



UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NBI/2025/115
Order No.:	210 (NBI/2025)
Date:	30 October 2025
Original:	English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

CELIS GARCIA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON APPLICATION FOR SUSPENSION
OF ACTION**

Counsel for Applicant:

Hilda Ojiambo, OSLA

Counsel for Respondent:

Sandra Baffoe-Bonnie, UNEP

Wambui Kahama-Bernard, UNEP

Introduction

1. The Applicant was a P-3 Programme Management Officer with the Corporate Services Division (CSD) of the United Nations Environment Programme (“UNEP”) in Nairobi. On 23 October 2025, he filed an application for suspension of action pending management evaluation of the UNEP’s decision not to renew his fixed-term contract (“the contested decision”).

2. On 30 September 2025, the Applicant received notice of the non-renewal of his appointment which was to expire on 14 November 2025. The notice said that “[y]our official separation from UNEP will therefore take effect at the close of business on 14 November 2025.”

3. The Applicant began pre-approved certified sick leave on that same day, effective through 9 November, with possibility of further extension, “depending on medical progress.” He filed for management evaluation of the contested decision on 22 October.

4. On 23 October, the Registry served the application on the Respondent, requesting that he submit a Reply by Tuesday, 28 October. The Respondent filed its Reply, which included eleven annexes, two of which were recorded as *ex-parte*, containing confidential information.

Consideration

5. Under Article 2(2) of the UNDT Statute,

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.

6. Article 13 of the Tribunal’s Rules of Procedure reiterates this principle on suspension of action during a management evaluation.

7. The Applicant has filed a timely management evaluation request of the decision not to extend his fixed-term appointment. The decision has not been rendered, and therefore, the review is ongoing. Accordingly, it falls to the Tribunal to determine whether the contested decision satisfies the three prerequisites set out in Article 2(2) for granting of the remedy requested, i.e., prima facie unlawfulness; particular urgency; and irreparable damage.

8. All three requirements of these prerequisites must be satisfied for a suspension of action application to be granted, and the three requirements must be cumulatively met - that is, the Tribunal can only suspend the contested decision if all three conditions are met. If one prong is unsuccessful, the application must fail. *See, Wathanafa, 2023-UNAT-1389; Khambatta, UNDT/2012/058; Nwuke, UNDT/2012/115; Applicant, UNDT/2011/158.*

9. With regard to the first prong, the Applicant avers that the decision to separate him from the organization was unlawful as it was implemented while he was on approved sick leave and argues that his sick leave his appointment “ought to have been extended to enable him to utilize his sick leave entitlement.”

10. As specifically noted by the Applicant, Section 3.9 of ST/AI/2005/3 (“Sick Leave”) provides that:

When a staff member on a fixed-term appointment is incapacitated for service by reason of an illness that continues beyond the date of expiration of the appointment, he or she shall be granted an extension of the appointment, after consultation with the Medical Director or designated medical officer, for the continuous period of certified illness up to the maximum entitlement to sick leave at full pay and half pay under staff rules 106.2. [currently sr 6.2] or 206.3 [cancelled]

11. This is further supported by section 4.9 of ST/AI/2013/1 (“Administration of fixed-term Appointments”):

Extension of fixed-term appointments for utilization of sick leave

4.9 When a staff member on a fixed-term appointment is incapacitated for service by reason of an illness that continues beyond the date of expiration of the appointment, he or she shall be granted an extension of the appointment, after consultation with the Medical Director or designated medical officer, for the continuous period of certified illness up to the maximum entitlement to sick leave at full pay and half pay under staff rule 6.2.

12. It is not disputed that the Applicant had applied for and received the requisite approval for sick leave through 9 November, with possibility of further extension, “depending on medical progress.” Thus, the initial separation notice covered the period of his certified sick leave.

13. In addition, on 6 October the Chief of Human Resources (HR) specifically addressed the Applicant’s concerns regarding sick leave. In that email, the HR Chief said, “your sick leave entitlements will be administered in full accordance with the applicable Staff Regulations and Rules, including coordination with UNON/JMS on medical certification, leave processing, and any associated benefits during the certified period.” He further explained “please rest assured that all procedures related to the ongoing sick leave and subsequent separation will be handled strictly under the applicable rules and administrative guidance, in coordination with JMS and UNON HR.”

14. Finally, the Respondent submitted a signed declaration from the Director of the Corporate Services Division at UNEP, which says:

the staff member has been informed in writing that his sick-leave entitlements will be fully administered in accordance with ST/AI/2005/3 and that no separation action will be implemented while certified sick leave remains in effect. The staff member has been informed in writing that his sick-leave entitlements will be

fully administered in accordance with the applicable Staff Regulations and Rules, including coordination with UNON/JMS for medical certification and benefits processing (annex 4). From an HR perspective, any extension of the fixed-term appointment may be issued after 14 November 2025, solely for the duration of certified sick leave, consistent with ST/AI/2005/3.

15. This confirms that the contested decision complies with the terms of ST/AI/2005/3 regarding the extension of an appointment during certified sick leave and thus is not unlawful in this regard.

16. The Applicant next argues that he was given assurances that his fixed-term appointment would be renewed by the Respondent, which constitute “countervailing circumstances” that are enforceable. The Respondent does not address this argument, other than to repeat it.¹

17. In *Ahmed* 2011-UNAT-153, the Appeals Tribunal held that

[U]nless the Administration has made an “express promise that gives a staff member an expectancy that his or her appointment will be extended”, or unless it abused its discretion, or was motivated by discriminatory or improper grounds in not extending the appointment, the non-renewal of a staff member’s fixed-term appointment is not unlawful.

18. Additionally, there is no legitimate expectation 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.” *Muwambi* 2017- UNAT-780, para. 25; and *Igbinedion*, para. 26. In addition, “the jurisprudence requires this promise at least to be in writing.” *Muwambi*, para. 25.

¹ The Tribunal feels it must note the woefully inadequate reply. Respondent’s counsel checked the box indicating that he does not contest receivability of the application but then says, without any supporting legal argument, that “the Respondent submits the application is not receivable.” ON the merits, the reply parrots the applicable three-pronged test without any effort to argue that test is not met in this case. Instead, the reply refers to a batch of 12 attachments apparently expecting the Tribunal to wade through them and discern what legal arguments can be gleaned therefrom. The Tribunal legitimately expects more from legal counsel.

19. The Applicant claims that on 9 September 2025 he “was verbally informed, ... in the presence of colleagues, that his contract would be renewed with new duties allocated to him under the Governance Affairs Office.” The Respondent’s version of this meeting is that the Applicant “was among those informed that there was a possibility that they would be extended to undertake functions supporting other UNEP divisions, including the Governance Affairs Office (GAO), although no specific duration was communicated.”

20. Of course, this difference of recollections about a verbal statement is precisely why the jurisprudence requires that an enforceable promise of renewal be in writing. Thus, the comments in that meeting are not sufficient to show an express promise of renewal or extension.

21. The Applicant also submits an email exchange between him and the GAO Director on 26 September 2025. In response to the Applicant’s offer to provide support from 29 September until 3 October, the Director thanked him for his offer and said he could assist with NGO accreditation “[b]ut this may change based on the needs of the Unit.” However, this was not an express promise of renewal. The GAO Director specifically said that the plan “may change,” and thus the Applicant could not have a legitimate expectation of renewal from this email.

22. Indeed, also included in the record by the Applicant is his email to the UNEP Executive Director, dated 3 October 2025, in which he asks her to reconsider the contested nonrenewal decision. In that email, the Applicant acknowledges “that our organization is undergoing a challenging period” before raising his sick leave issues. He then says “[i]f there is still an opportunity for me to continue carrying out my functions, whether in the same capacity or within a different unit, such as the Governance Affairs Office, I would be most grateful for you to please reconsider such opportunity for me.” The clear import of his request is that he did not have an express promise of renewal.

23. On the morning of the deadline for the Tribunal to issue its order, the Applicant filed a Request for Leave to File a Rejoinder to the Respondent’s Reply. In this submission he raises two new arguments as to why the contested decision is

unlawful. First, he says the purported operational rationale for his nonrenewal is factually unsupported; and second, that there is “a clear nexus” between the “reversal of his contract extension” and the initiation of an investigation against him by the Office of Internal Oversight Services (OIOS).

24. As to the latter, the Applicant provides no further information. Glaringly absent is any information about the OIOS investigation, including the date it was initiated and by whom, the nature of the allegations being investigated, the date on which the Applicant became aware of the investigation, and any connection between the investigation and the nonrenewal decision. So, the Tribunal rejects this argument. There is no clear nexus or any evidence that the nonrenewal was due to this investigation.

25. As to the former, the Applicant challenges the declaration from the Director of the Corporate Services Division that the possibility of a six-month extension for the Applicant was “reversed” on 22 September 2025. In rebuttal, the Applicant submits a slide show entitled “Donors Update” and dated 26 September 2025 in which he says that his post is shown as budgeted within the organization as of 1 December 2025.

26. Without more, the slide show is not easily understandable. For example, it contains an organigramme which shows staffing at the Intergovernmental Negotiating Committee on Plastic Pollution (INC) Secretariat “as of 1 December 2025,” which contains two P-3 Programme Management Officer Posts. They have no names or titles attached, but the Tribunal will accept that one of these is the Applicant’s post.

27. However, the contested decision is to not renew the Applicant’s appointment beyond its stated expiration on 14 November 2025. The organigramme predicts staffing as of 1 December, two and one-half weeks later. As shown above, the Respondent has committed to extend the Applicant’s appointment to cover his certified sick leave, which certainly could explain the organigramme. In fact, the record contains an email from the Applicant in which he says that his “expected

recovery period that will extend up to fifteen (15) weeks, depending on medical progress.” As such, the slide show does not contradict the declaration.

28. To be clear, the requirement of *prima facie* unlawfulness demands “serious and reasonable doubts about the lawfulness of the contested decision.” *Hepworth* UNDT/2009/003, para. 10. This was also confirmed, *inter alia*, in *Corcoran* UNDT/2009/071, para. 45; *Berger* UNDT/2011/134, para. 10; *Chattopadhyay* UNDT/2011/198, para. 31. The Applicant has not raised any reasonable doubts about the lawfulness of the contested decision in this case, and certainly not serious doubts. There is no evidence that shows the decision to abolish the Applicant’s post was unlawful, and there is further no evidence to support the claim that, in taking this decision, the Organisation intended to implement it in a manner which deprived the Applicant of his medical benefits and entitlements under the applicable rules.

29. Having determined that the Applicant has failed to establish that the decision was not *prima facie* unlawful, it is unnecessary for the Tribunal to discuss the remaining two prerequisites for suspension of action.

Conclusion

30. In view of the foregoing, the Application for suspension of action pending management evaluation is DENIED.

(Signed)

Judge Sean Wallace

Dated this 30th day of October 2025

Entered in the Register on this 30th day of October 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi