



## Introduction

1. On 16 December 2014, the Applicant, a Staff Representative at the United Nations Joint Staff Pension Fund (“UNJSPF”), filed an application, pursuant to art. 2.2 of the Statute of the Dispute Tribunal, requesting the suspension of action pending management evaluation of the implementation of Job Opening 14-ADM-UNJSPF-33681-R-New York (R): Chief of Section, Client Services, Records Management and Distribution Section, P5 [“(the JO)”].

2. The Applicant contends, in essence, that the JO should not be filled as the selected candidate does not have the required lateral moves under ST/AI/2010/3, sec. 6.3. The Applicant further contends that the exception thereto, reflected in the JO, and contemplated in a new draft Memorandum of Understanding on Human Resources for UNJSPF (“the draft MoU”) as well as in an email communication of 4 December 2013 from the Chief Executive Officer (“CEO”) of UNJSPF, has no legal basis, is contrary to the relevant Secretary-General’s Bulletin, is not codified in the applicable “Memorandum of Understanding with respect to the United Nations Personnel Procedures applicable to [UNJSPF]” (“the current MoU”), and is unlawful. The Applicant also submits that the administrative decision denies his right to proper consultation as a UNJSPF Staff Representative in violation of the Staff Regulations.

3. The Registry acknowledged receipt of the application on 17 December 2014 (the application was filed after the Registry’s official working hours on 16 December 2014), and served it on the Respondent directing that the reply be submitted by 5:00 p.m., 19 December 2014. In his reply, filed by said date and time, the Respondent filed a *point limine* submitting that the management evaluation was completed on 18 December 2014, and, therefore, there is no longer any basis for the Applicant’s request for suspension of action, and no scope for any order suspending the alleged decision pursuant to art. 2.2 of the Dispute Tribunal’s Statute. Accordingly, the application should be rejected.

## Background

4.



The revised MOU and related documentation cannot be presented to the Pension Board in July 2014 without the requested staff management consultations in accordance with Staff Regulations 1, 8.1 and 8.2.

In addition since you stated in your letter and in the three town hall meetings of April 4 that the current MoU is “out of date” and “is not working”, all decisions based on this MoU have become null and void. Moreover the MoU issued in 2000 has never exempted staff members from the lateral move requirement for applying to posts at the P5 Level, and specifies that UNJSPF recruitment would follow standard UN recruitment procedures.

9. On 19 June 2014, the Deputy CEO, on behalf of the CEO/UNJSPF, responded to the Applicant and the Alternate Staff Representative that the draft MoU “remains in the drafting stage in OHRM” and that:

With regard to [the JO], please be advised that it was advertised in accordance with the normal UN recruitment procedures, including the exception to the two lateral move requirement for P-5 positions in the Fund, as granted by the ASG/OHRM on 29 November 2013.

10. On 19 June 2014, the Applicant and the Alternate Staff Representative responded to the UNJSPF/CEO, reiterating the request that the JO “be canceled and reissued after the matter is resolved” and further explaining that:

We respectfully submit that the issuance of [the JO] is illegal, as in the first instance it violates Staff Regulation 1, para. (e) “The Staff Regulations apply to all staff at all levels, including staff of the separately funded organs, hold appointments under the Staff Rules.” In the second instance it is not in compliance with regulations 8.1 and 8.2 as there were no staff management consultations on this change.

The change of 29 November 2013 referenced in your response, itself goes against OHRM’s own mobility policy as described in ST/AI/2006/3 [the Administrative Instruction preceding the currently applicable ST/AI/2010/3 to which reference is made in paras. 5 – 6 above]. This deviation together with the limitation of service of the P5 incumbents to the UNJSPF creates a two-tiered system within the same department, again in violation of Staff Regulations and the Secretary-General’s advocacy of “ONE UN”.

11. On 2 July 2014, the ASG/OHRM was requested to provide “the legal reasoning behind the granting of exemption to the Pension Fund” regarding the JO.

12. In the Report of the Advisory Committee on Administrative and Budgetary Questions (“ACABQ”) dated 22 October 2014 (A/69/528) regarding the “United Nations pension system”, at para. 26, ACABQ confirmed that the draft MoU was yet to be concluded and that the ACABQ:

... is of the view that some of the specific requirements proposed by the Pension Fund include exceptions to United Nations human resources policies and procedures by which the General Assembly should be informed through the Pension Board.

13. In the Fifth Committee’s report of 5 December 2014 on the United Nations pension system (A/69/637), referring to the ACABQ’s 22 October 2014 report, the Pension Board was requested to “inform the General Assembly of the outcome of the revisions” of the draft MoU.

14. On 16 December 2014, the Applicant filed a request with the Management Evaluation Unit (“MEU”) for management evaluation of the decision regarding “[i]mplementation of a new policy for filling posts in the Pension Fund without prior consultation with designated Staff Representatives recently reflected in the issuance of a vacancy announcement pursuant to the new policy: [the JO]”.

15. On 18 December 2014, in response to the Applicant’s 16 December 2014 request for management evaluation, the Chief of the MEU responded that “[f]ollowing our review of the compliance of your request with the procedural requirements under the Staff Rules, we regret to inform you that your request is not receivable, as the matter you submitted does not constitute a reviewable administrative decision”.



claim on behalf of other staff members, or to submit an application before the Dispute Tribunal in his capacity as staff representative.

20. Without considering the merits of the application, or commenting on the findings of the MEU, the Tribunal notes that the management evaluation has been completed. Since an application under art 2 of the Statute is predicated upon an ongoing and pending management evaluation, a