



Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko, Acting Registrar

GILRUTH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for the Applicant:

Daniel Trup, OSLA
Brian Gorlick, OSLA

Counsel for the Respondent:

Katya Melliush, UNON (for UNEP)

Case No. UNDT/NBI/2014/007

Order No.: 012 (NBI/2014)

outlining the outcome of a meeting he had had with the Office of Staff Legal Assistance (OSLA) in Nairobi regarding his contract renewal. His email stated, *inter alia*, that he had informed OSLA of:

[T]he NY decision not to renew my contract on my current post, and that you and I had discussed options including: a) other contract possibilities, b) an early retirement package, or c) to put my case formally to the OSLA for transmission to the Management Evaluation Unit in NY for possible submission to the UNDT.

7. Mr. Candotti responded to the Applicant the same day as follows:

Many thanks for your email and for your information. I shall inform ED accordingly. In the meantime, for the record, it is important to note that EOSG has not yet taken a final decision not to extend your contract, although indications for similar contract extensions for staff members at D2 and above are that mobility remains a firm principle for management. I shall keep you posted.

8. According to the Applicant, on 7 January 2014, the Executive Director of UNEP (ED/UNEP) informed him orally that his appointment would not be extended beyond 2 February 2014.

9. The Applicant filed a request for management evaluation on 17 January 2014.

10. By a memorandum dated 17 January 2014 addressed to the Secretary-General, the ED/UNEP requested approval for a one year and 10 month extension of contract for the Applicant through his mandatory retirement date on 30 November 2015. The memorandum indicated that the Applicant had successfully met performance expectations during the reporting period.

11. The Applicant filed the current application for suspension of action on 18 January 2014.

12. By a memorandum dated 20 January 2014, the Human Resources Management Service of the United Nations Office at Nairobi (HRMS/UNON) forwarded the ED/UNEP's memorandum to the Secretary-General to the Office of Human Resources Management (OHRM) in New York.

Parties' submissions

Applicant's submissions

13. The Applicant submits the following:
 - a) The reason provided for the impugned d

Considerations

15. Applications for suspension of action are governed by art. 2.2 of the Statute of the Tribunal and art. 13 of the Rules of Procedure. Article 2.2 provides, in relevant part, as follows:

The Dispute Tribunal shall be competent to hear and pass judgment 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.

16. The three statutory prerequisites contained in articles 2.2 and 13.1 of the Statute and Rules of Procedure, i.e. *prima facie* unlawfulness, urgency and irreparable damage, must all be satisfied for an application for suspension of action to be granted. In addition to the three statutory prerequisites cited above, the applicant must also show that there is an administ

19. According to the Applicant, the ED/UNEP informed him on 7 January 2014 that a decision had been made not to renew his appointment beyond 2 February 2014. The Respondent disputes this because no written notification of this decision has been sent to the Applicant.

20. The undisputed evidence that the Tribunal does have before it is that there was communication from Mr. Candotti on 27 December 2013 to the Applicant that the Executive Office of the Secretary-General (EOSG) had not taken a final decision on his contract extension. There is also evidence that on 20 January 2014, the ED/UNEP's request for an extension of the Applicant's contract from 3 February 2014 to 30 November 2015 was forwarded to OHRM with a request that OHRM "kindly obtain the Secretary-General's approval of this extension".

21. Even if the Tribunal accepts the Applicant's contention that the ED/UNEP orally informed him of the non-renewal of his FTA on 7 January 2014, it appears that the ED's actions subsequent to this discussion clearly indicate that: (a) the decision to renew or not renew the Applicant's appointment does not lie in his hands; and (b) the decision is still outstanding by the ultimate decision-maker, the Secretary-General.

22. In light of the foregoing, the Tribunal has no choice but to find that there is no administrative decision for it to suspend.

23. The Tribunal sincerely sympathizes with the Applicant who will now live in the unenviable world of uncertainty for the next couple of days until the Secretary-General decides on his fate. However, the General Assembly has reiterated that the Dispute and Appeals Tribunals shall not have any powers beyond those conferred under their respective statutes.² This means the Dispute Tribunal would be acting

