



## **Introduction**

1. On 9 November 2011, Ms. Dina Neskorožhana, a staff member of the Department of Public Information, filed an application for suspension of action, pending the outcome of management evaluation, of the implementation of the decision to impose on her a 31-day period of ineligibility for re-employment on a temporary appointment after the expiration of her fixed-term appointment. Both parties refer to this period of ineligibility as “break in service”.

2. The Applicant’s fixed-term appointment expired on 31 October 2011. She submits that she was first made aware of the contested decision on 1 November 2011, and that on 8 November 2011 she was also informed that, notwithstanding the Tribunal’s recent judgment in *Garcia* UNDT/2011/189, she would not be allowed to be re-employed on a temporary appointment until she completed a break in service of 31 days, calculated from 31 October 2011. She filed a request for management evaluation on 9 November 2011.

## **Procedural matters**

3. On 9 November 2011, the Dispute Tribunal issued Order No. 265 (NY/2011), directing the Respondent to submit a reply to the present application by 12 p.m., 11 November 2011. Both parties were also directed to attend a case management hearing on 10 November 2011.

4. The hearing took place as scheduled, with both Counsel appearing in person. The principle purpose in holding the hearing was to enable the parties to explain whether any issues would be raised that had not already been the subject of a decision by the Tribunal. The Respondent submitted, in effect, that the case raised the new issue that a suspension of action cannot be made unless an offer of a temporary contract is made to a staff member within the 31-day break in service.



Upon separation from service, including, but not limited to, expiration or termination of, or resignation from, a fixed-term, continuing or permanent appointment, a former staff member will be ineligible for re-employment on the basis of a temporary appointment for a period of 31 days following the separation.

11. The English version of the revised instruction was placed on the United Nations Official Document System (“ODS”), iSeek (UN’s intranet portal), and the online Human Resources Handbook on 28 October 2011. The French version of the revised instruction was placed on ODS on 31 October 2011, and, on 1 November 2011, it was placed on iSeek and the online Human Resources Handbook. The Respondent submits that the draft of the revised instruction was circulated to staff representatives on 14 July 2011, and that some of them provided their comments.

12. On 31 October 2011, the Dispute Tribunal issued *Parekh* UNDT/2011/184, *Helming* UNDT/2011/185 and *Buckley* UNDT/2011/186, ordering the suspension of the contested decisions to impose breaks in service of 31 days between the applicants’ fixed-term appointments and subsequent temporary appointments.

13. On 1 November 2011, the Applicant’s former supervisor informed her that OHRM had confirmed that, following the expiration of her fixed-term appointment on 31 October 2011, she would be required to take a 31-day break in service before re-appointment on a subsequent temporary appointment. The Applicant was further informed that the Tribunal’s judgments in *Parekh*, *Helming* and *Buckley* applied only to those specific staff members who applied to the Tribunal for a suspension of action.

14. On 4 November 2011, this Tribunal issued *Garcia*, which presented identical circumstances, that is, an imposed 31-day period of ineligibility for a temporary appointment upon the expiration of Ms. Garcia’s fixed-term appointment on 31 October 2011.

15. The Applicant submits that, also on 4 November 2011, she had a conversation with the Deputy Director of News and Content, News and Media Division, DPI, who confirmed to her that it was clear that after a break in service the Applicant would come back to DPI.

16. On 8 November 2011, the Applicant wa





*Receivability and urgency*

a. The Applicant has not been offered a temporary appointment since her fixed-term contract ended. An offer of appointment must comply with certain formal requirements, and the expression of a wish to bring the Applicant back to the department does not satisfy those requirements. Without an offer of appointment on a temporary basis, no administrative decision to impose a 31-day break in service has been made. The Applicant seeks the suspension of an administrative decision that does not exist;

b. On the other hand, the Respondent submits that the period of break in service runs from the expiry of a contract, in this case from 31 October 2011. In view of the formalities required before an offer of appointment can be made to a staff member, it may be that the Applicant will not receive an offer of appointment prior to the expiry of the 31-day period. This may render the application moot;

*Prima facie unlawfulness*

c. Notwithstanding the previous decisions, on the facts of this case, the notice given to the Applicant was adequate. The surrounding context leading



e. The Tribunal has previously held that a break in service cannot be artificial in nature (*Castelli* UNDT/2009/075). In order to make a break in service actual, 31 days are required. It is only after 31 days of separation that a staff member's ties to the Organization are finally severed. This is the rationale for the period.

### **Consideration**

21. Article 2.2 of the Statute of the Dispute Tribunal provides that the Tribunal may suspend the implementation of a contested administrative decision action during the pendency of 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 Tribunal can suspend the contested decisions only if all three requirements of art. 2.2 of its Statute have been met.

22. An application for suspension of action is receivable under art. 2.2 of the Statute if it concerns a contested administrative decision that is the subject of an ongoing management evaluation.

23. The Respondent challenges the application on the basis that the Applicant seeks the suspension of the administrative decision 0Trf0 Td007 Tch/c 0.01ase AohjTel



- a. whether the implementation of the contested decision would have the prejudicial effect of unilaterally altering the Applicant's contract by introducing a new provision that is detrimental to her acquired rights; and
- b. whether the notice given to the Applicant of the imposition of the 31-



