



**Before:** Judge Alexander W. Hunter, Jr.

**Registry:** New York

**Registrar:** Hafida Lahiouel

NOUINOU

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON AN APPLICATION FOR  
SUSPENSION OF ACTION**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
ALS/OHRM, UN Secretariat

## **Introduction**

1. On 8 September 2016, the Applicant, an Assistant to the Director of the Investigations Division, Office of Internal Oversight Services (“OIOS”), filed an application for suspension of action pending management evaluation pursuant to art. 2.2 of the Statute of the Dispute Tribunal, together with 17 annexes. The Applicant requests an order suspending the implementation of a decision not to renew her fixed-term appointment, which is due to expire on 28 October 2016.

2. On the same day, the Registry transmitted the application for suspension of action to the Respondent in accordance with art. 13.2 of the Rules of Procedure of the Dispute Tribunal.

## **Background**

3. The following background is based on the submissions and annexes provided by the Applicant.

4. At 1:01 p.m. on 7 September 2016, the Applicant sent an email to the Executive Officer, OIOS, requesting clarification regarding an extension of her fixed-term appointment. She stated that she was looking forward to a meeting that afternoon to discuss the issue.

5. The Applicant states that on the same day she was verbally informed of the decision not to renew her fixed-term appointment by the Officer-in-Charge of the Investigations Division and the Executive Officer, OIOS.

6. At 3:32 p.m. on the same day, an Administrative Officer, Executive Office, OIOS, sent the Applicant an email titled “Your separation effective 28 October 2016 [close of business].” Attached was a memorandum regarding the procedures to be followed for separation.

7. By email response at 7:27 p.m. on the same day, the Applicant informed the Administrative Officer that: “I am not separating from the Organization and I never asked for any separation. I will apply for position[s] in other offices within the UN system starting from now as I am building my UN career.” She stated that in her meeting earlier that day she had been informed that she would receive a letter confirming that her appointment would not be renewed and providing the reasons for the decision. She questioned why she was now receiving an email regarding separation procedures. The Applicant also raised concerns that she was being retaliated against and stated: “I definitely urge you to study my contract situation, my history at the Organization that I am committed to and my sacrifices ... somehow I need some protection and some support.”

8. Annexed to the application for suspension of action filed by the Applicant in this case is a request to the Ethics Office, signed and dated 7 September 2016, for protection against retaliation pursuant to ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations). The request states that the alleged retaliation was committed by the current and former Officers-in-Charge of the Investigations Division, OIOS. The complaint raises a number of concerns of the Applicant and concludes by noting that she has not been informed of who made the decision not to renew her appointment, when and for what reason.

### **Applicant’s submissions**

9. The Applicant’s principal contentions may be summarized as follows:

#### *Prima facie unlawfulness*

a. The non-renewal decision was taken in retaliation for a prior complaint that the Applicant submitted to the Assistant Secretary-General, Office of Human Resources Management, against the current Officer-in-Charge of the Investigations Division, OIOS, and another staff member;

- b. The decision is part of a policy “to eliminate any Investigations Division staff considered ‘loyal’ to the former director” of the Division;
- c. No work-related reason has been given for the non-renewal decision. Although the Applicant was informed verbally that she would receive a letter regarding the non-renewal decision and the reasons for the decision, no such letter has been provided;
- d. The Applicant has no negative performance appraisals or misconduct investigations pending;

*Urgency*

- e. Under the heading “Major urgency,” the Applicant submits that the matter is urgent for the following reasons: “applying justice,” “defending integrity and accountability,” “respecting confidentiality,” “comply with the UN and the OIOS mandates,” “saving the reputation of the Organization,” “removing conflicts of interest,” “ending retaliation,” “combating corruption,” “acting on protection of whistleblowers,” and “establishing a protection of staff members from harm of member states that have conflicts of interest”;
- f. Under the heading “Specific urgency,” the Applicant requests a number of remedies, including rescission of the decision, renewal of her appointment for two years, reassignment to another office, and the establishment of a panel to investigate a number of issues within the Investigations Division, OIOS;

*Irreparable damage*

- g. The situation has caused moral damage, including stress and anxiety;
- h. The decision would cause irreparable harm to the Applicant’s career development;

- i. The decision would cause irreparable harm to the Organization.

### **Consideration**

10. Article 2.2 of the Statute of the Dispute Tribunal provides:

2. 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.

11. Article 13 of the Rules of Procedure of the Dispute Tribunal provide:

#### **Article 13 Suspension of action during a management evaluation**

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 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.

2. The Registrar shall transmit the application to the respondent.

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.

12. Staff rules 11.2(a) and (d) state:

#### **Rule 11.2**

##### **Management evaluation**

- (a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent

regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

...

(d) The Secretary-General's response, reflecting the outcome of the management evaluation, shall be communicated in writing to the staff member within 30 calendar days of receipt of the request for management evaluation if the staff member is stationed in New York, and within 45 calendar days of receipt of the request for management evaluation if the staff member is stationed outside of New York. The deadline may be extended by the Secretary-General pending efforts for informal resolution by the Office of the Ombudsman, under conditions specified by the Secretary-General.

13. The Applicant states in her application that she submitted a request for management evaluation on 7 September 2016, although it is not clear from the application and annexes which document she is referring to. In accordance with staff rule 11.2(d), the Secretary-General's response to a request for management evaluation shall be communicated to a staff member within 30 calendar days of receipt of the request if, as is the case here, the staff member is stationed in New York. Provided the Applicant indeed submitted a request for management evaluation on 7 September 2016, the Secretary-General is required to provide a response by 7 October 2016, at the latest.

14. In accordance with art. 2.2 of the Statute, the Tribunal may only order suspension of the implementation of a contested administrative decision "during the pendency of the management evaluation." Once a response to a request for management evaluation is provided, or the response period of 30 calendar days expires, a contested decision is no longer pending management evaluation. Indeed, the statutory deadline for filing an application on the merits to the Tribunal begins to run from the date of the response to the request for management evaluation, or from the date of the expiration of the 30-day response period if no response is provided (art. 8.1(d)(i) of the Statute).

15. The contested decision is due to be implemented on 28 October 2016, by which time the decision will no longer be pending management evaluation.

Either the Applicant would have received a response from management or the 30-day response period would have expired. The Tribunal does not have jurisdiction to suspend the implementation of a contested decision beyond the pendency of management evaluation (*Igbinedion* 2014-UNAT-410, para. 21). The application must therefore be rejected.

**Conclusion**

16. In light of the foregoing, the Tribunal ORDERS:

The application for suspension of action is rejected.

*(Signed)*

Judge Alexander W. Hunter, Jr.

Dated this 9<sup>th</sup> day of September 2016