



## UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2009/39  
Judgment No.: UNDT/2009/008  
Date: 13 August 2009  
Original: English

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**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

OSMAN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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### JUDGMENT

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**Counsel for Applicant:**

Carmen Artigas

**Counsel for Respondent:**

Susan Maddox, ALU/OHRM

Notice: The format of this judgment has been modified for publication purposes in accordance with Article 26 of the Rules of Procedure of the United Nations Dispute Tribunal.

BETWEEN:

Case No: UNDT/GVA/2009/39

OSMAN

APPLICANT

AND

THE SECRETARY-GENERAL OF  
THE UNITED NATIONS,

RESPONDENT

ORDER

1. By application registered on 3 August 2009 under UNDT/GVA/2009/40, the Applicant, serving as Fuel Assistant at United Nations Assistance Mission for Iraq (UNAMI), at the FS3/10 level, on the basis of a Fixed-Term Appointment under 100 Series of the Staff Rules, requested the Tribunal to order the suspension of the implementation of the UNAMI's decision not to renew his contract beyond 18 August 2009.

#### **CONTENTIONS OF THE PARTIES**

2. The Applicant holds that he has been subject to irregular practices and to abuse of power and that he has received employment threats from his superiors. For the first time in 18 years of service at the United Nations he has been the victim of such an injustice, his evaluation procedure not having been regularly followed. He wished to have his contract renewed for such a period of time as to permit the Administration to conform itself to the relevant rules and procedures. He has suffered since August 2007 from his Second Reporting Officer's behaviour, who has encouraged his First Reporting Officer and other persons to take non justified measures with regard to him. His hierarchy has taken advantage of the staff member's absences motivated by his mother's decease to prevent him from responding to the allegation on the quality of his performance. The decision not to renew his contract was not taken following a regular procedure but it is motivated by his request for 5-day leave. The

Applicant was deprived of the possibility to benefit from fair review of his electronic performance appraisal system (E-PAS) by a rebuttal panel, and his post is intended to be given to an Australian national staff member. His contract was prolonged for one further month on 13 July 2009 and he has applied for a position in United Nations Support Office for AMISOM (UNSOA), in Nairobi; nevertheless, his candidacy was not successful owing to his current hierarchy. He wishes that his contract be prolonged three months to obtain an Outstanding E-PAS for 2007/2008 and 2008/2009. The Applicant claims that this 2008/2009 E-PAS has been halted by his supervisor. He requests that his application for suspension of action be considered before 18 August 2009.

3. By e-mail dated 4 August 2009, the Applicant has confirmed that he requested the suspension of the implementation of the decision not to renew his contract beyond 18 August 2009. He would like that the rebuttal of his E-PAS 2007/2008, which is pending, be fairly completed and contends that his E-PAS for the period 2008/2009 has handled with delay, that it is still in the E-PAS in-tray of his supervisor, and has not been signed and re-sent to him.

4. By e-mail of 5 August 2009, the Applicant specifies that he possesses evidence of the considerable work that he conducted since he took office in his current post, in February 2007.

5. By e-mail dated 11 August 2009, the Respondent endorses the observations of Management Evaluation Unite (MEU) of 10 August 2009 and considers that the Applicant's application has become moot since the Administration will follow MEU's observations, which are as follows: the Applicant received, since March 2008, several observations by his supervisors regarding the quality of his work. On 26 August 2008 he expressed his will to be subject to a regular E-PAS procedure, including the formal rebuttal process, and observed that on 12 August 2008 no work plan had been finalized with his supervisor for 2008/2009. On 17 June 2009 and on 23 July 2009, the Applicant informed UNAMI that he wished to rebut his E-PAS for 2007/2008. On 27 July 2009 the Applicant was requested to address a letter to the Chief of Mission Support stating that the assessment of his work should be re-evaluated and giving the names of three persons to be members of the Rebuttal Panel. On 28 July 2009 the Applicant provided the requested information.

6. MEU considers that the conditions to grant the suspension of action are met, as (1) there is urgency, (2) the damage caused should the decision be implemented would be irreparable and (3) the procedure of performance evaluation of the Applicant was not correctly followed, whereas the non-renewal of his contract is taken on the grounds of poor quality of his work. MEU recommends that the rebuttal procedure for the Applicant's 2008/2009 E-PAS be completed, while waiting for the outcome of the management evaluation.

7. By e-mail of 11 August 2009, the Applicant maintains that the delay in presenting his rebuttal is due to his mother's death.

8. By memorandum dated 12 August 2009, the Applicant's counsel, made observations on the Respondent's reply. It was submitted that the performance appraisal procedure was not regular and the provisions of Administrative Instruction ST/AI/2002/3 were not respected. The Applicant was unfairly treated by his supervisors and their conduct corresponds to discrimination, harassment and abuse of authority. The end of the Applicants contract will leave him unemployed and the harm suffered will be irreparable.

## **CONSIDERATIONS**

9. The Statute of the United Nations Dispute Tribunal in its Article 2.2 states the following:

“the Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The Dispute Tribunal’s decision on such an application shall not be subject to appeal.”

10. It flows from submissions and documents of the file that the Applicant submitted, on 2 August 2008, a request for management evaluation of the decision not to renew his

appointment. To date, no official response to this request has been issued and the contested decision has not been overturned by the Administration. Hence, contrary to what the Respondent contends, the Applicant's request for suspension of action has not become moot, and it must thus be decided upon.

11. The Appellant asserts, and this point is not contested by the Administration, that the decision not to renew his contract beyond 18 August 2009 is unlawful in as much as his evaluations corresponding to the periods 2007/2008 and 2008/2009 were conducted following an irregular procedure. In this respect, it is established that UNAMI decided not to renew the Applicant's appointment on the grounds of poor performance, while the appraisal performance procedure for the concerned staff member, at least for 2008/2009, was not regularly completed. Therefore, in light of the case file, the decision under review appears as *prima facie* illegal.

12. The urgency for the Judge to rule on the Applicant's request is established, since the implementation of the contested decision would result in the Applicant being excluded from the United Nations staff as of 18 August 2009.

13. Lastly, the implementation of the said decision would cause to the Applicant an irreparable damage as, even if staff members do not have a right to have their contract renewed, the Applicant, after over 16 years of service at the United Nations, will find himself unemployed and, thus, without income.

14. Hence, the conditions set out in the above-cited provision of the Statute to grant suspension of action are met regarding the decision not to renew the Applicant's contract.

For the reasons stated above

It is DECIDED that

The implementation of the decision by which UNAMI decided not to renew the Applicant's appointment beyond 18 August 2009 is suspended during the pendency of management evaluation.

*(Signed)*

Judge Jean-François Cousin

Dated this 13 day of August 2009

Entered in the Register on this 13 day of August 2009

*(Signed)*

Víctor Rodríguez, Registrar, UNDT, Geneva