



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2016/070  
Order No.: 275 (NY/2016)  
Date: 12 December 2016  
Original: English

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**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Hafida Lahiouel

CARUSO

v.

## **Introduction**

1. On 7 December 2016, the Applicant, a Director at the D-2 level of the Director of the Middle East and West Asia Division ( MEWAD ) in the Department of Political Affairs ( DPA ), filed an application seeking suspension pending management evaluation of the decision not to renew her appoint beyond 31 December 2016 and a request for accountability referral under art. 10.8 of the Dispute

2. On the same date, the application was transmitted to the Respondent, instructing him to file a reply by 9 December 2016.

3. On 9 December 2016, the Respondent filed his reply whereby he stated that

be implemented pending the completion of the management evaluation and requests that the application be rejected.

request for accountability referral be rejected.

## **Background**

4. In her application for suspension of action, the Applicant described the factual background as follows:

On 17 May 2016, the Applicant was provided with an e-performance review for the period 2015/2016. The document was FRO [name redacted] and Second Reporting Officer [name redacted] [reference to annex omitted].

despite widespread appreciation for the work from external and internal stakeholders [reference to annex omitted].

On 7 March 2016, [the FRO] informed the Applicant that her contract would not be renewed. [The FRO] explained to the Applicant that he would prepare a three-month [Performance Improvement Plan, after which she would be separated from service.





No reference was made to any specific work output from the Applicant or her Department which raised issues of poor performance.

On the same day and following on from this e-mail, the Applicant received notification that she would be separated from the United Nations [reference to annex omitted].

On 06 December 2016, the Applicant submitted a Management Evaluation Request challenging the decision regarding her non-renewal [reference to annex omitted].

### **Applicant's submissions**

5. main contentions may be summarized as follows:

*On the application for suspension of action on the contested decision*

#### Prima facie unlawfulness

a. It is a well-established principle that unsatisfactory performance constitutes a legitimate basis for the non-renewal of a staff member holding a fixed-term appointment (*Ahmed* 2011/UNAT/153). Indeed, it is recognized jurisprudence that a staff member, whose performance was rated as partially meets, has no legitimate expectancy of renewal of his or her contract (*Kotanjyan* 2015/UNDT/181, *Said* 2015/UNAT/175, *Dzintars* 2011/UNAT/184, *Jennings* 2011/UNAT/184);

b. However, pursuant to sec. 10.4 of ST/AI/2010/5 (Performance Management and Development System), a staff member cannot be separated on account of poor performance unless a PIP has been initiated and completed in a fair and transparent manner;

c. In this case there is no dispute that, in line with sec. 10.1 of ST/AI/2010/5, a time-bound(bound)] TJETBT1 anj0t4(e)]t5 Tma stap[(b.98 79(De)6o)]t5 Tm



in two emails dated 10 November 2016 and 1 December 2016. Had such substantive performance issues apparent, these two email communications would be consistent and contain substantive damning evidence to highlight

does not in itself suggest such poor performance that would indicate that separation was the only outcome. Rather it reveals substantive contradictions and inconsistencies, including:

i. On 10 November 2016, review refers to the delegate her responsibilities. However, in the final review on 1 December 2016, no mention is made with respect to such allegations regarding the lack of delegation;

ii. In the final review dated 1 December 2016, the FRO raised his concern that the Applicant has failed to keep herself well-briefed across relations with all Special Political Missions in the Division. As MEDAW Director, this is perhaps the most serious accusation as it alleges her failure to perform a

the first

critical concern. No mention

iv. In the 10 November 2016 review, the FRO commended the Applicant on her very useful, active engagement in the meticulous preparation of the MEWAD staff retreat. However,

involvement in this same retreat and alludes to the notion that the retreat was prepared solely by another individual/entity and that the Applicant merely participated;

v. In addition, the FRO comments on the lack of strategic direction given by the Applicant. A review of the MEWAD staff retreat assessment report prepared by an external facilitator makes no reference to such a fundamental flaw. In fact, the report praises, under the heading of

MEWAD are able to adapt and manage their contribution despite the challenges of the country portfolios which are of a more heated political nature to those of other divisions;

vi. In the 10 November 2016 review, the FRO asked the Applicant to pay attention to the United Nations Regional Centre for Preventative Diplomacy for Central Asia ( UNRCCA ). In the 1 December 2016 review, the FRO indicates that the Applicant fulfilled this activity. However, he then subsequently chastises this activity as an example of her failure to stay abreast of all Special Political Missions in the Division;

vii. The FRO noted in the 10 November 2016 review that the





The FRO actions cannot be interpreted as intending to improve performance but rather a reflection of a desire to rid himself of the Applicant;

Urgency

n. The Applicant received the notice of non-renewal on 1 December  
t on 31  
December 2016, just over 3 weeks away;

Irreparable damage

o. The Dispute Tribunal has found that harm to professional reputation and career prospects, or harm, or sudden loss of employment may constitute irreparable damage (*Corcoran* UNDT/2009/071 and *Calvani* UNDT/2009/092). The Dispute Tribunal also found that separation from service will occasion irreparable harm in that the staff member will lose the prospect of applying for positions within the UN as an internal candidate (see *Igunda*





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17. Since one of the cumulative conditions is not fulfilled there is no need for the Tribunal to further analyze the remaining ones, notably *prima facie* unlawfulness and urgency, and the application for suspension of action is to be rejected.

*Request for an order on accountability referral pursuant to art. 10.8 of the Statute*

18. Article 10 of the Dispute Statute provides as follows:

*(Amended by resolution 69/203)*

1. The Dispute Tribunal may suspend proceedings in a case at the request of the parties for a time to be specified by it in writing.

2. At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

3. At any time during the deliberations, the Dispute Tribunal may propose to refer the case to mediation. With the consent of the parties, it shall suspend the proceedings for a time to be specified by it. If a mediation agreement is not reached within this period of time, the Dispute Tribunal shall continue with its proceedings unless the parties request otherwise.

4. Prior to a determination of the merits of a case, should the Dispute Tribunal find that a relevant procedure prescribed in the Staff Regulations and Rules or applicable administrative issuances has not been observed, the Dispute Tribunal may, with the concurrence of the Secretary-General of the United Nations, remand the case for institution or correction of the required procedure, which, in any case, should not exceed three months. In such cases, the Dispute Tribunal may order the payment of compensation for procedural delay to the applicant for such loss as may have been caused by such procedural delay, which is not to exceed the salary.

5. As part of its judgement, the Dispute Tribunal may only order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or



