



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2017/011

Order No.: 045 (NBI/2017)

Date: 22 February 2017

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

HAYDAR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICATION FOR
SUSPENSION OF ACTION PURSUANT
TO ARTICLE 13 OF THE RULES OF
PROCEDURE**

Counsel for the Applicant:
Edwin Nhliziyo

Counsel for the Respondent:
Nicole Wynn, ALS/OHRM
Paulos Weldesellasie, ALS/OHRM

The Application and Procedural History

1. The Applicant is a Supply Officer with the United Nations Multidimensional Integrated Stabilisation Mission in the Central African Republic (MINUSCA). She serves on a Continuing Appointment at the P3 level, and is based in Bangui.

2. On 16 February 2017, the Applicant sought Management Evaluation of the Respondent's decision to transfer the Supply Section from the Service Delivery Service to the Supply Chain Management Service, within MINUSCA and the new functions assigned to her in that arrangement. Within the Supply Chain Management Service, the Applicant was being assigned to carry out the job functions of a Commodity Manager (Medical), which positions she contends she has not been trained or rostered for.

3. The Applicant had previously sought Management Evaluation against the same decision on 28 December 2016. The Management Evaluation Unit (MEU) responded to her on 15 February 2017.

4. She received her second response from the Management Evaluation Unit on 17 February 2017. Her request for review of the impugned decision was dismissed.

5. Also on 17 February 2017, the Applicant applied for suspension of the impugned decision pursuant to art. 13 of the Rules of Procedure.

Deliberations

6. Applications for suspension of action are governed by art. 2 of the Statute and art. 13 of the Rules of Procedure of the Tribunal. Article 13 provides as follows:

1. The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to

suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an on-going management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

2. [...]

3. The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

4. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

7. Within the United Nations internal justice system however, a suspension of action order under art. 2 of the UNDT Statute and art. 13 of its Rules of Procedure can only be ordered to maintain the status quo until the MEU to which a request for review of an impugned Management decision must be made, discharges it upon concluding that the impugned decision was lawful or unlawful.

8. The remedy under art.13 is only available for the period of review by the MEU. Whatever the Tribunal's decides and orders in respect of the lawfulness or otherwise of an administrative decision, the order lapses as soon as MEU completes its review and issues its decision. That period can be for as long as 45 days, but it has in many cases been seen to be shorter.¹

9. Similarly, an application for suspension of action pursuant to art. 13 of the Rules of Procedure cannot properly be received or entertained by the Tribunal where there is no request *pending* before the MEU.

¹ See *Lee* Order No. 030 (NBI/2015).

10. In the present case, there is no dispute as to whether or not a request for review is pending before the MEU. The Applicant has challenged the impugned decision before MEU twice, and has received the Unit's decision in both requests.

11. The present Application is therefore misconceived.

12. The Application for Suspension of Action is hereby **REFUSED**.

(Signed)

Judge Nkemdilim Izuako

Dated this 22nd day of February 2017

Entered in the Register on this 22nd day of February 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi