



**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Morten Michelsen, Officer-in-Charge

SUKARIEH

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:**

Sètondji Roland Adjovi

**Counsel for Respondent:**

Stephen Margetts, ALD/OHR, UN Secretariat

## **Introduction**

1. On 6 May 2022, the Applicant, a staff member of the Office of Investment Management (“OIM”), the United Nations Joint Staff Pension Fund (“UNJSPF”), filed an application requesting, under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure, a suspension of action pending management evaluation of the 29 April 2022 decision to extend his Administrative Leave with Pay (“ALWP”) through 31 May 2022, for the 28<sup>th</sup> time since his initial placement on ALWP on 13 December 2019 (“the contested decision”).

## **Factual background**

2. On 13 December 2019, the Investigations Division of the Office of Internal Oversight Services (“OIOS”) received a report of possible misconduct implicating the Applicant. On the same day, UNJSPF placed the Applicant on ALWP until 31 January 2020 on the ground “we have serious concerns and reason to believe that [the Applicant’s] continued presence in OIM’s offices represents a possible risk to the safety of OIM’s staff”.

3. Commencing 31 January 2020, the Applicant’s ALWP has been extended every month up to and including the most recent extension on 29 April 2022 until 31 May 2022.

4. On 28 February 2022, OIOS issued its investigation report concerning the Applicant’s conduct.

5. On 22 March 2022, the Organization provided the Applicant with a memorandum setting forth the allegations of misconduct, and on 1 April 2022, the Organization provided supporting documentation to the Applicant.

6. On 6 May 2022, the Applicant filed a request for management evaluation of the contested decision.

7. On the same day (6 May 2022), the Applicant filed the present application for suspension of action.

8. On 9 May 2022, the Applicant submitted his response to the allegations of misconduct.

9. On 10 May 2022, the Respondent filed the reply to the suspension of action application.

10. On 10 May 2022, the Applicant filed the motion for leave to respond to the Respondent's reply.

### **Consideration**

#### *The Applicant's 10 May 2022 motion*

11. As a preliminary matter, having reviewed the Applicant's submission of 10 May 2022, the Tribunal decided to grant his motion for leave to respond to the Respondent's reply.

#### *The legal framework for granting suspension of action during management evaluation*

12. 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.

#### *Prima facie unlawfulness*

13. 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 unlawful. The test is not particularly

onerous since all the Tribunal is to do at this stage is to decide as to whether it appears that, if not rebutted, the claim will stand proven on a *prima facie* basis. Any such determination is not binding should the Applicant subsequently file an application on the merits and the matter would proceed to a full judicial review. It is merely an indication as to what appears to be the case at this preliminary stage.

14. On ALWP, staff rule 10.4 provides, in relevant part, as follows:

(a) A staff member may be placed on administrative leave, subject to conditions specified by the Secretary-General, at any time after an allegation of misconduct and pending the completion of a disciplinary process. Administrative leave may continue until the completion of the disciplinary process.

(b) A staff member placed on administrative leave pursuant to paragraph (a) above shall be given a written statement of the reason(s) for such leave and its probable duration.

(c) Administrative leave shall be with full pay ...

(d) Placement on administrative leave shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure. ...

(e) A staff member who has been placed on administrative leave may challenge the decision to place him or her on such leave in accordance with chapter XI of the Staff Rules.

15. The circumstances under which a staff member may be placed on ALWP are stated in ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process):

*Administrative leave with pay*

11.3 The decision to place a staff member on administrative leave with pay may be made by the authorized official at any time following a report of suspected unsatisfactory conduct and following the authorized official's determination that at least one of the following circumstances is met:

(a) The staff member is unable to continue effectively performing the staff member's functions, given the nature of those functions;

(b) Continued service by the staff member would create a risk that the staff member could destroy, conceal or otherwise tamper with potential evidence, or interfere in any way with the investigation or disciplinary process, including by retaliating against individuals protected under ST/SGB/2017/2 or intimidating a witness;

(c) The continued presence of the staff member on the Organization's premises or at the duty station could constitute a security or financial risk to the Organization and/or its personnel, or could otherwise prejudice the interests or reputation of the Organization;

(d) The staff member's continued presence at the office could have a negative impact on the preservation of a harmonious work environment;

(e) There is a risk of repetition or continuation of the unsatisfactory conduct.

16. As the Appeals Tribunal stated in *Sanwidi* 2010-UNAT-084, "when judging the validity of the exercise of discretionary authority ... the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate". The Appeals Tribunal underlined that "it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him" or otherwise "substitute its own decision for that of the Secretary-General" (see para. 40).

17. In the Applicant's submissions, the Applicant does not argue that the contested decision violated any specific provisions of staff rule 10.4 or sec. 11.3 of ST/AI/2017/1. In fact, consistent with the applicable legal framework, the Applicant was placed on ALWP following a report of possible unsatisfactory conduct and his placement on ALWP has been extended as the authorized official decided that his continued presence in the office posed a risk to the safety of OIM staff.

18. Instead, the Applicant argues that the duration of his ALWP and the practice of extending ALWP for one month at a time are disproportionate, abusive and punitive.

19. Before addressing the Applicant's argument, the Tribunal notes that the decision challenged in this case is the 29 April 2022 decision to extend ALWP until 31

May 2022. The Applicant did not challenge the initial decision to place him on ALWP, nor did he challenge earlier decisions to extend ALWP. The Appeals Tribunal held in *Gisage* 2019-UNAT-973 at para. 31 that each decision to extend ALWP is “distinct from each other” and does not “constitute a single decision placing [a staff member] on [administrative leave]”. Accordingly, the Tribunal’s review will be limited to the contested decision, namely, the decision to extend ALWP from 29 April 2022 to 31 May 2022.

20. The Tribunal notes that the applicable legal framework does not set the time limit to the duration of ALWP, nor does it provide any guideline on the length of each extension of ALWP. However, as the Appeals Tribunal held in *Gisage* 2019-UNAT-973, para. 40, “any decision to extend [administrative leave] must be reasonable and proportional”. The Appeals Tribunal stated that “[m]uch will depend on the circumstances, including any practical challenges at the duty station, the nature of the allegations, the complexity of the investigation and the need to follow due process”.

21. In this case, the Organization transmitted memorandum outlining the allegations of misconduct to the Applicant on 22 March 2022 and supporting documents on 1 April 2022 and the deadline for the Applicant to submit his response to the allegations was set one month thereafter. On 29 April 2022, the Applicant requested a one-week extension, which the Organization granted. Accordingly, on 9 May 2022, the Applicant submitted his response to the allegations. The Respondent submits that the Administration will now take the final step in the process and therefore the disciplinary process as well as the Applicant’s placement on ALWP is approaching its conclusion.

22. In the circumstances described above, the Tribunal finds that an extension of ALWP from 29 April 2022 to 31 May 2022 is reasonable.

23. While it is not within the scope of review, the Tribunal notes that the total duration of ALWP appears to be quite lengthy, exceeding two years, and the Respondent does not explain why there was a significant delay in completing the

investigation. The Tribunal reminds the Respondent that the Organization should be mindful that a decision to extend ALWP must be “reasonable and proportional”.

24. Regarding the reasons for the contested decision, in the reply, the Respondent cites two examples from the OIOS investigation report to show that the Applicant’s continued presence posed a risk to the safety of other staff: in December 2019, the Applicant threatened to “attack” his supervisor, and in December 2020, he threatened to “step on [the] neck and [the] soul” of the then Director of OIM.

25. The Applicant argues that his words were “deliberately misconstrued and selectively taken ... out of context to support their narrative that the Applicant represented a physical threat” and his message to the then Director of OIM was sent more than a year after the initial decision to place him on ALWP and therefore it is “disingenuous to retroactively rely on this alleged threat to justify a decision taken earlier”.

26. When the contested decision to extend his ALWP was made on 29 April 2022, the Organization relied on the OIOS investigation report which concluded that the Applicant told his supervisor that he would “attack” her and that the Applicant sent the threatening message to the then Director of OIM. The Tribunal understands that the Applicant contests the findings of the OIOS investigation report, but in this case, the Tribunal does not review the merits of the OIOS findings. Instead, the Tribunal’s role is to decide whether the Organization reasonably exercised its discretion in making the contested decision, and the Tribunal finds, on a *prima facie* basis, that the Organization did so by relying on the OIOS investigation report’s findings.

27. Considering all the information before the Tribunal, the Tribunal finds that the contested administrative decision was not *prima facie* unlawful.

28. 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.

IT IS ORDERED THAT:

29. In light of the above, the Tribunal orders that:
- a. The Applicant's motion for leave to respond to the Respondent's reply is granted;
  - b. The application for suspension of action is rejected.

*(Signed)*

Judge Joelle Adda

Dated this 12<sup>th</sup> day of May 2022