



Case No. UNDT/NY/2017/117

Order No. 282 (NY/2017)

## Background

4. In the application for suspension of action, the Applicant presents the fact as follows (references to annexes omitted):

... [The Applicant] is currently serving as P-2 Programme Officer in the United Nations Children's Fund ("UNICEF") HIV/AIDS Section. She has worked at the UNICEF for fifteen years.

.... On 16 May 2012, [the Applicant] was granted a permanent appointment [...].

... On 10 October 2016, [the Applicant] was notified that her post was to be abolished effective 30 June 2017 [...].

.... On 12 April 2017, upon insistence of [the Applicant's] first and second reporting officers, the abolition was postponed until 31 December 2017 [...]. [The Applicant's] first and second reporting officers fully support the extension of her contract throughout 2018 substantiated by the section's needs and the available budget to support it [...]. As [the Applicant's] second reporting officer stated: "the position is pivotal to the section's efficient implementation of the new HIV strategy" [...] and "the section[,] still needs the staff member to continue with her functions" [...].

... On 27 November 2017, [the Applicant] was notified that the abolition of her post would not be further postponed and that the Administration would start the off-boarding process for 31 December 2017 [...].

... On 4 December 2017, [the Applicant] received a "separation letter" with the effect on 31 December 2017 [...].

... From 4 December 2017 to 26 December 2017, [the Applicant] was on a certified sick leave [...].

. On 28 December 2017, [the Applicant] filed a management evaluation request [...].

## Arridcepva uwdo kulkpu

5. The Applicant's principal contention may be summarized as follows:

*Prima facie unlawfulness*

a. It is well-established that administrative decisions must be made on proper reasons and the Administration has a duty to act fairly, justly and



f. The Dispute Tribunal stated in *Timothy* UNDT/2017/080, paras. 63-64, that:

... The Tribunal underlines in order for the Administration to fully respect its obligation pursuant to staff rule 9.6(e), it

- i. Firstly, instead of taking any active steps to assist the Applicant in

k. Secondly, instead of the Administration assisting the Applicant to find suitable alternative posts, it actually took steps to discourage and impede upon the Applicant' efforts to find a suitable alternative post. In particular:

i. As early as in April 2017, the Administration decided to preclude the Applicant from attending the "HR [assumedly, human resources] Local Focal" Points training under the pretext that her "post [would] be abolished after 31 Dec 2017". By consequence, the Applicant was not able to fully perform her duties as early as eight months before the anticipated abolition of the post and she was not given a chance to acquire additional knowledge and skills that might have been useful in searching for an alternative position within UNICEF;

ii. As early as in October 2016, the Applicant was informed that she had been identified by the Operations Chief as "close to retirement" and recommended to do so. Labelled as such, the Applicant Morris realized that she was not seriously considered for any alternative position leaving her with no other choice but to retire;

l. Finally, the Administration failed to perform any of the steps outlined by the Tribunal in the case of *Timothy*, which are required in order to comply with its obligation under staff rule 9.6(e). In particular:

i. The Administration did not provide a list of:

1. All posts at the Applicant' duty station occupied at the date of abolition by staff members with a lower level of protection than the applicant' post;
2. All vacant suitable positions at the same level or at a lower level; and







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9. In *Villamorán* 2011-UNAT-160, the Appeals Tribunal stated:

36. The Appeals Tribunal has consistently emphasized that appeals against most interlocutory decisions will not be receivable, for instance, decisions on matters of evidence, procedure, and trial conduct. An interlocutory appeal is only receivable in cases where the UNDT has clearly exceeded its jurisdiction or competence [footnote omitted].

...

43. Where the implementation of an administrative decision is imminent, through no fault or delay on the part of the staff member, and takes place before the five days provided for under Article 13 of the UNDT Rules have elapsed, and where the UNDT is not in a position to take a decision under Article 2(2) of the UNDT Statute, i.e. because it requires further information or time to reflect on the matter, it must have the discretion to grant a suspension of action for these five days. To find otherwise would render Article 2(2) of the UNDT Statute and Article 13 of the UNDT Rules meaningless in cases where the implementation of the contested administrative decision is imminent.

44. The Secretary-General contends that “[t]he last minute submission of an application for a suspension of action does not provide a legally sustainable basis to grant such a suspension, as was the approach of the Dispute Tribunal in the present case”. While we agree that the UNDT should have explicitly addressed this matter, a review of the record reveals that the decision to impose a break in service following the expiration of Villamorán’s fixed-term 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 Villamorán refiled her submission, using the correct form, on 5 July 2011, tw(e)4( )-7si15(3)30(s )-io0 G[( )] TJETQ

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