Introduction

1. On 8 December 2011, the Applicant, an Evaluation Officer with the Office of Internal Oversight Services ("OIOS"), submitted an application for suspension of action, pending management evaluation, of the decision to require her to take a break in service after the expiration of her current contract on 31 December 2011 and prior to a new temporary appointment.

2. The Applicant requested management evaluation of the contested decision by letter dated 24 November 2011.

3. On Friday, 9 December 2011, following receipt of the present application, the New York Registry of the United Nations Dispute Tribunal transmitted it to the Respondent. The Respondent duly filed his reply, as directed, by 1 p.m. on Tuesday, 13 December 2011, and the Tribunal proceeded to decide the matter on the papers before it.

4. Article 13.3 (Suspension of action during a management evaluation) of the Tribunal's Rules of Procedure provides that the Tribunal "shall consider an application for interim measures within five working days of the service of the application on the respondent". As the present application was served on the Respondent on 9 December 2011, the time for consideration of the present application will expire at the close of business on Friday, 16 December 2011.

Background

5. The following background information is based on the parties' written submissions and the record.

6. The Applicant was employed on a temporary appointment in the United Nations Economic and Social Commission for Asia and the Pacific ("ESCAP") from 4 September 2009 to 28 February 2010.

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17. By email of 18 November 2011, OHRM confirmed to the Executive Office of OIOS that the break in service requirement applied to the Applicant. This email was subsequently forwarded to the Applicant.

18. On 23 November 2011, the Applicant received her separation papers.

Applicant's submissions

19. The Applicant's principal contentions may be summarised as follows:

Prima facie *unlawfulness*

a. The Applicant seeks guidance on whether she should be required to take a break in service after 31 December 2011 or after 21 March 2012. She maintains that it should be after the latter date as her appointment at ESCAP should not be included in the calculation;

b. Staff rule 4.12 does not contain any break in service requirements.

Preliminary observation

24. The deadline for completion of the management evaluation in this case expires on Sunday, 25 December 2011; therefore, the following day being a holiday, management evaluation is due to be communicated to the Applicant by close of business Tuesday, 27 December 2011. The Respondent submits, in effect, that the Tribunal is not capable of suspending the contested decision under the present application, as the Applicant's appointment is due to expire several days after the due date for the management evaluation response.

25. Under art. 2.2 of the Tribunal's Statute, suspension of action may be ordered "during the pendency of the management evaluation". Staff rule 11.2(d) provides that the outcome of the management evaluation "shall be communicated in writing to the staff member within thirty calendar days of receipt of the request for management evaluation if the staff member is stationed in New York". One of the questions raised in the present case is whether, in the event suspension of action is ordered pending management evaluation and the Administration fails to communicate the outcome of management evaluation by the 30-day deadline and instead communicates it with some delay, the suspension ordered by the Tribunal would automatically lapse with the expiration of the 30-day period or continue until the outcome of management evaluation is communicated to the Applicant. The Tribunal does not find it necessary to consider this issue in view of its findings below.

Irreparable damage

26. It is generally accepted that mere financial loss is not enough to satisfy the requirement of irreparable damage. Depending on the circumstances of the case, harm to professional reputation and career prospects, harm to health, or sudden loss of employment may constitute irreparable damage.

27. For an application to be successful, there must be at least an averment of irreparable harm to the Applicant, which the present application does not contain. The

reasons proffered by the Applicant—that a new recruitment exercise "would require much time and effort on behalf of the Organization and be very inefficient"—do not constitute grounds for a finding of irreparable damage to the Applicant. The Tribunal finds that the Applicant has failed to articulate to the Tribunal on the papers filed that the implementation of the contested decision would cause her any harm at all or any harm that could not be compensated by an appropriate award of damages in the event the Applicant decides to file an application on the merits under art. 2.1 of the Tribunal's Statute.

28. Accordingly, the Tribunal finds that the Applicant has failed to demonstrate that the implementation of the contested decision would cause her irreparable damage, and the present application stands to be dismissed.

29. As one of the three conditions required for temporary relief under art. 2.2 of the Statute has not been met, the Tribunal does not need to determine whether the remaining two conditions—particular urgency and *prima facie* unlawfulness—have been satisfied. However, in the circumstances of this case, the Tribunal finds it appropriate to include its observations regarding the Applicant's claims regarding the urgent nature of this case.

Urgency

30. Even if the Applicant were able to es

will not be satisfied if the urgency was created or caused by the applicant (*Jitsamruay* UNDT/2011/206).

32. The Applicant acknowledges that she first became aware of the decision on 25 October 2011, when she "received correspondence that OHRM had determined that the end of service date on [her] temporary appointment should be 24 September 2011". She discussed it on the same day with her supervisors and the Executive Office of OIOS. This prompted further exchange between the Executive Office and OHRM. On 18 November 2011, OHRM sent an email to the Executive Office, which the Applicant described in her application as "confirm[ing] the [contested] decision".

33. In view of the circumstances in this case, the Tribunal finds that the Applicant was informed of the decision on 25 October 2011, at the latest. Based on the Applicant's own application, on that day she not only discussed the decision with her supervisors, but was also provided with the correspondence from OHRM on that issue. The Tribunal finds that the communications that followed between the Executive Office and OHRM were prompted by the Applicant and were, in effect, attempts to have the issue clarified and, if possible, reconsidered. However, the final decision was reached on 25 October 2011.

34. The present application was filed on 8 December 2011, more than six weeks after 25 October 2011. In the circumstances of this case, the Tribunal finds that the Applicant cannot seek its assistance as a matter of urgency in this case when she has had knowledge of the decision for more than six weeks. Any urgency in this case is, accordingly, of the Applicant's own making.

35. As the Applicant failed to satisfy the requirements of irreparable damage and particular urgency, the Tribunal does not find it necessary to consider whether the contested decision is *prima facie* unlawful.

Conclusion

36. The present application for suspension of action is rejected.

(*Signed*)

Judge Ebrahim-Carstens

Dated this 15th day of December 2011

Entered in the Register on this 15th day of December 2011

(*Signed*)

Hafida Lahiouel, Registrar, New York