



**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

ZONG

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON MOTION FOR INTERIM  
MEASURES**

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**Counsel for Applicant:**  
Self-represented

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

## **Introduction**

1. On 28 September 2018, the Applicant filed an application contesting the decision not to extend her temporary appointment as a Language Service Assistant, GS-4, Department of General Assembly and Conference Management (“DGACM”) beyond 19 September 2018. Within the application, the Applicant made a motion for interim measures, in which the Applicant seeks the suspension of the implementation of the contested decision pending the proceedings before the Tribunal pursuant to art. 14 of the Dispute Tribunal’s Statute.

## **Factual and procedural background**

2. On 20 September 2017, the Applicant joined the United Nations on a six-month temporary appointment with the Chinese Translation Service, DGACM. The Applicant’s temporary appointment was initially set to expire on 19 March 2018. The Applicant’s temporary appointment was renewed on 20 March 2018 through 30 June 2018, and again on 1 July 2018 through 19 September 2018.

3. The Applicant received the Performance Evaluation Form for staff members holding temporary appointments (“P.333 form”) for the initial temporary appointment period of 20 September 2017-19 March 2018, which was signed by the Applicant and her First Reporting Officer (“FRO”) and Second Reporting Officer (“SRO”) on 26 March 2018. In the motion, the Applicant submitted as follow regarding this performance evaluation (references to annexes omitted):

... The First Evaluation: the performance evaluation presents untrue and unsubstantiated information. Therefore, it is biased and unfair.

When I received my first evaluation form (March 2018), I was shocked, because my then FRO, [DY, name redacted], never provided me with any negative communication regarding my work performance, not to mention any oral warnings. I talked to my FRO about this (about late March). I said, “I don’t have these “issues”, and

even if I did, you should let me know first, and if I don't correct, then you can escalate the "issues" on paper." He agreed with my point, and he asked me to go to the SRO's office with him. [SRO] asked me if I received any feedback, I said no, and he asked [FRO] if he had given me any feedback. [FRO] said no. Then, he had no words to say, and quickly switched the topic. I couldn't ask him to switch back. At the end of the meeting, he repeated that he's not going to change the grade because he has already submitted the form to EO [Executive Office], and told me to look ahead.

The first evaluation (20 September 2017-19 March 2018) is untrue. It doesn't reflect my work performance. If I really had these "problems" for the past six months, then why didn't my FRO, whom I interact with on a daily basis, never communicate them with me? On the contrary, my SRO, who doesn't interact with me often, formed the idea that I have "problems", even though he has no facts to support the overall rating of C [partially meets performance expectations].

In the past six months (20 September 2017-19 March 2018), [FRO] has never given me any negative feedback. In fact, he has only praised me for my work performance orally and via emails. In these emails, he also copied [SRO] about my good work performance. After receiving these emails regarding my good performance, [SRO], however, never responded to them. I thought he's the Chief, maybe he's too busy to give me, a new G4 staff member, any attention. Later on, when [RJ, name redacted] became my FRO, [RJ] documented all my "mistakes" that he could find and copied it to [SRO], [SRO] suddenly became very involved and responsive to all his emails about my "bad" performance, and thanked [RJ] for "helping" me to improve. This contrast, however, is very shocking to me. I am doing the same work just like before, however, because the change of the new FRO, my performance deteriorated. My "bad" performance report seems to interest [SRO] a lot more than the "good" performance feedback from [DY]. Looking back now, I feel [DY] probably had sensed that [SRO] is biased towards me. He copied [SRO] about my good work performance, hoping [SRO] could evaluate my performance fairly and objectively.

As this first C, which means "partially meets performance expectations", is contradictory to [DY]'s positive feedbacks that I received on my work performance, I suspected that the "C" and the FRO's comments are both made by the SRO[...]. I have found evidence that my suspicion is actually true.

In relation to the first evaluation, I believe that [SRO] violated the UN procedures by bypassing the FRO, writing and deciding the grade for

my FRO, [DY]. He pretended to be [DY] on the evaluation form, then he jumped back to his SRO role, and wrote “I concur with the comments and rating entered by the FRO” (cited from my 1st p.333 form) which is a lie. In other words, [SRO] played two roles, both FRO and SRO, on my evaluation form. Moreover, after the role-playing, [SRO] did not note the fact that it is himself who wrote the FRO’s comments and decided the grade on the form. As the Chief of Chinese Translation Service, [SRO] abused his authority by manipulating my evaluation form, and intentionally gave me a C by neglecting FRO’s positive feedback on my work performance and replacing FRO to decide my grade. [SRO]’s authority, integrity, professionalism and mature judgment as the Chief of Chinese Translation Service and my SRO are questionable.

SRO is the Chief of Chinese Translation Service (CTS). In the CTS meeting, he has explicitly said: “performance evaluation is a very good tool, and we should use it wisely. if a staff is not doing good, we should let s/he know as early as possible. Otherwise, staff member will lose a good opportunity to improve. The result is terrible.” In reality[,] SRO has done the exact opposite of what he instructed others to do. The performance evaluation has been manipulated as a tool to separate me from [the] UN.

In early February 2018, [SRO] suddenly came to me and demanded that I drop my French class at the UN, with no reason provided. I was half way through the course, and I didn’t dare to ask him why. I didn’t understand why, because I know the UN encourages its staff to learn a new language, and it’s especially helpful for my job as a language service assistant. Other coworkers had no problem taking [the] UN courses. For example, [LY, name redacted], another front desk colleague, has taken multiple courses, and she never got any setbacks from the Chief. I’m the only staff member that has been demanded to drop the class.

I told [SRO], if I drop now, I’ll be charged with a penalty fee. He said he’ll write me an email to avoid the fee. In his email, he made an excuse saying our unit is understaffed, so I can’t continue my course. This reason is untrue. My class only took place during lunchtime. In our office, we have a rotation for the lunchtime shift (one person/day). Only one staff is required to stay in the office for lunch time shift. I only have one day’s lunchtime shift, and it’s not conflicting with my class’s schedule. Therefore, taking the French class will not affect my work. As he is the Chief, and also my SRO, he had all the power. As a new staff member that just worked there for four months, I had no choice but to obey the Chief’s demand. Now, I still don’t know the

real reason. However, if he's interested in keeping me for long term, he would let me take classes just like other coworkers, because improving language skills is beneficial for improving my role as a language service assistant. I feel that before starting reviewing my work performance in late March, [SRO] had already showed his bias towards me as early as in February. He had decided not to keep me at CTS, and that's why I was the only one who was demanded to drop classes, and that's why I repetitively received Cs for my evaluation forms.

4. Subsequently, another e-performance document ("e-PAS") for the performance cycle 2017-2018 was completed in the form specific to a fixed term appointment for the same period, which was signed by the FRO on 26 April 2018, by the SRO on 27 April 2018, and by the Applicant on 3 May 2018. In the motion, the Applicant submitted as follows regarding this performance evaluation:

... The Second Evaluation: [SRO] threatened me by stating that I should not rebut the second evaluation (the ePas)[.]

One week after signing my first evaluation, on 2 April 2018, I was told to write self-evaluation on my ePas. I wrote 1500 words about my performance at work, hoping my SRO could really get to know about my performance and evaluate fairly. However, against all facts and expectations, on April 27th, 2018, I still got a C. I went to the FRO's office for advice. So [FRO] and I talked to [SRO] again. The feedback we received from the SRO is that because the time of the ePas is close to the first evaluation form, in order to keep the consistency, I get a C. [SRO] said he wouldn't change his decision of giving me another C on my ePas because he has already decided. I didn't agree with the ePas, and I couldn't help, so I cried. I was new to the UN HR system, and I didn't know much about the evaluation process. [FRO] said, "Lihua, you can rebut. Right, Chief?" [SRO] had a harsh look, and said that I can rebut. However, if I do rebut, he won't renew my contract, and moreover, he'll write more "problems" in the evaluation part of my ePas. When we were leaving [SRO]'s office, [SRO] smiled to me and asked me to look ahead and forget about the past.

I was told that I should not use my right to rebut as otherwise, I would be separated from [the] UN. As I was scared, I did not rebut; but with the benefit of a hindsight, I think this amounts to serious misconduct on the part of [SRO]. It was not my intention to not to rebut. Given the conditions of my temporary contract, I had to obey SRO's decision if I still wanted my contract to be renewed. [SRO] again asked me to let

the existing evaluations go, and look forward to my future evaluations. Instead of ensuring a fair evaluation process, the SRO plays a role in denying and obstructing my right to rebut. HR office has also told me that as a temporary staff, I am not supposed to have ePas. Creating an ePas for me is not even in the HR framework.

5. On 27 June 2018, a P.333 form for the period of 1 April 2018-30 June 2018 was signed by the Applicant, the FRO, and the SRO. In the motion, the Applicant submitted as follows regarding this performance evaluation (references to annexes omitted):

... The Third Evaluation: [SRO] failed to communicate with me regarding my evaluation before giving me another C, and again as a FRO, [RJ] failed to evaluate my true performance by not providing solid examples that were identified as partially meeting expectation.

On 27 June 2018, I received my third performance evaluation (p.333), which was a C. When I asked the FRO for any examples that led to his conclusions, he said he couldn't think of any now, but will get back to me via email. However, I still haven't received any examples today. I told [RJ] that I wanted to talk to my SRO about this C. He didn't want to talk, but he told my FRO to assure me that no matter what grade I get, it would not affect my contract renewal. Even though there is no solid example showing my "problems", they wouldn't change their conclusions. From the perspective of my FRO and SRO, the actual grade on the evaluation form, and on what basis I have been given a C do not seem to matter much. At that time, I was waiting for my contract renewal, and I didn't even have a valid ground pass. I couldn't say no because it would offend them, and I would lose my contract immediately.

After receiving my third C, I was very confused because [RJ] makes me believe that he thinks highly of me. In April 2018, [RJ] became the new programming officer. As he had no experience of how to work as a programming officer before, he had lots of questions of the front desk's work. At that time, I gave him a significant amount of support, because I was the staff member who was covering 100% of [XZ, name redacted] (on vacation) and 70%-80% of [YL, name redacted]'s work (even though [YL] didn't take leave, and was still working in the office). I had a very heavy workload during that period, and I played a major role in ensuring the functionality of the front desk in the Chinese Translation Service. [RJ] appreciated my support to him, and said to me "Lihua, I know you have done a lot of work in the office,

and you are also doing very well. I and other colleagues all see it, and we'll recognize your work." When he said that to me, I was very touched because I felt he recognized my hard work. During that period, SRO was in China. Before SRO left for China, SRO told me he'll ask [XZ] to check my work and give me a score when he comes back. When SRO and [XZ] came back to work, [XZ] told me that I can get 90 out of 100 for the work that I have done when she's away.

However, against all facts and expectations, I still got a C. I asked a senior colleague, [BB, name redacted], to ask FRO why he gave me a C, because [BB] and FRO are good friends for many years. [BB] told me that FRO told her that the giving me a C is SRO's decision, and refused to talk more about it.

6. The Applicant submits that the above-described three evaluation forms affected her chance to stay at CTS/DGACM and her ability move to another office within the United Nations:

The Chief explicitly told me to go to other offices. He said he's not changing the Cs, but he'll write me a recommendation letter. When I asked him to write a letter for me, he said he would ask EO. However, I never heard back. I find this self-contradictory. One month ago, I got an interview at DGACM/Documents Management Section, and the interviewer was very interested in me because I knew all the workflow at DGACM. I was told the hiring manager was ready to hire me. However, after I submitted my evaluation forms, they selected someone else. I am worried that these Cs are devastating for my career at the UN. These Cs not only eliminate any chances for me to stay at CTS, but also inevitably block my way moving to other UN offices.

In summary, the three evaluations fail to reflect the substance of my work; instead, they show abuse of authority. My supervisors have used my contract renewal as leverage to get my submission to their power and not to rebut for the negative evaluations that they imposed on me. Based on this ground, my supervisors repetitively abused their power, fooling me, comforting me and deliberately keeping give me Cs at the same time. The decision of giving me three Cs for my three evaluations is illogical and self-contradictory.

Because C indicates "partially meeting expectations", and if my work performance is so poor then my contract should and will not be renewed again and again. If my contract is being renewed again and again, and I am even getting an increasing amount of work, this means that my performance is good enough to have more jobs done. I am

good enough to be hired and handle more and more jobs, however, I'm not considered as good enough to get a B, because the treatment I get CTS is not fair.

Even though I have received three Cs, and was placed on a PIP, SRO and FRO still allocated a significant amount of new jobs to me from August 1st, 2018. If I am already identified as having difficulties with my current jobs in my hands, and I therefore need to improve myself to work on these "problems", why am I receiving more new jobs at the same time? This would further deteriorate my work performance and lead to the decrease of quality of work in CTS. If the Chief is a reasonable and accountable manager, he should be aware of these, and avoid giving me more new jobs because this affects the implementation of the PIP, the quality of work at CTS and further decreases my work performance at the same time.

7. According to the unsigned document submitted by the Applicant, the Performance Improvement Plan ("PIP") was created on 6 July 2018 for the duration of 9 July 2018-10 September 2018. The Applicant also submitted the signed PIP for the updated duration of 16 August 2018-10 September 2018, which was signed by the Applicant's FRO and SRO on an unknown date.

8. By email dated Friday, 14 September 2018, the Applicant's SRO notified the Applicant that "after careful evaluation of your performance, we have decided not to recommend you for extension of contract. Your last day of service will be 19 September 2018".

9. On 16 September 2018, the Applicant submitted the request for management evaluation to the Management Evaluation Unit contesting the decision not to renew her temporary appointment due to performance and to separate her from the Organization.

10. On 17 September 2018, the Applicant filed an application for suspension of action pending management evaluation. On the same day, the case was assigned to the undersigned Judge.



11. On 18 September 2018, the Respondent filed his response to the application for suspension of action.

12. On 19 September 2018, the Tribunal issued Order No. 181 (NY/2018), granting the applicant's application for suspension of action in relation to the decision not to renew her temporary appointment due to performance and to separate her from the Organization, and suspended the implementation of this decision pending management evaluation.

13. Following the issuance of Order No. 181 (NY/2018), the Applicant's temporary appointment was extended until 30 September 2018.

14. On 28 September 2018, the Applicant was notified of the outcome of the management evaluation, in which the Secretary-General has decided to uphold the decision not to renew the Applicant's temporary appointment.

15. On 28 September 2018, the Applicant filed the application and the present motion.

16. The Registry acknowledged receipt of the Applicant's application and request for interim measures and served them on the Respondent on 28 September 2018. In accordance with art. 14.2 of the Dispute Tribunal's Rules of Procedure, the Respondent was directed to file a reply to the request for interim measures by 4:00 p.m. on 2 October 2018.

17. On 1 October 2018, the Respondent duly filed his response to the motion for interim relief, claiming that it is not receivable. First, the Dispute Tribunal does not have competence to suspend the implementation of a contested decision as an interim measure in cases of appointment under art. 10.2 of the Dispute Tribunal Statute. The decision not to extend the Applicant's temporary appointment is a case of appointment. Second, the contested decision has been implemented. Following the issuance of Order No. 181 (NY/2018), the Applicant's temporary appointment was

extended from 20 to 30 September 2018 pending management evaluation of the contested decision. The Respondent submitted that the Applicant's temporary appointment expired on 30 September 2018 and she has separated from the Organization.

## **Consideration**

### *Applicable law*

18. Article 10.2 of the Tribunal's Statute states:

At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

19. Article 14 of the Dispute Tribunal's Rules of Procedure states:

#### Suspension of action during the proceedings

1. At any time during the proceedings, the Dispute Tribunal may order interim measures to provide temporary relief where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.
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.

20. The Tribunal considers that an order on interim measures may be granted at the request of the parties when the following cumulative conditions are met:

- a. The motion for interim measures is filed in connection with a pending application on the merits before the Tribunal, anytime during the proceedings;
- b. The application does not concern issues of appointment, promotion or termination;
- c. The interim measure(s) ordered by the Tribunal must provide solely a temporary relief to either party, such relief being neither definitive by nature nor having the effect of disposing of the substantive case in relation to which the application for interim measures is filed;
- d. The contested administrative decision appears *prima facie* to be unlawful;
- e. There is a particular urgency in requesting the interim measures;
- f. The implementation of the contested administrative decision would cause irreparable damage.

### **Considerations**

21. The Tribunal notes that the Applicant's motion for interim measures is filed in connection with a currently pending application on the merits. The first condition mentioned above is accordingly fulfilled.

22. The Tribunal considers that a request to suspend the implementation of a contested administrative decision pending proceedings cannot be granted when the request for suspension concerns issues of appointment, promotion or termination, pursuant art. 10.2 from the Dispute Tribunal's Statute and art. 14 of its Rules of Procedure, as these issues are expressly excluded from being suspended by the Dispute Tribunal's Statute and Rules of Procedure.

23. The Applicant's request for interim measures relates to an appointment, namely the decision not to extend her temporary appointment. Consequently, the second condition identified above is not fulfilled as the issues raised by the Applicant are excluded from being suspended by the Dispute Tribunal.

24. Seeing that at least one of the above-mentioned cumulative conditions is not fulfilled, the Tribunal therefore need not consider whether the remaining requirements, namely temporary relief, *prima facie* unlawfulness, urgency and irreparable damage, are met.

25. In the light of the foregoing,

IT IS ORDERED THAT:

26. The present application for interim measures is rejected.

(Signed)

Judge Alessandra Greceanu

Dated this 4<sup>th</sup> day of October 2018