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Case No.: UNDT/NY/2013/033  
Order No.: 118 (NY/2013)  
Date: 29 April 2013



## **Introduction**

1. On 24 April 2013, at 4:55 p.m., the Applicant, an Arabic translator with the Department for General Assembly and Conference Management (“DGACM”) at the P-3 level, filed an application in which he contested “[t]he decision to separate him from service following the decision not to grant him a permanent appointment upon the completion of his probationary employment period”.

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a permanent position, which the Applicant believes falls under the exclusionary clause of art. 10.2 (which states that “temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination”).

6. In response to the motion for an expedited hearing on the merits, the Tribunal issued Order No. 117 (NY/2013), dated 25 April 2013, instructing the Respondent to file and serve his comments, if

## **Background**

8. On 25 June 2009, the Applicant joined DGACM on a two-year probationary appointment. His letter of appointment stated that “[a]t the end of the probationary service [he] will either be granted a Permanent/Regular Appointment, or [the] present appointment will be terminated”.

9. Two years later, on 24 June 2011, his probationary appointment was extended for an additional period of one year. The Applicant subsequently appealed this decision before the Tribunal by application of 27 January 2012 (Case No. UNDT/NY/2012/003).

10. On 21 June 2012, the Central Review Committee (“CRC”) received a request from DGACM that the Applicant’s probationary period be extended for an additional year on an exceptional basis. The Applicant’s probationary period was extended until 31 August 2012 pending the completion of the CRC’s review prior to which the CRC denied the request.

11. Starting on 31 August 2012, the Applicant’s contract was further extended on a month-to-month basis pending the completion of informal dispute resolution discussions undertaken in Case No. UNDT/NY/2012/003. On 20 November 2012, the Tribunal was informed of the failure of the informal dispute resolution proceedings in Case No. UNDT/NY/2012/003.

12. Following the failed informal resolution dispute process, a rebuttal panel was convened from 7 to 21 February 2013 to review the Applicant’s 28 June 2012 request to rebut his electronic performance appraisal for the period of 1 April 2011 to 31 March 2012. The panel concluded that the overall evaluation of “Partially meets performance expectations” should be retained.

13. On 27 February 2013, the CRC, which had received a 4 December 2012 submission from DGACM requesting that the Applicant be separated from service,

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opinion the interpreter may have to the contrary, or else the interpreter would become the author.

31. A plain reading of art. 10.2 of the Statute is that the Dispute Tribunal may at any time during the proceedings order an interim measure to provide temporary relief to either party, including the Respondent. A literal, plain and common reading of art. 10.2 is that the Tribunal has the power, *suo motu*, to order any temporary relief, which it may find appropriate, from the time an applicant has filed her or his application and until the Tribunal fully, finally and entirely disposes of the case.

Difference between art. 2.2 and 10.2 of the Statute

32. A plain reading of arts. 2.2 and 10.2 of the Statute demonstrates that, for the Tribunal to order an interim measure under art. 10.2 of the Statute, it is not required that such interim measure is preceded by a request or an application by either party.





suspension of separation from service have been made. This determination is made in the interests of justice and in view of the particular circumstances, including: the Respondent's request that a period of 30 days is required to prepare a meaningful reply to the Applicant's request for an expedited hearing; delays by the MEU; indications to the Applicant that informal resolution may be considered; the Applicant's misguided understanding of art. 10.2 of the Statute; and the fact that due to the time constraints it would not be possible for him to file a motion for interim measures and for the Tribunal to subsequently consider it.

42. In order to do so, pursuant to art. 10.2 of the Statute, the Tribunal will therefore consider whether the contested administrative decision appears *prima facie* to be unlawful, whether the case is of particular urgency, and whether implementation of the contested decision would cause irreparable damage.

*Prima facie unlawfulness*

43. In Order No. 76 (NY/2013), the Dispute Tribunal made a finding of *prima facie* unlawfulness of the decision to separate the Applicant on 31 March 2013 and ordered its suspension during the pendency of the management evaluation.

44. Having examined the papers presently before it, the Tribunal finds that the documents before the Tribunal do not warrant a change in the conclusion previously made by the Tribunal in Order No. 76 (NY/2013) that the separation is *prima facie* unlawful. The Tribunal finds that, for reasons stated in Order No. 76 (NY/2013), the requirement of *prima facie* unlawfulness is satisfied.

*Particular urgency*

45. The Applicant's current appointment expires on 30 April 2013 and his separation from service is therefore imminent. The urgency in this case has not been created by the Applicant. The MEU delayed in rendering its decision until six days before the expiration of the Applicant's appointment extension, and

the Administration refused to extend his appointment further. The Tribunal is satisfied, on the facts as presented by the Applicant, that this is not a case of self-created urgency. This urgency is not caused by the Applicant's own makings and is therefore not self-inflicted (see also *Dougherty* UNDT/2011/058, *Jitsamruay* UNDT/2011/206, *Evangelista* UNDT/2011/212). Accordingly, the Tribunal finds that the present case is particularly urgent.

*Irreparable damage*

46. If the Applicant's contract is not extended he will lose his employment with the United Nations. It is established law that a loss of a career opportunity with the United Nations is considered irreparable

IT IS ORDERED THAT:

49. The Respondent shall suspend the implementation of the decision to separate the Applicant from the date of this Order pending the final determination of the substantive merits of the application or until such further Order as may be deemed appropriate by the Tribunal.

50. The Tribunal will determine whether the present case is to be considered on an expedited basis following receipt of the Respondent's reply and any further submissions.

51. The parties are entreated to explore informal resolution of this matter in the interim.

*(Signed*