



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2025/040

Order No.: 78 (GVA/2025)

Date: 4 July 2025

Original: English

Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: Isaac Endeley, Officer-in-Charge

DE LA VARGA FITO

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:

Rebecca Britnell, UNHCR
Jan Schrankel, UNHCR

Introduction

1. By application filed on Saturday, 28 June 2025, the Applicant, a staff member of the United Nations High Commissioner for Refugees (“UNHCR”), requests suspension of action, pending management evaluation, of the decisions not to extend her Internal Temporary Assignment (“ITA”) beyond 30 April 2025, and not to renew her fixed-term appointment (“FTA”) beyond 30 June 2025, consequently separating her from service.
2. The application for suspension of action was served on the Respondent on Monday, 30 June 2025, with an instruction to refrain, for as long as the suspension of action procedure before the Dispute Tribunal is ongoing, from taking any further decision or action relating to the decision that the Applicant seeks to suspend.
3. The Respondent filed his reply on 2 July 2025.

Facts

4. The Applicant was appointed on an FTA on 25 September 2006. Her most recent FTA was issued on 1 July 2022 with an end date of 30 June 2025.
5. Following a series of promotions and appointments, she completed her last regular assignment on 31 December 2023, as a Senior Strategic Planning Officer in the Division of Strategic Planning and Results, based in Geneva.
6. By memorandum dated 28 November 2023, entitled “Information and Administrative Details in Relation to the End of Your Assignment”, the Applicant was informed of the following:

If your current FTA expires before completion of 9 months on [Special Leave with Full Pay—“SLWFP”] and you are assigned to another position before its expiry date, your FTA will be renewed in accordance with the provisions of UNHCR’s Policy on the Administration of Fixed-Term Appointments. If you are selected for a short-term assignment, the extension of your FTA will be aligned with the duration of that assignment, unless you qualify for a five-year FTA at the time of contract expiry. **Should you not be reassigned before the expiry date of your current FTA, your FTA will not be renewed.** (emphasis added)

7. By Reassignment Memorandum dated 17 July 2024, the Applicant was informed that she had secured an ITA from 17 July 2024 to 30 April 2025 as a Senior Diversity, Equity and Inclusion Officer based in Geneva, at the P-4 level.

8. On 28 April 2025, the Applicant requested an extension of the ITA. The Hiring Manager informed on 1 May 2025 that such extension would not be possible.

9. On 1 May 2025, the Applicant was placed on Special Leave with Full Pay (“SLWFP”) as a non-working staff member in between assignments (“SIBA”).

10. By letter dated 27 May 2025, the Applicant wrote to the High Commissioner, UNHCR, seeking an extension of her FTA beyond 30 June 2025, for five years, or two years in the alternative.

11. By email dated 5 June 2025, the Applicant was informed that her last day of active service would be 30 June 2025, and that separation formalities had been initiated.

12. By email dated 6 June 2025, the Applicant followed up on her letter to the High Commissioner seeking an extension of her FTA.

13. On 10 June 2025, the Head of Assignments and Talent Mobilization Service, Division of Human Resources (“Head, ATMS, DHR”) responded to the Applicant, confirming that, in accordance with the *Policy on the Administration of Fixed-Term Appointments* (PL/2025/04) and the *Recruitment and Assignments Policy* (PL/2025/03), the renewal of an FTA must be supported by a regular assignment or a temporary assignment. In the absence of one, the FTA expires on the date specified in the letter of appointment, with no expectation of renewal.

14. By email dated 20 June 2025, the Applicant was sent a Separation Memorandum, dated 19 June 2025, regarding her upcoming separation from UNHCR on 30 June 2025.

15. On 26 June 2025, the Applicant filed a management evaluation request (“MER”) contesting the non-extension of the ITA beyond 30 April 2025, following which the Applicant was placed on SLWFP effective 1 May 2025.

16. On 27 June 2025, the Applicant filed a second MER contesting the non-renewal of her FTA and impending separation from UNHCR.

Consideration

17. 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.

18. The Applicant contends that the contested decisions are tainted by several external factors. In this context, she submits that:

- a. The decisions not to extend her ITA and not to renew her FTA represent a breach of contract insofar as they constitute a constructive termination for which she did not receive termination benefits;
- b. The Organization failed to ensure a fair and transparent consideration of her applications to various vacant positions;
- c. She was subject to retaliatory and discriminatory treatment; and
- d. The Organization has failed to apply "fair reduction in force safeguards", made frequent and disruptive human resources policy changes without adequate notice or safeguards, and maintained a hostile and unsafe work climate due to its failure to update its 2014 Policy on Harassment and Abuse of Authority.

19. In contrast, the Respondent submits that the contested decisions were lawful and properly taken, and that the Applicant did not produce any evidence to substantiate her claims.

20. The Tribunal notices, first, that the Applicant submitted two separate management evaluation requests in support of her application for suspension of action pending management evaluation. Specifically,

a. On 26 June 2025, the Applicant requested management evaluation of the administrative decision dated 28 April 2025 not to extend her ITA beyond 30 April 2025; and

b. On 27 June 2025, the Applicant requested management evaluation of the decision not to extend her FTA beyond 30 June 2025.

21. In this context, the Tribunal will address each alleged contested decision separately in order to determine whether each of them meets the threshold for granting a suspension of action pending management evaluation.

The decision not to extend the Applicant's ITA beyond 30 April 2025

22. Article 2.2 of the Tribunal's Statute is clear that the Dispute Tribunal is competent to hear an application for suspension of action pending management evaluation where the contested decision has not yet been implemented. This limited scope has been extensively discussed and is well-established in the jurisprudence of the Dispute Tribunal (see *Dalgamouni* Order No. 137 (NBI/2014), *De Luca* Order No. 79 (GVA/2019), *Laurenti* Order No. 243 (NBI/2013), *Rudolf Jocondo* Order No. 71 (NBI/2024)).

23. As stated in *Applicant* Order No. 87 (NBI/2014):

A suspension of action order is, in substance and effect, akin to an interim order of injunction in national jurisdictions. It is a temporary order made with the purpose of providing an applicant temporary relief by maintaining the *status quo* between the parties to an application pending trial. It follows, therefore, that an order for suspension of action cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented.

24. In this case, the decision not to extend the Applicant's ITA beyond 30 April 2025 has already been implemented. Therefore, it is not receivable as an application for suspension of action.

The decision not to extend the Applicant's FTA beyond 30 June 2025

25. On 27 June 2025, the Applicant requested management evaluation of the decision not to renew her FTA beyond 30 June 2025. Subsequently, on 28 June 2025, the Applicant filed the instant application for suspension of action.

26. As the non-renewal of the Applicant's FTA was due to be effectively implemented on 30 June 2025, with her subsequent separation from service that same day, the Tribunal finds that this decision had not yet been implemented by the time the Applicant filed the instant application. Therefore, it determines that the application is receivable in this respect.

Prima facie unlawfulness

27. 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)).

28. Staff regulation 4.5(c) and staff rule 9.4 provide that a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service, and shall expire automatically and without prior notice on the expiration date specified in the letter of appointment.

29. Paras. 4.2(b) and 6.2 of UNHCR's *Policy on the Administration of Fixed-Term Appointments* (PL/2025/04) ("the FTA Policy") reflect the foregoing, and provide that such expiry of an FTA of any duration is not considered as a termination within the meaning of the UN Staff Regulations and Rules.

4. APPOINTMENT

Types of appointments

[...]

4.2 UNHCR staff members may hold one of the following four types of appointment:

[...]

(b) Fixed-Term Appointment

An FTA is a time-limited appointment issued in respect of staff members who have been appointed to a position by the High Commissioner, or an official with the High Commissioner's delegated authority, following a UNHCR competitive selection process. It does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service.

6.2 An FTA of any duration does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of length of service. It expires automatically, and without prior notice, on the expiration date specified in the Letter of Appointment. The expiry of an FTA of any duration is not considered as a termination within the meaning of the UN Staff Regulations and Rules.

30. Para. 5.1(a) of the FTA Policy further provides that:

An FTA will only be renewed when the concerned staff member will be serving on, or has been selected for, a regular or temporary assignment at the date the renewal would take effect.

31. As stated by the Appeals Tribunal in *Muwambi* 2017-UNAT-780, para 25 (internal references and footnotes omitted):

It is a well-established principle that fixed-term appointments or appointments of limited duration carry no expectation of renewal or conversion to another type of appointment. Even the renewal of the appointment of a staff member on successive contracts does not, in and of itself, give grounds for an expectancy of renewal, unless the Administration has made an express promise that gives the staff member an expectancy that his or her appointment will be extended. The jurisprudence requires this promise at least to be in writing.

32. Nevertheless, an administrative decision not to renew a fixed-term appointment can be challenged on the grounds that the Administration has not acted fairly, justly or transparently with the staff member or was motivated by bias, prejudice or improper motive (*Obdeijn* 2012-UNAT-201, para. 33; *Ahmed* 2011-UNAT-153, paras. 45-46).

33. In this case, the Applicant was notified on 28 November 2023 in the above-mentioned Memorandum that:

[...]

[s]hould [she] not be reassigned before the expiry date of [her] current FTA, [her] FTA will not be renewed.

34. The foregoing was repeatedly confirmed to the Applicant in the correspondences of 5 and 10 June 2025.

35. Considering that length of service and repeated contract renewals do not create a legitimate expectation of renewal, as per the applicable legal framework and jurisprudence, and considering that the Applicant did not provide any evidence that she had been promised a renewal of her FTA, the Tribunal finds that there are no grounds to conclude that the Applicant had any legitimate expectation of renewal.

36. The Tribunal also finds that the Applicant has not provided evidence to substantiate any of her other claims. Specifically, there are no *indicia* of bias, ill-motivation or improper motives; there is no evidence of the Applicant being subjected to a retaliatory and discriminatory treatment, and there is no evidence supporting a failure by the Organization to “ensure a fair and transparent consideration of [the Applicant]’s applications to various positions”. With respect to the latter, there is not even any evidence that the Applicant actually contested any of her unsuccessful applications.

37. Lastly, the Tribunal finds that there is no merit to the Applicant’s claim of “constructive termination”. The non-renewal of her contract was consequential to her own failure to secure a temporary or regular assignment on the date the renewal would take effect, as required by the foregoing legal framework and, therefore, cannot be viewed as *prima facie* unlawful.

38. Therefore, the Tribunal finds that 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 an application for 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).

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Conclusion

39. In view of the foregoing, the application for suspension of action pending management evaluation is rejected.

(Signed)

Judge Sun Xiangzhuang

Dated this 4th day of July 2025

Entered in the Register on this 4th day of July 2025

(Signed)

Isaac Endeley, for Liliana López Bello, Registrar, Geneva