



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2025/101
Order No.: 174 (NBI/2025) - Corr.1
Date: 6 October 2025
Original: English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

LWANDA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Laurence Fauth

Counsel for Respondent:

Halil Goksan, AS/ALD/OHR, UN Secretariat

Charlene Ndirangu AS/ALD/OHR, UN Secretariat

Notice: This Order has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. The Applicant is the Head of the United Nations Resident Coordinator's Office (“RCO”) at the United Nations Development Coordination Office (“UNDCO”) in Banjul, The Gambia.

2. On 26 September 2025, he filed an application for suspension of action (“SOA”) with the UNDT Registry in Nairobi requesting the Tribunal to stay two decisions: the decision of a Rebuttal Panel to confirm his “partially meets expectations” rating and the subsequent decision of the UNDCO Head of Entity not to renew his fixed-term appointment beyond 30 September 2025. He describes the contested decision as,

Rebuttal Panel’s confirmation of “partially meets expectations” rating in ePAS [performance evaluation] for 2024-2025 PMD [Performance Management Document] cycle; and Non-extension of appointment; notice of separation of 11 days.

3. The Respondent filed a reply to the SOA application on 29 September 2025.

Facts

4. The Applicant joined the United Nations as Head of RCO in The Gambia on 11 January 2020.

5. On 1 July 2024, a new staff member joined the RCO as Resident Coordinator and became the Applicant’s First Reporting Officer (“FRO”). The Applicant’s Second Reporting Officer (“SRO”) is the UNDCO Regional Director for Africa.

6. In August 2024, three United Nations Country Team (“UNCT”) staff members raised written complaints about the Applicant’s tone, lack of cooperation and/or behaviour in meetings. As a result, a virtual meeting was convened with the Applicant’s SRO, the UNDCO Deputy Regional Director (“DRD”), the FRO and the Applicant. In a follow up written message three days later, the FRO reminded the Applicant that in his role as Head of RCO he was expected to be professional and act as that, explicitly instructed him to refrain from mass messaging the UNCT,

to copy him on communications, and warned that disregarding instructions would constitute insubordination.

7. In November 2024, the FRO continued to send written reminders on communication style, urging the Applicant to de-escalate disputes, respect protocols and avoid unilateral action with the UNCT.

8. The Applicant's performance document was created on 15 November 2024.

9. On 7 January 2025, the FRO proposed a Performance Improvement Plan ("PIP") and issued a three-month appointment extension.

10. On 10 January 2025, the FRO initiated a PIP process for the Applicant. The Applicant wrote to the FRO contesting the issuance of the PIP on 13 January 2025.

11. On 4 April 2025, the FRO informed the Applicant, that based on a comprehensive review of his PMD, he had determined that the Applicant's performance only partially met the expected standards and that he had therefore recommended the extension of the Applicant's appointment to 30 April 2025 and not for the usual one-year period.

12. The Applicant's performance appraisal for the 1 April 2024 to 31 March 2025 performance cycle was signed off by the SRO on 9 April 2025 with a rating of "partially meets expectations".

13. On 23 April 2025, the Applicant initiated a rebuttal of his performance rating for the April 2024 to March 2025 performance cycle. His appointment was extended to allow the rebuttal procedure to be completed. The last extension was to 30 September 2025.

14. The Rebuttal Panel decided that the overall rating should not be changed and on 18 September 2025, the Chairperson of the Rebuttal Panel transmitted its report on the Applicant's request for rebuttal to the UNDCO Assistant Secretary-General ("ASG").

15. On 19 September 2025, the Applicant was provided a copy of the Rebuttal Panel Report and was notified of the non-extension decision.

16. He requested management evaluation of the contested decision on 26 September 2025.

Parties' submissions

17. The Applicant's principal contentions are:

Unlawfulness

a. Upon joining the RCO, the FRO subjected him to prohibited conduct causing him to file a complaint with the Office of Internal Oversight Services ("OIOS").

b. The analysis of the Rebuttal Panel in its Report contains several factual and legal errors. The assessment was not fair and objective but instead was arbitrary and irrational. It relied on the FRO's self-serving unsubstantiated allegations while ignoring contradictory messages of the FRO in his emails to the Applicant. It also ignored the Applicant's evidence of bias, prejudice, harassment, and retaliation.

c. The Rebuttal Panel found that there were several violations of ST/AI/2021/4/Rev. 1 (Performance Management and Development System).

d. The non-extension decision cannot be supported by a rating of "partially meets expectations" given his record of performance since he took up the post, as evidenced in his two prior PMD ratings of "exceeds expectations", which seriously contradict the allegations of poor performance from the FRO.

Urgency

e. The matter is urgent because his appointment is due to expire on 30 September 2025.

Irreparable harm

- f. Harm to professional reputation and career prospects, or harm to health or sudden loss of employment constitutes irreparable damage.
- g. He is 48 years of age and loss of his job would significantly hinder the Applicant's future prospects with the United Nations and for him to find work elsewhere or in his home country.
- h. He has always had a stellar performance record and was emotionally shocked by the actions of his new FRO.

18. The Respondent's principal contentions are:

Receivability

- a. The Respondent contests the receivability of the Applicant's request for the suspension of the Rebuttal Panel's Report as it was already implemented.

Lawfulness of the contested decision

- b. Following an unsuccessful PIP and a "partially meets expectations" rating, the Organization lawfully and rationally decided not to renew the Applicant's appointment.
- c. The Applicant's unsatisfactory performance was established in accordance with the Organization's performance management framework. After having identified the Applicant's performance shortcomings and bringing them to his attention, the FRO properly initiated a PIP process for the Applicant from 11 January to 10 April 2025. However, the Applicant refused to engage with the PIP and failed to accomplish the actions he was expected to complete during the PIP process.
- d. The rebuttal process complied with ST/AI/2021/4/Rev.1 (Performance Management and Development System).

e. The Applicant's claims in relation to the alleged delays concerning his workplan and the mid-year review and the alleged noncompliance of the FRO's action with ST/AI/2021/4/Rev. 1 are unfounded. The Applicant does not establish that he did not know the performance goals, and that he was denied a fair chance to meet those goals. Nor can he establish he was denied an opportunity to improve his performance.

f. Contrary to the Applicant's contention, the PIP was implemented. The evidence shows that the Applicant's FRO and SRO brought his performance shortcomings to his attention on multiple occasions and provided him a fair chance to improve his performance, including through a PIP. The Applicant's objection to being placed on the PIP and refusal to sign the PIP document does not render the PIP unimplemented or unlawful. Contrary to the Applicant's assertion, there is no provision requiring an FRO to mention the PIP process in the performance appraisal documents.

g. The FRO's views suggesting that the Applicant's conduct amounted to harassment and the Panel's reference to those views in the summary of the FRO's arguments in its report are inconclusive to the Panel's detailed and reasoned assessment in upholding the original rating.

h. The Panel assessed the FRO's various positive feedback to the Applicant. However, the Panel found that the FRO's positive feedback amounted to little more than the normal courteous responses from an FRO on regular work exchanges.

i. The Panel reasonably concluded that, despite the requirements of his role, the Applicant had performance shortcomings in leading with tact, diplomacy, politeness and in constant search of mutually beneficial outcomes to help carry forward the joint work of the UNCT.

j. The existence of friction between the Applicant and the FRO, including the Applicant's allegations of prohibited conduct against the FRO, is not enough to establish that the FRO was biased or prejudiced. In any case, the Applicant's rating of "partially meets expectations" was endorsed by the SRO

and upheld by the Rebuttal Panel. In particular, the Rebuttal Panel was composed of three individuals nominated by the Applicant, at the same and higher level than the FRO.

Urgency

k. The fact that the Applicant's appointment will expire on 30 September 2025 does not necessarily mean that the matter is undoubtedly urgent. Since April 2025, the Applicant knew that his appointment was extended only for the duration necessary for the completion of the rebuttal process.

l. Since April 2025, it was evident that the Rebuttal Panel's upholding of the "partially meets expectations" rating would result with the non-renewal decision. As per section 15.7 of ST/AI/2021/4/Rev. 1, nothing prevents the Applicant from challenging the non-renewal decision. However, this does not mean that a non-renewal decision naturally stemming from a binding Rebuttal Panel rating automatically renders it particularly urgent.

No irreparable harm

m. The Applicant has not shown that the failure to grant the SOA application pending management evaluation would cause him irreparable harm. He joined the Organization at a senior level and has only held his current position in the RCO in The Gambia. Given his level of entry into the Organization's service and his brief tenure, the loss of his employment, does not show, on its own, that his future employment prospects, whether within the Organization or externally, would be irreparably harmed.

n. The Applicant's alleged emotional shock is not evidence of irreparable harm. Such an alleged emotional reaction, even if established, must also be balanced with the Organization's obligation to maintain a harmonious work environment, and the emotional well-being of the staff members affected by the Applicant's performance shortcomings.

Considerations

19. Article 2.2 of the UNDT Statute provides that:

The Dispute Tribunal shall be competent to hear and pass judgement 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 ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

20. The Dispute Tribunal can suspend the contested decision only if all three requirements have been met. Thus, for an SOA application to succeed, an applicant must show that all the following conditions have been cumulatively met: (i) the decision appears to be unlawful on its face; (ii) there is particular urgency; and (iii) implementation of the decision would cause irreparable damage to the applicant.

Receivability

21. For the Tribunal to be competent to entertain an SOA application pursuant to art. 2.2 of the Tribunal's Statute, the contested decision must not have been implemented.

22. Section 14.5 of ST/AI/2021/4/Rev.1 provides that "[t]he performance rating resulting from the rebuttal process shall be binding on the head of entity and on the staff member concerned." The Tribunal is not competent to suspend the Rebuttal Panel's 18 September 2025 confirmation of the "partially meets expectations" rating of the Applicant's performance for the 2024-2025 PMD cycle following the conclusion of the rebuttal process. In other words, there is no pending implementation of the rebuttal process for the Tribunal to suspend and the Tribunal, therefore, lacks jurisdiction. See for example, *Halloway*, Order No. 43 (NBI/2024), para. 19.

23. However, in accordance with section 14.7 of ST/AI/2021/4/Rev.1, an administrative decision that stems from any final performance appraisal and that

affects the conditions of service of a staff member may be resolved through informal or formal justice mechanisms. The confirmation of the “partially meets expectations” rating by the Rebuttal Panel in this case is a final performance appraisal of the Applicant’s performance for the 2024-2025 PMD cycle and the Tribunal is competent to review the effect of that appraisal, that is, the non-extension of the Applicant’s appointment.

Unlawfulness

24. The Applicant’s challenge of the lawfulness of the non-extension decision, can be summarized under two headings.

- a. The non-extension decision was a result of retaliation by his FRO for filing a complaint of prohibited conduct with OIOS.
- b. The non-extension decision cannot be supported by a rating of “partially meets expectations” given the Applicant’s record of performance since he took up the post.

25. Paragraph 51 of General Assembly resolution 62/228, adopted on 22 December 2007, reaffirms the importance of the general principle of exhausting administrative remedies before formal proceedings are instituted. Where statutory provisions exist to provide internal remedies, it is proper that staff members should exhaust those remedies before appealing the contested decision before the UNDT. See for example, *Ng'ang'a* UNDT/2023/013, para. 9.

26. ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) provides the process for appropriate corrective action, while offering support to those targeted by prohibited conduct of the type alleged by the Applicant. Further, section 3 ST/SGB/2017/2/Rev.1 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations) stipulates that reports of misconduct should be made through the established internal mechanisms: to the OIOS, the Assistant Secretary-General for Human Resources Management, the head of department or

office concerned or the focal point appointed to receive reports of sexual exploitation and abuse.

27. The Applicant claims that he filed a complaint of prohibited conduct against his FRO with OIOS which is currently being processed. However, other than his mere assertion, he did not file any evidence of the same. In addition, despite his submission that from 6 September 2024 to 1 November 2024, he was “on leave trying to deal with” the FRO’s prohibited conduct, he does not provide any evidence of what appropriate corrective actions he took to do so, as provided by the Staff Regulations and Rules.

28. The Applicant does not substantiate his claim that the contested decision was a result of retaliation by his FRO for filing a complaint of prohibited conduct against him with OIOS. His performance rating was approved by the SRO and affirmed by the Rebuttal Panel, and there is no evidence that these people were motivated by retaliation. He has failed to convince the Tribunal of the nexus between his unproven allegations of prohibited conduct and his performance shortcomings which resulted in a rating of “partially meets performance expectations.”

29. The Applicant argues that the non-extension decision cannot be supported by a rating of “partially meets expectations” given his record of performance since he took up the post. In *Sarwar* 2017-UNAT-757, para. 73, the Tribunal set forth the standard of review in poor performance cases:

Whenever the Secretary-General is called upon to decide if a valid and fair reason exists to terminate an appointment for poor performance, he should consider whether the staff member in fact failed to meet the performance standard and if so whether: i) the staff member was aware, or could reasonably be expected to have been aware, of the required standard; ii) the staff member was given a fair opportunity to meet the required standard; and iii) termination of

appointment is an appropriate action for not meeting the standard in the circumstances. The processes and standards contained in ST/AI/2010/5 [superseded by ST/AI/2021/4] are geared to the specific attainment of these general objectives.

The same applies *mutatis mutandis* to a non-renewal decision.

30. In the present case, the case record reveals that: the Applicant was made aware of the required performance standards expected of him at least as far back as August 2024; he was given a fair opportunity to meet the required standard; and the non-renewal decision is an appropriate action for not meeting the standard. The complaints from staff of the Applicant's inappropriate behaviour are particularly concerning given his critical role as Head of RCO. The case record reveals that the Applicant was opposed to any attempts to remedy the identified shortcomings, including participation in a PIP. Performance standards generally fall within the prerogative of the Secretary-General and, unless the standards are manifestly unfair or irrational, other bodies should not usurp the function of setting performance standards. *Sarwar, supra*, para. 81. The Tribunal does not consider that the standards and performance expectations to which the Applicant was held were manifestly unfair.

31. The Rebuttal Panel Report shows that the Panel conducted a thorough review of the Applicant's performance for the period 1 April 2024 to 31 March 2025. The Panel reviewed all documents made available by the Applicant, his FRO and other documents submitted upon the Panel's request. The Panel also interviewed four other parties deemed relevant, including an *ad interim* Resident Coordinator during part of the Applicant's 2024-2025 performance cycle.

32. In conclusion, there is no basis for a determination that the non-extension decision is unlawful. For an SOA application to succeed, all three statutory requirements must be met cumulatively. The Applicant has failed to prove that the contested decision was *prima facie* unlawful, the Tribunal does not consider it necessary to review the other two limbs of the tripartite test, that is, urgency and irreparable harm.

Conclusion

33. In view of the foregoing, the application for suspension of action is rejected.

(Signed)

Judge Sean Wallace

Dated this 6th day of October 2025

Entered in the Register on this 6th day of October 2025

(Signed)

Isaac Endeley, for Wanda L. Carter, Registrar, Nairobi