



**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Isaac Endeley

EL OMARI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**ORDER**

**ON SUSPENSION OF ACTION  
PENDING MANAGEMENT  
EVALUATION**

---

**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

André Luiz Pereira de Oliveira, UNFPA  
Elizabeth Ann Interlandi, UNFPA

## **Introduction**

1. On 14 December 2023, the Applicant, a Monitoring and Evaluation Analyst, in Tripoli, Libya with the United Nations Population Fund (“UNFPA”), filed an application 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 his fixed-term appointment beyond its expiry on 31 December 2023.

2. By email of 15 December 2023, the Registry acknowledged receipt of the application and served it on the Respondent and, on behalf of the Tribunal, instructed him to file a reply by 20 December 2023.

3. On 19 December 2023 at 5:55p.m., the Respondent filed a reply contending that the application is without merit.

## **Factual background**

4. On 5 December 2023, the Applicant received a letter from a UNFPA Director for Human Resources dated 4 December 2023 informing him that his fixed-term appointment would not be renewed beyond its expiry date of 31 December 2023 due to “lack of funds in the Libya Country Office of [his]post; Grade/Level: NO-B, Title: Monitoring and Evaluation Analyst, Position Number: 00136892”.

## **Consideration**

5. 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.

*The Applicant's submissions on the merits of the case and the scope of the case*

6. In the application, the Applicant sets out his submissions on why he believes that the contested decision regarding the non-renewal of his fixed-term appointment was unlawful as follows (emphasis omitted):

The stated reason for the decision, lack of funds, is demonstrably false and serves as a smokescreen for personal agendas and retribution. Furthermore, when misconduct allegations are made against a UNFPA staff member, the organization may take several steps to ensure a fair and impartial investigation, including the temporary suspension of the staff member from their duties. This suspension aims to:

Protect the integrity of the investigation: By removing the staff member from their regular duties, UNFPA can prevent them from influencing witnesses, tampering with evidence, or otherwise impeding the investigation.

Protect the interests of the complainant and the staff member: The suspension can help to ensure that both parties are treated fairly, and that the investigation is free from bias or intimidation.

Maintain the reputation of UNFPA: By taking action to address misconduct allegations, UNFPA can demonstrate its commitment to upholding its values and ethical standards.

The decision to suspend a staff member is taken on a case-by-case basis, considering factors such as:

UNFPA Policies and Procedures Manual Disciplinary Framework:  
[https://www.unfpa.org/sites/default/files/admin-resource/OAIS\\_Disciplinary\\_Framework](https://www.unfpa.org/sites/default/files/admin-resource/OAIS_Disciplinary_Framework).

Please refer to the attachments for details.

Furthermore, the stated reason of budgetary constraints is not the true reason for my non-renewal. I base this belief on the following facts:

- The non-renewal letter states that it's due to lack of funds.
- My position is a core post within the country office current structure and has been and is still being funded from the CORE fund Regular Resources (FPA90). Please see the attached budget sheet for the country office confirming this fact. Also, please refer to the attached organigram confirming my position and its funding source.
- Even on the hypothesis that the country office will have its new realignment for CPD2023-2025, we do see that my

position is already being included and funded from the regular resources (FPA90).

- Even on the hypothesis that my M&E position is only planned to be funded from FPA90 for the year of 2023, yet it's a well-known practice that this fund will be disbursed to the country office for the year 2024 noting previous years at least from 2018-2023 where my position has been being funded from as this fund core post, in additions, country office is already funding other positions from this fund FPA90 and has committed to continue funding these positions from this fund for the year of 2024 by granting already FTA [assumedly, used as an abbreviation for fixed-term appointment] positions that will expire in up to Oct 2024, also currently have renewed other positions until April 2024 from this fund source (FPA90) despite the fact that these positions are not core positions and are based at our sub-office in Tunis. The indisputable fact that this fund source will be available in the year 2024, my position as M&E is still needed as a core function for the purposes of all UNFPA Libya CO [assumedly, used as an abbreviation for country office] implemented Programmes as well as for the regional office and HQ, yet the representative is manipulating and communicating false and misleading information only to serve his deliberate ongoing personal agenda for targeting me and other colleagues.

- Even if the plan of the country office is to reduce positions, then the process cannot start with M&E [assumedly, used as an abbreviation for monitoring and evaluation] post, especially that the M&E department and the entire office includes only one M&E post, which means the office will remain without a core position, on the other hand, it has been decided not to renew a core position and instead to offer or renew other positions within the country office for the period up to Oct 2024 which confirms that the office is to continue its operations in Libya at least until this date but yet without M&E staff as per the representative plans which demonstrate clear contradiction in the principle of making this decision of non-renewal of my contract.

- As a senior local staff in UNFPA Libya CO, I have been oriented and exposed to the budget of the country office during the first two years at least and then I have been excluded from this exercise like many other local colleagues. Therefore, I am surprised that I have been excluded from being put on the regular resources budget line as my FTA contract has been non renewed. Because before I was the most local critical staff who

has been put on the regular resources since my profile is being shared between all UNFPA Libya CO programmes, namely (GBV, SRH, Youth and Data).

- On 5<sup>th</sup> of December 2023. When I received the letter of non-renewal of my fixed term appointment, I tried to understand the aspects of this decision. Therefore, I tried to contact my direct supervisor, our IOM, the CO Representative and ASRO [unknown abbreviation] HR analyst each one individually through emails, messages, and phone calls and. I had no response from any of the above mentioned except from my direct supervisor, and when I informed him he mentioned that he is surprised and not aware of such a decision, and he was at the time of my call just clearing my annual leave balance as a requirements of end of year closure, he also mentioned that he was not included in this decision and he was planning to work with me on the evaluation of my Performance Appraisal and Development (PAD) of the current year 2023, and the PAD planning of the next year 2024. Additionally, he mentioned that he will ask the IOM and when he asked her, she told him I am not aware of this decision. Hence, he stated that he is surprised by the decision made as he was not aware of. This led me to put more effort to understand the basis and aspects of this decision especially that I received no reply from any of the responsible persons in the management, I have tried to call the Representative, I received no answers to my calls, I have sent messages to him saying that I want to understand from him the aspects of the decision made, he mentioned that he is busy with a retreat and in the meantime he already saw my email to the ASRO HR analyst which I sent as reply to their Non-renewal email and asked for a meeting with to have more clarifications. Even, when I told him that I will not take a lot from his time as I was sure that he would at least provide me with initial answer to my inquiries, he mentioned he will contact me ASAP. I haven't received any reply nor a message of a phone call after that, which left me with no option but to book one way ticket to Tunis and visit the office just to have someone to respond to me since I have already witnessed a car[e]less reaction from all the responsible persons that I have tried to contact at a management level. During my visit to Tunis office, I have met with the Representative and he mentioned "that this is related to lack of fund reasons and the CO has made this plan and propose it to the ASRO and DHR [unknown abbreviation] as it was pressured by them on a financial basis in the recent months, he also mentioned that he didn't reply to my messages before I [traveled] and meet him

in Tunis as he was waiting for ASRO HR Analyst to reply to my initial email sent to her on 5<sup>th</sup> December 2023, as she is the one that is well aware of answering any of my inquiries and the better person to direct my question to". Based on this clarification made by the Representative I have send a farewell message to all my colleagues and thanking them for 4.6 years with them and informing them of the decision as well as ensuring to them that I will make a proper handover to the office to ensure everything has been completed professionally with the office, and my reaction was professional on this decision with everyone as I showed good intentions. On 11<sup>th</sup> December after 6 days of my initial email to ASRO, dated 5<sup>th</sup> December 2023, I received a reply from ASRO HR Analyst proposing to have a meeting on 12<sup>th</sup> December to answer all my inquiries. when I asked "how a core position such as M&E FTA and its cruciality for the organization is not being renewed especially that it's funded by FPA90 which is a core fund in addition to that it's only one position in the organization [...] she replied "this is a very good question, it's purely budget and financial and I am not sure how the country office decides on that and on which basis the country office decides to put this position on regular resources or IB [unknown abbreviation] budget etc., unfortunately, I don't know this information, and the best one to answer you these inquiries and questions is the Operation Manager (IOM) and CO Representative"[.] [B]ased on this reply and comparing to what have been mentioned to me by the Rep in our meeting in Tunis I believe that I have received a completely misleading, false information from the Rep as what he mentioned fully contradicts with the answers received in my meeting with ASRO HR Analyst. He mentioned "that this is related to lack of fund reasons and the CO has made this plan and propose it to the ASRO and DHR as it was pressured by them on a financial basis in the recent months, he also mentioned that he didn't reply to my messages before I [travelled] and meet him in Tunis as he was waiting for ASRO HR Analyst to reply to my initial email sent to her on 5<sup>th</sup> December 2023, as she is the one that is well aware of answering any of my inquiries and the better person to direct my question to". Which shows that the Rep put the responsibility of this decision on ASRO while I have received opposite reply from ASRO. In addition, the statement of ASRO HR Analyst contradicts also with what has been mentioned by the IOM when she informed my supervisor that she is not aware of this decision.

- In that respect, I believe that I have been manipulated by the management as it did not provide me with a true answer, in fact, I have been provided with misleading information [...] [w]hich confirms the suspicion I always had regarding the CO Representative of having retaliatory attitude towards me and other staff due to the letter that has been approved and sent to the Regional Director from All UNFPA Staff members through me, dated on 25<sup>th</sup> September 2022. Therefore, this led me to raise this case and ensure that my rights are protected as per the staff rule and regulations.

7. The Appeals Tribunal has consistently held that “the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review”. When defining the issues of a case, the Appeals Tribunal further held that “the Dispute Tribunal may consider the application as a whole”. See *Fasanella* 2017-UNAT-765, para. 20, as affirmed in *Cardwell* 2018-UNAT-876, para. 23.

8. In the present case, in the application under the heading, “Details of the decision you seek to suspend”, the Applicant explicitly only contests the non-renewal of his fixed-term appointment. No reference is made to any UNFPA investigation to which he is otherwise referring in his submissions. Also, when closely perusing the casefile, the Tribunal cannot identify any other actual administrative decision(s), which the Applicant might reasonably wish to challenge.

9. The Tribunal therefore finds that the only administrative decision under review is the decision not to renew the Applicant’s fixed-term appointment as per the letter of 4 December 2023.

*Prima facie unlawfulness*

10. In considering whether to suspend an administrative decision pending management evaluation, the Dispute Tribunal’s Statute does not require the Tribunal to make a definitive finding that the decision is in fact unlawful. The test is not particularly onerous since all the Tribunal is required to do at this stage is to examine the material in the application and to form an opinion as to whether it appears that, if

not rebutted, the claim will stand proven. Any such opinion is not a finding by the Tribunal and is certainly not binding should the matter go to trial on the merits. It is merely an indication as to what appears to be the case at the suspension of action stage. Whether or not this initial impression is well-founded or not is a matter for determination after a full examination of the evidence in the event that a substantive claim is filed.

11. The Respondent submits that the Applicant's fixed-term appointment is not renewed due to loss of funding. He submits as evidence an Excel spreadsheet from which it follows that the Applicant's post, is 50 percent financed through a "fund code" labelled "JPD56". From another document of 13 December 2023, it follows that whereas an "[a]greement" regarding fund code JPD56 began on 13 December 2022, it ended on 31 December 2023. Under the heading "Current Extension", the relevant field is thereafter left blank and not indicating any extension.

12. The Tribunal notes that the Appeals Tribunal has held that lack of funding is a valid reason for not renewing a staff member's appointment (see, for instance, *Nouinou* 2019-UNAT-902, *Abdeljalil* 2019-UNAT-960, *Abu Ouda et al.* 2020-UNAT-1018, and *El Najjar* 2020-UNAT-1028). Also, as follows from the evidence produced by the Respondent, the fund code, or budget line, from which the Applicant's post received 50 percent of its financing, namely JPD56, will end on 31 December 2023, which appears to indicate that this funding is no longer available.

13. Accordingly, the Tribunal finds that since the Respondent has adequately established that the Applicant's post has lost its funding, the reason for the non-renewal of the Applicant's fixed-term appointment would also appear to be proper and correct. At the same time, the Tribunal notes that the onus is on the Applicant to prove any ulterior motives (see, for instance, the Appeals Tribunal in *Kisia* 2020-UNAT-1049 and *Najjar* 2021-UNAT-1084), but finds that he has not provided any evidence to show any ill-motivation. On a *prima facie* basis, the contested decision therefore seems to be lawful.



14. Since one of the three cumulative conditions to grant a suspension of action is not met, it is not necessary to address the two other conditions, namely, urgency and irreparable harm.

15. In light of the above,

IT IS ORDERED THAT:

16. The application for suspension of action is rejected.

*(Signed)*

Judge Joelle Adda

Dated this 20<sup>th</sup> day of December 2023

Entered in the Register on this 20<sup>th</sup> day of December 2023

*(Signed)*

Isaac Endeley, Registrar, New York