



Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

COMPAORE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Cristian Gimenez-Corte

Counsel for Respondent:

Maria Romanova, AS/ALD/OHR, UN Secretariat

Jacob van de Velden, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant served as a professional staff member on a fixed term appointment with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). He was based in Goma as an Air Operations Officer.

Facts and Procedural History

2. On 31 January 2025, the Applicant filed an Application for Suspension of Action Pending Management Evaluation challenging the Respondent's decision to separate him from service on grounds of serious misconduct.

3. It is the Applicant's case that the impugned decision is *prima facie* unlawful; and that unless it is urgently stayed, it would cause him irreparable harm.

4. Pertinently, the Applicant submits that the impugned decision was made on 12 December 2024, that he was notified of it the following day, but that the date of implementation is "unknown, probably 24 February 2024."

5. The Respondent filed his reply on 4 February 2025 and argued that the application should be dismissed as not receivable because the impugned decision has already been implemented.

Consideration

6. Articles 2.2 of the Dispute Tribunal's Statute and 13 of its Rules of Procedure govern the Tribunal's jurisdiction in deciding on applications to suspend implementation of a contested administrative decision that is the subject of an ongoing management evaluation. An applicant must satisfy the Tribunal that the contested decision is *prima facie* unlawful, that the case is of particular urgency and that implementation of the decision would cause irreparable damage.

7. This Tribunal held in *Applicant* Order No. 087 (NBI/2014) para. 24 that

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.

8. Before entering into a discussion on whether the Applicant has met the requirements for the test of suspension of action, the Tribunal must first determine whether or not the impugned decision can properly be stayed.

9. As the Respondent points out, the jurisprudence is clear that the Tribunal cannot suspend a decision that has already been implemented. See, e.g., UNDT/2012/080 (*Wang*), para. 15; UNDT/2011/107 (*Nwuke*), paras. 51-53; *Abdalla*, Order No. 4 (GVA/2010), para. 16; *Neault*, Order No. 6 (GVA/2011), para. 26; and *McCarthy*, Order No. 41 (NY/2018), para. 9.

10. It is apparent from the Applicant's submissions and the annexes to his application that the impugned decision was made on 12 December 2024, and that it was effective *immediately* upon the Applicant's notice thereof. The challenged sanction letter says the separation is "effective upon your receipt of the letter in the sense of section 9.3 of ST/AI/2017/1." Section 9.3 in turn says, in pertinent part, that the decision is deemed received on the date the decision was electronically communicated.

11. The reply confirms this as it includes as an annex, the Personnel Action showing that the Applicant's separation for misconduct was effected on "14.12.2024."

12. As the Applicant has come to the Tribunal more than one month after the impugned decision was made and effected, there is nothing for the Tribunal to preserve. Put another way, the horse has bolted, and the stable doors have closed; an injunction at this point would serve no purpose whatsoever. Accordingly, the Tribunal finds that it lacks authority to grant the application to suspend the decision because it has already been implemented.

13. Additionally, the Tribunal lacks jurisdiction to suspend the decision pending management evaluation because there is no valid ongoing management evaluation.

14. The application seeks to suspend implementation of the disciplinary decision to separate him from service. Staff rule 11.2(a) rule generally requires management evaluation as a first step in formally contesting an administrative decision. However, staff 11.2(b) expressly exempts challenges to disciplinary decision from this requirement.

15. Although the Applicant apparently requested management evaluation on 28 January 2025, that request was a nullity in light of staff rule 11.2(b). As such, there is no valid management evaluation ongoing, and the Tribunal lacks jurisdiction to suspend the contested disciplinary decision. See *Amani*, Order No. 079 (NBI/2020), para. 11. 5; and *Rahme*, Order No. 213 (NBI/2017), para. 9.

Conclusion

16. The application for suspension of action pending management evaluation is DENIED.

(Signed)

Judge Sean Wallace

Dated this 7th day of February 2025

Entered in the Register on this 7th day of February 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi