



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2025/014
Order No.: 28 (GVA/2025)
Date: 2 April 2025
Original: English

Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: Liliana López Bello

SUAREZ LISTE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Jérôme Blanchard, HRLU, UNOG

Introduction

1. By application filed on 21 March 2025 and completed on 24 March 2025, the Applicant, a staff member of the Division of Conference Management, United Nations Office at Geneva (“UNOG”), requests suspension of action, pending management evaluation, of the decision not to extend his fixed-term appointment (“FTA”) beyond 31 March 2025 due to poor performance.
2. On 25 March 2025, the application for suspension of action was served on the Respondent, instructing him to refrain for as long as the suspension of action procedure before the Tribunal was ongoing from taking any further decision or action relating to the decision that the Applicant sought to suspend.
3. On 26 March 2025, the Respondent filed his reply.

Facts

4. On 15 March 2021, the Applicant received a probationary two-year FTA as a successful candidate of the Competitive examination for recruitment against language positions at the P-3 level at the Department for General Assembly and Conference Management (“DGACM”) in New York. In September 2021, he was laterally transferred to DGACM in Geneva.
5. For the 2022-2023 performance cycle, the Applicant’s performance was rated as “partially meets performance expectations”. Pursuant to section 6.4 of ST/AI/2020/3 on “Competitive examinations for recruitment against or placement in language positions at the P-2 or P-3 level”, the Applicant’s probationary period was extended for an additional year until 14 March 2024.
6. The Applicant contested before this Tribunal the decision not to convert his two-year FTA to a continuing appointment after the end of his probationary period as language staff, extending it instead. The Tribunal rejected this application by Judgment *Suarez Liste* UNDT/2024/040.
7. The Applicant rebutted his performance evaluation for the 2022-2023 performance cycle. On 14 November 2023, a Rebuttal Panel confirmed the rating.

The Applicant was subsequently placed in a Performance Improvement Plan (“PIP”), but his performance did not improve. For the 2023-2024 performance cycle, he received a rating of “does not meet performance expectations”.

8. On 8 March 2024, the Applicant was informed that the Organization would not convert his probationary FTA to a continuing appointment on the basis of unsatisfactory performance. To enable the Applicant to review and acknowledge the final performance evaluation in Inspira, his FTA was extended until 22 March 2024, upon which he would be separated from service.

9. On 20 March 2024, the Applicant submitted a rebuttal for his 2023-2024 performance evaluation. As a result, his FTA was extended to allow for the completion of the rebuttal process.

10. On several occasions and for various reasons, including being on sick leave, the Applicant consistently postponed or declined invitations from the Rebuttal Panel to meet throughout 2024. He insisted on being interviewed in-person after his return from sick leave and refused to respond to the Panel’s questions in writing.

11. While the Applicant continued to decline invitations to meet with the Panel or respond to its questions in writing, he requested that his FTA be extended to the Human Resources Management Service (“HRMS”) of the United Nations Office at Geneva (“UNOG”) due to the ongoing rebuttal process.

12. On 19 February 2025, the Rebuttal Panel issued its report and maintained the Applicant’s rating of “does not meet performance expectations” for the 2023-2024 performance evaluation.

13. On 21 February 2025, the Rebuttal Panel’s report was shared with the Applicant, his First Reporting Officer (“FRO”) and his Second Reporting Officer (“SRO”).

14. The Applicant requested Certified Sick Leave (“CSL”), and his FTA was subsequently extended until 31 March 2025.

15. On 27 February 2025 and 24 March 2025, the Applicant requested management evaluation of the decision not to renew his FTA beyond 31 March 2025.

16. On 6 March 2025, the Chief, HRMS, informed the Applicant, *inter alia*, that should he remain on CSL after 31 March 2025, his FTA would be extended accordingly.

17. On 24 March 2025, the Applicant completed the instant application seeking suspension of the decision not to renew his FTA beyond 31 March 2025.

18. On 26 March 2025, the Respondent filed his reply. In it, he requested that the application for suspension of action be rejected because it did not meet the cumulative required criteria of art. 2.2 of the Tribunal's Statute.

Consideration

19. Art. 2.2 of the Tribunal's Statute provides that the Tribunal shall be competent to 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. These three requirements are cumulative. In other words, they must all be met in order for a suspension of action to be granted. Furthermore, the burden of proof rests on the Applicant.

Prima facie unlawfulness

20. The Tribunal recalls that the threshold required in assessing this condition is that of "serious and reasonable doubts" about the lawfulness of the impugned decision (*Hepworth* UNDT/2009/003, *Corcoran* UNDT/2009/071, *Miyazaki* UNDT/2009/076, *Corna* Order No. 90 (GVA/2010), *Berger* UNDT/2011/134, *Chattopadhyay* UNDT/2011/198, *Wang* UNDT/2012/080, *Bchir* Order No. 77 (NBI/2013), *Kompass* Order No. 99 (GVA/2015)).

21. In non-renewal cases due to unsatisfactory performance, the Tribunal recalls that, whenever the Administration decides not to extend an appointment on the

grounds of poor performance, the Tribunal verifies whether it complied with the relevant procedures.

22. In this case, the record shows that the Applicant received a rating of “partially meets performance expectations” and “does not meet performance expectations” for the performance cycles of 2022-2023 and 2023-2024. Both times, the Applicant rebutted the performance evaluation and, both times, a Rebuttal Panel upheld the performance ratings.

23. The Applicant alleges, however, that the Rebuttal Panel’s report for the performance evaluation of 2023-2024 is tainted by a procedural flaw. Namely, because the Applicant was not heard by the Rebuttal Panel, as required by art. 15.3 of ST/AI/2021/4 “Performance Management and Development System”.

24. As a result, the Applicant claims that the decision not to renew his appointment and to separate him from service subsequently is *prima facie* unlawful.

25. The Tribunal disagrees.

26. It is true that according to art. 15.3 of ST/AI/2021/4, a staff member has the right to be heard by the rebuttal panel. However, it is also true that the Applicant chose not to avail himself of such a right. There is ample documentary evidence on record indicating that the Applicant declined to meet with the Panel throughout 2024 due to being on sick leave and rejected the option of answering the Panel’s questions in writing.

27. In the Tribunal’s view, the Administration gave the Applicant ample opportunity to participate in the rebuttal process, and it is not *prima facie* unlawful, given the circumstances, that the Administration decided in the end to finalise it without hearing from him.

28. Furthermore, the fact that the Applicant was on sick leave is not sufficient for a *prima facie* finding that his right to be heard was violated. Indeed, as the Respondent correctly pointed out, in the absence of a medical report stating

otherwise, staff members on sick leave are expected to take minimal administrative actions, such as submitting sick leave requests or medical reports.

29. In this case, the Applicant indeed continued to exercise these administrative tasks during the period he was on sick leave in 2024, as shown by his consistent submissions of medical reports and requests to HRMS to extend his appointment due to his CSL.

30. Therefore, it cannot be inferred that the Applicant was unable to participate in the rebuttal panel while he was on sick leave between May 2024 and January 2025. As it follows, the Tribunal cannot interpret the Applicant's absence from the rebuttal process as anything beyond his own choice.

31. Lastly, the Applicant claims that on 7 February 2025, he filed a complaint with the Office of Internal Oversight Services ("OIOS") regarding allegedly prohibited conduct against the Chief, HRMS. The Chief, HRMS is the one who allegedly directed the rebuttal panel to finalise its report and communicated to the Applicant that his FTA would not be extended. According to the Applicant, his complaint is currently under examination.

32. The Tribunal first notes that the Applicant did not file a copy of his complaint with OIOS, making it impossible to verify the information. Secondly, the Tribunal observes that the alleged report of prohibited conduct was filed long after the decision to not renew the Applicant's appointment due to unsatisfactory performance and, consequently, separate him from service, which was communicated to him on 8 March 2024 by the Chief, Career Management Unit, HRMS. Thirdly, there is no evidence on record that the Applicant sought protection against retaliation from the Ethics Office.

33. Therefore, the Applicant's alleged report of prohibited conduct against the Chief, HRMS is unrelated to the decision he seeks to suspend and irrelevant to the determination of whether said decision is *prima facie* unlawful.

34. In view of the foregoing, the decision not to extend the Applicant's FTA beyond 31 March 2025 due to unsatisfactory performance is not *prima facie* unlawful.

35. Since the Applicant has failed to establish that the non-renewal decision is *prima facie* unlawful, given the cumulative nature of the conditions to be met for the granting of a suspension of action, the Tribunal does not find it necessary to consider whether the contested decision is urgent or whether it would cause irreparable damage (*Evangelista* UNDT/2011/212; *Dougherty* UNDT/2011/133).

36. Lastly, the Tribunal calls the Applicant's attention to his email dated 31 March 2025 directed to the undersigned Judge, which falls outside the scope of proceedings and does not comply with the Tribunal's Rules of Procedure. The Applicant is once more reminded that the parties should not contact Judges assigned to their cases directly or informally, and that any submission must be done through the Registry via the e-filing portal.

Conclusion

37. In view of the foregoing, it is ORDERED THAT the application for suspension of action pending management evaluation is rejected.

(Signed)

Judge Sun Xiangzhuang

Dated this 2nd day of April 2025

Entered in the Register on this 2nd day of April 2025

(Signed)

Liliana López Bello, Registrar, Geneva