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As such I again collectively reiterate my request that my SLWP request be forwarded to Mr. [António Guterres] once he assumes his position as the new United Nations Secretary-General. You are in a position of bias and conflict of interest to take any further action on my request.

Thank you Ms. Wainaina [ASG/OHRM] also just want to ensure you that all I am seeking is a fair and non-bias decision to avoid the need for any further UNDT review of this issue. Notwithstanding my position I would request that you also abide to the UNDT direction and inform me of your decision within the prescribed 30 day timetable.

10. On 3 November 2016, the Applicant was informed by email from the OiC/OHRM of the decision not to grant the Applicant's request for SLWP. The email stated:

Thank you for your email to the Assistant Secretary-General for Human Resources Management (ASG/OHRM). I am responding on her behalf, as she is currently on extended leave.

The Dispute Tribunal has ordered the ASG/OHRM to decide your 9 March 2016 request for special leave with pay within 30 days. As Officer-in-Charge of OHRM, I have considered your request to be placed on special leave with pay and decided to deny it for the following reasons.

First, please note that I do not share your view that the ASG/OHRM is in a position of bias or conflict of interests because of her hierarchical relationship with Mr. Takasu [Under-Secretary-General for Management] and the Secretary-General. In my opinion, the same applies to me.

Secondly, staff rule 6.2 provides that a staff member, who is unable to perform his duties by reason of illness shall be granted sick leave. You have been on certified sick leave since 3 March 2016. Your sick leave entitlements have not been exhausted. Kindly note that in accordance with the Organization's rules, a staff member is granted sick leave independent of the source of his or her illness.

Thirdly, I have considered whether this was an exceptional case under staff rule 5.3(f), and found that not to be the situation. The

Organization's rules contain a comprehensive framework that addresses your absence from duty as a result of your illness. As such, I did not consider it in the interest of the Organization to grant you special leave with pay outside of that framework.

Finally, with regard to your request that the Secretary-General-Designate, Mr. António Guterres decide this matter once he assumes the position of Secretary-General on 1 January 2017, I note that this would be in violation of the 30-day deadline imposed by the Dispute Tribunal.

11. On 4 November 2016, the Applicant submitted a request for management evaluation of the "decision of the OIC OHRM to deny [him] a special leave with pay". The Applicant further stated his request for management evaluation:

*What remedy do you seek through management evaluation?*

That my sick leave with pay request be forwarded to the incoming Secretary-General once he assumes office in January 2017. Based on the information on record it is the only means that I can be provided an un-bias decision in accordance with the rights afforded to me by Staff Rule 5.3.f.

12. As of the date of the Respondent's reply, the management evaluation of the Applicant's request is pending.

Applicant's submissions

13. The Applicant's principal contentions may be summarized as follows:

*Scope of the application*

a. The Applicant is requesting the Tribunal "to suspend the decision of the OIC/OHRM in addition to any further loss of his sick leave days until the MEU [Management Evaluation Unit] response". He submits that it is his "intention to either request the UNDT to issue an Order for the matter to be referred to the incoming Secretary-General for decision (with the suspension of the loss of any additional sick leave days as an interim

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He found that the Organization rules contain a comprehensive framework to address the Applicant's absence from duty as a result for illness. As such, the Applicant's absence from duty as a result of an illness is not an exceptional case, nor an exceptional circumstance warranting the discretionary grant of special leave with full or partial pay;

*Urgency*

d. The application is not urgent. As of 5 November 2016, the Applicant has the following leave balances remaining: 52 days of sick leave with full pay, 42 days of annual leave, and 195 days of sick leave with half-pay. Through a combination of sick leave and annual leave, the Applicant may remain on certified sick leave on full pay for up to 136 days of leave before he would be moved to half-pay;

*Irreparable damage*

e. The requirement of irreparable harm is not satisfied in this case. The Applicant's leave balances can be recalculated, and days of sick



implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

16. Article 13.1 of the Tribunal's Rules of Procedure states:

The Dispute Tribunal shall order a suspension of action 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.

17. In accordance with art. 2.2 of the Dispute Tribunal's Statute, the Tribunal may suspend the implementation of a contested administrative decision 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.

*Scope of the application*

20. The Applicant identifies the contested decision as the decision to “deny [his] special leave with pay request”, communicated to him on 3 November 2016. He states that the decision has been implemented since “3 March 2016”, when he was first placed on sick leave.

21. It follows from art. 2.2 of the Tribunal’s Statute that where an administrative decision has been implemented, a suspension of action may not be granted (*Candolfo* Order No. 101 (NY/2013)). However, in cases where the implementation of the decision is of an ongoing nature, the Tribunal may grant a request for a suspension of action (see, e.g. *Calvani* UNDT/2009/092; *Hassanin* Order No. 83 (NY/2011); *Adundo et al.* Order No. 8 (NY/2013); *Gallieny* Order No. 60 (NY/2014)).

22. In March 2016, the Applicant asked to be placed on SLWP. The USG/OIOS denied his request. In October 2016, the Tribunal found that the USG/OIOS did not have the authority to make such determination, and remanded the matter for consideration by ASG/OHRM within 30 days. On 3 November 2016, the OiC/OHRM refused the Applicant’s request to be placed on SLWP. Thus, the Applicant continued to be on sick leave and seeks suspension of the decision of the OiC/OHRM to deny his request to be placed on SLWP.

23. He identifies the contested decision as the decision to “deny [his] special leave with pay request”, communicated to him on 3 November 2016. However, he states in the application that the decision has been implemented since 3 March 2016, when he was placed on sick leave based on his physician’s recommendation. The Applicant indicates his intention to request the Tribunal to



28. The Tribunal may order the suspension