

Case No.: UNDT/GVA/2018/014
Order No.: 51 (GVA/2018)
Date: 27 February 2018

Introduction

1. By application on the merits filed on 22 February 2018, the Applicant contests the non-renewal of her fixed-term appointment (“FTA”) beyond 31 December 2017.
2. The application was served on the Respondent, who was granted until 26 March 2018 to file his reply on the merits.
3. On 25 February 2018, the Applicant filed a motion for interim measures requesting “suspension of the implementation of the decision of the Secretary-General, communicated to [her] via letter dated 19 February 2018 from the Under-Secretary-General for Management, to uphold the original contested decision of the [Chief of Mission Support (“CMS”), United Nations Assistance Mission in Afghanistan (“UNAMA”)], dated 13 December 2017, not to renew [her] [FTA] based on the reason of poor performance, and the subsequent memorandum of the Chief of Section, Human Resources ... dated 21 February 2018 instructing the Applicant to finalize her checkout from UNAMA by close-of-business 31 March 2018”.

Facts

4. The Applicant served as a Coordination Officer (P-4), Jalalabad Field Officer, UNAMA, Department of Peacekeeping on on 2017.

6. The record before the Tribunal shows that as per instruction of the Acting Assistant-Secretary General (“Acting ASG”), Office of Human Resources Management (“OHRM”), the outcome of the rebuttal process was annulled, and the Applicant then agreed upon the constitution of an ad-hoc Rebuttal Panel (“ad-hoc

7. On 31 March 2017, the Applicant’s First Reporting Officer (“FRO”) during her 2015-2016 and 2016-2017 performance evaluation cycles retired from the service of the Organization.

8. On 3 May 2017, the Applicant submitted her rebuttal statement to the ad-hoc panel examining the rebuttal of her 2015-2016 performance cycle rating.

9. On 10 June 2017, the Applicant electronically acknowledged that her performance review for the 2016-2017 cycle had been conducted, with a rating of “does not meet performance expectations”. On 21 June 2017, the Applicant submitted a rebuttal concerning this rating.

10. On 9 August 2017, the ad-hoc panel

13. On 19 December 2017, the Applicant requested management evaluation of the decision not to renew her FTA beyond 31 December 2017. On the same day, she filed an application for suspension of action pending management evaluation of the decision not to renew her FTA beyond 31 December 2017, pursuant to art. 2.2 of the Tribunal's Statute and art. 13 of its Rules of Procedure.

14. The Tribunal, by Order No. 260 (GVA/2017) of 27 December 2017, ordered that the contested decision be suspended pending the outcome of the management evaluation. Accordingly, the Applicant's FTA was extended until 31 March 2018.

15. The Under-Secretary-General for Management informed the Applicant by letter of 19 February 2018 that the decision not to renew her FTA was upheld.

16. On 22 February

19. It follows from the above provisions that the Tribunal cannot grant a request for interim measures in cases of appointment, promotion or termination.

20. In *Benchebbak* 2012-UNAT-256, the Appeals Tribunal held that the Dispute Tribunal exceeded its jurisdiction or competence in ordering the suspension of the contested decision beyond the date of the completion of management evaluation in a matter concerning the Applicant's separation upon non-renewal of a fixed-term appointment.

21. In *Auda* 2016-UNAT-671, the Appeals Tribunal ruled that the Dispute Tribunal correctly found that it had no jurisdiction to grant an application for suspension of action under art. 10.2 of its Statute, as follows:

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IT IS ORDERED THAT:

24. The motion for interim relief is rejected.

(Signed)

Judge Rowan Downing

Dated this 27th day of February 2018

Entered in the Register on this 27th day of February 2018

(Signed)

René M. Vargas M., Registrar, Geneva