



Case No. UNDT/NY/2017/106

Order

Department of Field Support



iii. A suitable post (post of Human Resources Assistant) with Job Opening 85169, was available, but the Applicant was not subjected to any comparative review process for this position;

d. Even if the Applicant had been fully and fairly and properly considered for suitable posts within the Organisation, which is disputed, the Applicant was not given sufficient (or any) notice of termination;

*Urgency*

e. Termination is said to take effect on 20 October 2017. In *Applicant* notice for non-renewal for a contract of employment that had lasted two years . The Tribunal disgraceful game and portrays ;

f. In *Applicant* UNDT/2012/091, it was found that where notice of non-renewal was provided after close of business, it could not be considered to be implemented until the end of the following day;

g. In the instant case, the notice requirements for termination are codified in the Rules and a period of three months months is required under staff rule 9.7(a);

h. The fact that no notice has been provided means that the matter is of the utmost urgency as implementation is imminent;

*Irreparable damage*

i. Referring to *Kasmani* 2009-UNDT-017, *Diop* 2012-UNDT-029 (Diop) and *Villamorán* 2011-UNDT-126, it is well-established that monetary compensation is insufficient to compensate the frustration, un004FDn

term contract. How much more so the unexpected and unlawful termination of a continuing appointment?

### **Consideration**

7. Articles 13.3, 19 and 36.1 of the Rules of Procedure state as follows:

#### **Article 13 Suspension of action during a management evaluation**

3. The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

#### **Article 19 Case management**

The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

#### **Article 36 Procedural matters not covered in the rules of procedure**

1. All matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Dispute Tribunal on the particular case, by virtue of the powers conferred on it by article 7 of its statute.

8. In *Villamorán* Order No. 171 (NY/2011) dated 7 July 2011, the Dispute Tribunal suspended the implementation of two decisions pending its consideration of an application for suspension of action concerning those decisions filed before the Tribunal on 5 July 2011. The Tribunal stated:

7. In view of the fact that 7 July 2011 is the last working day

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appointment was notified to her only on 23 June 2011. She made her request for management evaluation the same day and filed her request for suspension one week later, on 1 July 2011. The UNDT Registry informed her that she had used the wrong form and Villamoran refiled her submission, using the correct form, on 5 July 2011, two days prior to the date the decision would be implemented. In light of the foregoing, we do not find that the urgency was self-created.

46.

a preliminary suspension of five days pending its consideration of the suspension request under Article 13 of the UNDT Rules was properly based on Articles 19 and 36 of the UNDT Rules. We find that the UNDT did not exceed its jurisdiction in rendering the impugned Order. The interlocutory appeal is therefore not receivable.

11.

jurisprudence in *Villamoran* 2011-UNAT-160, the Dispute Tribunal has the competence to order a preliminary suspension of a contested administrative decision for up to five days pending its consideration of a suspension request under art. 13 of the Rules of Procedure in cases where the following cumulative conditions are fulfilled:

- a. The implementation of the contested administrative decision is imminent, that is, it will take place before the five days provided for under art. 13 of the Rules of Procedure have elapsed;
- b. The contested administrative decision is subject to the management evaluation review, which is ongoing; and
- c. The contested administration decision subject to a preliminary suspension is the same administrative decision that is the subject of the application for suspension of action pending management evaluation.

12. Regarding the first condition, the Tribunal notes that, in accordance with art. 13 of the Rules of Procedure, the Tribunal has five working days from the date of service of the application for suspension of action on the Respondent, namely on 27 October 2017, to consider the request for suspension of action pending management



evaluation of the contested decision. In the present case, the effective date of the \_\_\_\_\_, which is the date of the present Order and therefore the implementation is imminent.

13. Regarding the second and the third conditions, the Tribunal notes that, in the present case, the Applicant submitted a request for management evaluation on 20 October 2013, which is still ongoing. In the \_\_\_\_\_ for management evaluation, he identified the decision subject to management evaluation as [t]he failure of the MINUSTAH Administration to make necessary efforts to find a suitable post for [the Applicant] when [his] \_\_\_\_\_, but in the document titled,

\_\_\_\_\_, the Applicant clearly identified the contested decision as the termination notice dated 19 October 2017. Consequently, the Tribunal concludes that the Applicant has requested management evaluation of the termination decision in its entirety.

14. The Tribunal notes that, in the application for suspension of action, even though \_\_\_\_\_ Details of the decision \_\_\_\_\_, the contested decision was identified by the Applicant as the termination decision made on 19 October 2017 with the implementation date on 20 October 2017 in his other submissions.

15. It results that the contested administration decision subject to management evaluation is the same administrative decision as the one that is subject of the present application for suspension of action.

16. The Applicant indicated that, if the implementation of contested administrative decision will not be suspended, his contract is to be terminated and he is to be separated from the Organization on 20 October 2017 and it appears not be self-created. The Tribunal underlines that this matter is not at the merits stage.

17. The second and third conditions are therefore satisfied.

18. Pursuant to arts. 19 and 36.1 of the Dispute Tribun

IT IS ORDERED THAT:

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suspension of action under art. 2.2 of the Dispute  
implementation of the decision to ontinuing appointment  
shall be suspended until the Tribunal has rendered its decision on this application, or  
until further order.

*(Signed)*

Judge Alessandra Greceanu

Dated this 20<sup>th</sup> day of October 2017