

# **UNDT/2011/154, Hersh**

## **UNAT Held or UNDT Pronouncements**

The decision to terminate the Applicant's contract was taken at the Mission level, without the delegated authority required by ST/AI/234 and was therefore unlawful. The post facto approval of the decision by the ASG/OHRM does not cure the unlawfulness. The Secretary-General's action of entering into a contract of employment with the Applicant for the reason only of securing termination indemnities for the Applicant does not appear to be supported by any Staff Regulation, Staff Rules or any known principles of an employment contract. The termination of the Applicant's appointment as a result of the liquidation of UNMIS does not call into question her integrity, affect her reputation or affect her career prospects with future employers. Any damage that might ultimately be suffered by the Applicant as a result of the Tribunal's findings in relation to the lawfulness of the impugned decision can be remedied through an award of damages. A suspension of action application requires the cumulative presence of prima facie unlawfulness, urgency and irreparable harm in order to be successful. The absence of one of these conditions, while not allowing the grant of this Application, does not extinguish an applicant's cause of action where an unlawful decision has been taken to his or her detriment. It is the finding of this Tribunal that the subject matter of this suit cannot properly be addressed and determined in a suspension of action application. The Application for suspension of action is hereby refused for not having satisfied the three conditions required under the Statute and Article 13 of the Tribunal's Rules of Procedure for its grant. The Tribunal hereby transfers the instant Application to the general cause list to be heard on the merits.

## **Decision Contested or Judgment/Order Appealed**

On 22 August 2011, the Applicant filed the present Application for a suspension of the implementation of the administrative decision to separate her from service effective 31 August 2011 on the basis that it was not possible to transition her from UNMIS to either United Nations Mission in South Sudan (UNMISS) or to the United

Nations Interim Security Force for Abyei (UNISFA).

## Legal Principle(s)

N/A

## Outcome

Dismissed as not receivable

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Hersh

## Entity

UNMIS

## Case Number(s)

UNDT/NBI/2011/046

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

31 Aug 2011

## Duty Judge

Judge Izuako

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Suspension of action / interim measures

Receivability

Termination (of appointment)

## Applicable Law

Administrative Instructions

- ST/AI/234

GA Resolutions

Information Circulars

- UNMIS IC 218/2011

Security Council Resolutions

- S/RES/1978
- S/RES/1997

UNDT RoP

- Article 19
- Article 36