



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2025/037

Order No.: 77 (GVA/2025)

Date: 2 July 2025

Original: English

Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: Isaac Endeley, Officer-in-Charge

SAMARASINHA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Elizabeth Gall, BMS/OLS, UNDP

Introduction

1. By application filed on 25 June 2025, the Applicant, a staff member of the United Nations Development Programme (“UNDP”), requests suspension of action, pending management evaluation, of the decision of 19 May 2025 to extend his administrative leave without pay (“ALWOP”) until 24 August 2025.
2. On 30 June 2025, the Respondent filed his response to the Applicant’s 25 June 2025 application for suspension of action.
3. For the reasons set out below, the Applicant’s application for suspension of action is dismissed.

Facts

4. In his 25 June 2025 application for suspension of action, the Applicant set out the facts as follows (references to annexes omitted):

... The Applicant began working for [the United Nations] on 9 April 1999 and has almost two and a half decades of continuous service. From 1 January 2019 he was seconded from UNDP to the Secretariat working as the Resident Coordinator in Fiji from 25 November 2018.

... On 11 May 2023 the Applicant was informed he was placed on administrative leave pending investigation. He was instructed to leave Fiji immediately. Later on 24 November 2023 he was provided with the letter memorialising his placement on [Administrative Leave With Full Pay, (“ALWFP”)] [...].

... On 24 November 2023 the Applicant’s secondment to the Secretariat came to an end and he returned to UNDP.

... On 25 November 2023 the Applicant was placed on ALWFP by UNDP [...].

... On 1 December 2023 the Applicant was placed on [ALWOP] [...].

... The Applicant contested that placement which is subject to separate litigation.

... On 20 August 2024 [the Office of Internal Oversight Services (“OIOS”)] submitted an investigation report to UNDP.

... On 10 February 2025 UNDP presented formal allegations of misconduct [...]

... On 19 February 2025 UNDP extended ALWOP for a further three months [...]

... On 4, 5 and 10 April 2025 the Applicant responded to the allegations [...].

... On 18 April 2025 the Applicant contested the [19] February extension [...]

... On 30 April 2025 the Applicant supplied two forensic reports to UNDP [...].

... On 19 May 2025 UNDP further extended ALWOP to 24 August 2025 [...].

... On 26 May 2025 the Applicant filed a management evaluation contesting the 19 May 2025 decision to extend ALWOP [...].

... The Applicant files this request for suspension of action in relation to the 26 May 2025 management evaluation request. [...].

Consideration

Suspension of action during management evaluation

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 only suspend any contested administrative decision if all three requirements have been met, and all three prongs of the test must be demonstrated by the Applicant for an application for the suspension of action to succeed.

Prima facie unlawfulness, urgency and irreparable harm

6. The Tribunal recalls that a finding of *prima facie* unlawfulness does not require more than serious and reasonable doubts about the lawfulness of the contested decision (*Hepworth* UNDT/2009/003, para. 10; *Corcoran* UNDT/2009/071, para. 45; *Corna* Order No. 90 (GVA/2010); *Loose* Order No. 259 (GVA/2017)).

7. In three previous cases filed by the Applicant regarding the same ALWOP, namely Cases Nos. UNDT/GVA/2024/003, UNDT/GVA/2024/015 and UNDT/GVA/2025/036, this Tribunal held that the contested administrative decisions regarding placing the Applicant on ALWOP or extending this ALWOP were not *prima facie* unlawful (see, Order No. Nos. 9 (GVA/2024) dated 31 January 2024, Order No. 115 (GVA/2024) dated 23 September 2024, and Order No. 076 (GVA/2025) dated 1 July 2025, respectively).

8. In Order No. 9 (GVA/2024), the Tribunal held, in response to the Applicant's 24 January 2024 application for suspension of action, that (see paras. 19-28):

... In this respect, staff rule 10.4 on administrative leave pending investigation and the disciplinary process provides as follows (emphasis added):

(a) A staff member may be placed on administrative leave, under conditions established 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 except *(i) in cases where there are reasonable grounds to believe that a staff member engaged in sexual exploitation and/or sexual abuse, in which case the placement of the staff member on administrative leave shall be without pay, or (ii) when the Secretary-General decides that exceptional circumstances exist which warrant the placement of a staff member on administrative leave with partial pay or without pay.*

... [Paragraph] 42 of the UNDP Legal Framework for Addressing Non-Compliance with [United Nations] Standards of Conduct provides that ALWOP may be contemplated in cases where [...]:

(a) On the basis of the information before [the ASG/BMS], there is preponderance of evidence that the staff member engaged in the alleged conduct and the alleged misconduct is of such gravity that it would, if established, warrant separation or dismissal under Staff Rule 10.2 (a) (viii) or (ix);

(b) There is *prima facie* evidence of allegations of sexual exploitation and abuse.

... The Tribunal recalls that ALWOP is an interim measure that may be applied while the investigation or the disciplinary process is still ongoing. As such, the placement on ALWOP is based on the facts available at the relevant time the decision is made.

... According to the UNDP Legal Framework, a staff member may be placed on ALWOP only when it is determined by “preponderance of evidence”, even during the interim stage of the disciplinary process, that a staff member engaged in the alleged misconduct and that said misconduct is of such gravity that it would, if established, warrant separation or dismissal. A determination in that sense shall be done on a case-by-case basis and considering the exceptional circumstances of a particular case.

... Consequently, the Tribunal finds that the UNDP Legal Framework for Addressing Non-Compliance with [United Nations] Standards of Conduct is not inconsistent with staff rule 10.4.

... In his application, the Applicant also alleges that the ASG/BMS did not consider either evidence [but she indicated that decision results from OIOS having told] her that a preponderance of evidence exists and that misconduct, if proven, would warrant separation or dismissal.

... In this respect, the Tribunal notes that in the decision letter of 1 December 2023, the ASG/BMS referred to i) the reasons provided in her previous letter of 24 November 2023, and ii) the OIOS confirmation that there was a preponderance of evidence that the Applicant engaged in the alleged misconduct which is of such gravity that it would, if established, warrant separation or dismissal. The letter dated 24 November 2023 reads, in its relevant part, as follows:

The reason for this decision is that the OIOS investigation is ongoing, and the existence of these allegations has been reported in a number of media outlets. Given the seriousness of the allegations ... there is a significant risk that your return to active

service could prejudice the interest or reputation of the Organization. Further, your seniority as a staff member means there is a risk that you will not be able to effectively perform functions commensurate with your status. In addition, in view of your seniority, the number and seriousness of the allegations could have a negative impact [on] any work environment to which you may be assigned.

... While it is true that the record does not show that the ASG/BMS made her own assessment of the evidence, by referring to the OIOS confirmation that there was a preponderance of evidence, it is generally understood that the ASG/BMS endorsed said assessment. As such, the Applicant's argument is rejected.

... Having said the above and considering that the burden of proof is on the Applicant, the Tribunal finds that the evidence he produced does not serve to prove, at this stage, that the decision is *prima facie* unlawful.

... In light of the foregoing, the Tribunal deems that the contested decision is not *prima facie* unlawful.

9. In Order No. 115 (GVA/2024), the Tribunal held, in response to the Applicant's 13 September 2024 motion for interim measures, that (see paras. 21-24):

... The Tribunal recalls that in his pending application, the Applicant contests the 1 December 2023 decision to place him on ALWOP. The Tribunal assessed the lawfulness of this decision in its consideration of the Applicant's 24 January 2024 application for suspension of action. The Tribunal found that the contested decision was not *prima facie* unlawful.

... Having considered the Applicant's arguments in his motion for interim measures, the Tribunal finds no new element supporting a finding of *prima facie* unlawfulness of the 1 December 2023 decision.

... Indeed, in essence, the Applicant argues that the decision-maker failed to consider all the evidence before him (e.g., the investigation report and the Applicant's response to it) when deciding to extend his placement on ALWOP. This, however, could be relevant, at best, in an examination of the 20 August 2024 decision extending the Applicant's placement on ALWOP.

... The Tribunal finds that the contested decision underlying the application on the merits, in which the Applicant filed his motion for

interim measures, does not meet one of the three cumulative conditions in art. 14 of its RoP and art. 10.2 of its Statute, i.e., *prima facie* unlawfulness.

10. In Order No. 076 (GVA/2025), in response to the Applicant's 24 June 2025 motion for interim measures, the Tribunal affirmed and adopted the reasons of Orders Nos. 009 (GVA/2024) and 115 (GVA/2024) as set out above.

11. In comparison with these previous Orders, the background for the Applicant's current application for suspension of action and the 19 May 2025 extension of the ALWOP remains unchanged. Also, in the instant Order, the Tribunal therefore affirms and adopts the reasons set out in these previous Orders.

12. As in Case No. UNDT/GVA/2025/036, in the present case, the Applicant further submits that the decision is "vitiating by excessive and unjustified delay". His argumentation is, however, different as, in the present case, he submits that (references to annexes and footnotes omitted):

... As long as the Applicant remains on ALWOP he is subject to the [United Nations] rules and can take outside employment only with permission. The Applicant has sought such permission on several occasions relating to more than four different positions and has been refused each time. While remaining a staff member the Applicant also cannot access his pension.

... Thus, for more than a period of a year and a half the Applicant has been left without means due to UNDP's decision on ALWOP.

... OIOS took 15 months to investigate this matter. On receipt of their report UNDP took half a year to draft allegations of misconduct. By any standard this is an excessive period of time. Having taken the decision to deprive the Applicant and his family of their livelihood it was required that the matter be processed urgently.

... While UNDP initially required a response within 10 working days the Applicant ultimately responded after two months. The Applicant took 79 days to respond which is a fraction of the time he has been on ALWOP – 572 days.

... [The Dispute Tribunal has] held administrative leave must not be permitted to act as a punitive measure. Leaving the Applicant

without means for a period of 19 months (and potentially up to 21 months as per the current extension of ALWOP) while blocking attempts to earn his living elsewhere plainly represents a *de facto* punitive measure.

... While the case is complex there is no justification for the excessive period of time taken including half a year for the mechanical process of generating an allegations memo relying on an already completed investigation report.

... When considering delay [the Dispute Tribunal] must consider the totality of the period the Applicant has been on ALWOP. Depriving the Applicant of both functions and salary for a period of a year and a half meets the threshold of a constructive dismissal. [The Dispute Tribunal has] defined such as being “when the employer engages in a scheme of action which, in effect, makes it so difficult for the employee to continue with his or her work, that the latter has no realistic option but to resign” [*Koda* UNDT/2010/110, para. 56 upheld on appeal] or that they might reasonably believe their employer was “marching them to the door” [*Balestrieri* 2010-UNAT-41, para. 24]. The Applicant has been deprived of work for two and a half years and left without means for the last year and a half. There is little doubt he is being marked to the door. That resignation is the only way to access employment elsewhere and his pension fund makes it his only alternative to the status quo.

... The Staff Rules require a staff member placed on administrative leave be informed of “its probable duration” [staff rule 10.4 (a)]. More than two years ago the Applicant was informed of his placement on ALWP for three months. More than a year and a half ago he was informed this would be without pay for a period of three months. Never have UNDP made any attempt to indicate the probable duration of administrative leave. They consider it sufficient to extend it indefinitely. By the time the currently disputed extension of ALWOP ends, the Applicant would have been without pay for 631 days – of which 202 days would be following the presentation of the Charge Letter.

... The decision maker has failed to take into account relevant factors [...]

... The decision to place a staff member on ALWOP must be proportionate, striking a balance between the requirement that such decision be without prejudice to the subject’s rights, taking account of the impact of the infringement on his right to emoluments as against the Organisation’s right to protect its own interests.

... On its face the contested decision and management evaluation response has failed to do so. No account has been taken of the impact of leaving the Applicant and his family without means for a period of more than one and a half years. The decision maker relies exclusively on the nature of the alleged misconduct and state of inculpatory evidence without applying their mind at any stage to the impact on the Applicant and his family and balancing these competing considerations. Meanwhile the Applicant's response to allegation indicates that the interests of the Organisation should weigh less heavily given the solid exculpatory evidence presented. Yet UNDP declines to consider this.

... [The] impact on the Applicant is significant, this, coupled with the excessive time he has been placed on ALWOP are relevant factors that the decision maker has failed to take into account.

13. In response, the Respondent contends that "the total duration of the Applicant's placement on ALWOP (from 1 December 2023) is not excessive or unjustified". He further submits that "Staff Rule 10.4 does not include any limit on the total period of time that a staff member may be placed on administrative leave (with or without pay)", which "depends on the circumstances of the case". Also, "[t]he Organization has a legitimate interest in extending the Applicant's placement on ALWOP to allow the disciplinary process to continue, particularly given the Organization's interest in ensuring that serious abuse of power in the workplace, including through the means of sexual misconduct, by a senior official is addressed".

14. The Tribunal notes that the parties agree that the Applicant was placed on ALWOP on 1 December 2023, which would appear to have left him without pay for a total of 19 months. However, the Tribunal does not, on a *prima facie* basis, find that this vitiates the contested decision, at least as of yet, but strongly encourages the Respondent to finalize the disciplinary process as soon as possible, also to avoid further litigation.

15. Accordingly, the Tribunal finds that the Applicant has failed to substantiate that the contested decision is *prima facie* unlawful. Given the cumulative nature of the conditions to be met for the granting of interim measures, 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).

Conclusion

16. In view of the foregoing, the Applicant's 25 June 2025 application for suspension of action is dismissed.

(Signed)

Judge Sun Xiangzhuang

Dated this 2nd day of July 2025

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

(Signed)

Isaac Endeley, for Liliana López Bello, Registrar, Geneva