submits that the matter is now urgent because his appointment will not be renewed beyond 15 March 2023. However, the Applicant does not provide any submissions to explain the delay in filing his application.

15. The Tribunal notes that whereas the Applicant has known about the contested decision since 20 December 2022, he only files his application for suspension of action of this decision on 7 March 2023— eleven weeks later, and only eight days before the expiry of his appointment. In *El-Awar* Order No. 153 (NBI/2018) this Tribunal found that a delay of twenty days between being notified of a decision to separate the applicant in that case from service and filing a request for suspension of action amounted to self-created urgency and denied the application for suspension of action.

16. In light of the Applicant's unjustifiable delay in filing the application for suspension of action, the Tribunal finds that the current urgency is self-inflicted as he had ample

opportunity, as well as reason, to file it at a much earlier stage. Accordingly, the Applicant has not satisfied the requirement of particular urgency.

*Prima facie unlawfulness and irreparable harm*

17. As the Applicant has not satisfied the requirement of particular urgency, it is not necessary for the Tribunal to examine the two other conditions, namely *prima facie* unlawfulness and irreparable harm.

**Conclusion**

18. In light of the above, the Tribunal rejects the application for suspension of action.

*(Signed)*

Judge Joelle Adda

Dated this 10<sup>th</sup> day of March 2023