



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

MCDONALD

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON APPLICATION FOR  
SUSPENSION OF ACTION**

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**Counsel for Applicant:**

Bart Willemsen, OSLA

**Counsel for Respondent:**

Sarahi Lim Baró, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant has been serving as an Administrative Assistant with the Humanitarian and Development Coordination Unit (“HDCU”) in the United



13. On 25 June 2012, the Applicant was informed that the Secretary-General had rejected her request for suspension of action.

**Applicant's submissions**

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

d. Should the retrenchment exercise be lawful, the procedure followed to evaluate staff members subject to the retrenchment exercise is nonetheless flawed as it awarded extra points to staff members who received “good comments” in their evaluation even t

Administrative Assistants at the FS-4 level, was considered for the post but it was determined that she did not meet the required qualifications. The review and selection process was conducted fairly and all of the staff members at the FS-4 level were treated equally. The selection of the DSRSG's personal assistant bears no relation with the non-renewal of the Applicant's post. Furthermore, this is a new post at the FS-5 level whereas the Applicant is at the FS-4 level;

c. The Applicant was not recruited against Post No. 75211 but rather against Post No. 51940 in the Civil Affairs Section. However, like other Administrative Assistants, her position is not associated with any individualized post number and the assignment to a specific post number in itself does not provide her with a right to continue on the assigned post or have her contract renewed. Consequently, the non-renewal of the Applicant's contract is solely the result of the abolishment of the occupational group HDCS which resulted in the Applicant's post no longer existing;

*Urgency*

d. The current circumstances are solely the r5( )JTJ0.EOc 0 7 Tw 15.735 0 Td/P ~~MCe~~ curre

## **Consideration**

### *The nature of an application for suspension of action and its conditions*

16. This is an application for suspension of action pending management evaluation. An application filed under art. 2.2 of the Tribunal's Statute (and art. 13 of the Rules of Procedure) is, by its nature, a request for urgent interim relief pending final resolution of the matter. It is an extraordinary discretionary relief, which is generally not subject to appeal, and which requires consideration by the Judge within five days of the service of the motion on the Respondent (see art. 13.3 of the Tribunal's Rules of Procedure). Therefore, both parties must do their best to provide sufficient information for the Tribunal to decide the matter preferably on the papers before it within the time limit. Such motions disrupt the normal day-to-day business of the Tribunal, and indeed on this occasion, as the sole presiding judge in New York, I received three such applications on Tuesday, 26 June 2012, which all had to be decided by Friday, 29 June 2012.

17. Article 2.2 of the Statute of the Dispute Tribunal provides that 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. The Tribunal can suspend the contested decision only if all three requirements of art. 2.2 of its Statute have been met.





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completion of management evaluation are very limited as the time limit for MEU to reply to the Applicant's request for management evaluation would appear to be 23 July 2012. Thus, the balance of convenience supports the granting of a suspension.

*Urgency*

30. It is undisputed that the Applicant's contract expires on 30 June 2012, i.e., one day from the date of the present Judgment, and that she was informed about the non-renewal on 31 May 2012.

31. Considering the imminent risk of the Applicant being separated from MINUSTAH, the Tribunal finds that her case is one of particular urgency and that it is not the result of the Applicant's own actions.

32. The Tribunal notes that the Applicant only received the reply from the Secretary-General that her request for suspension of action filed with the MEU was rejected on 25 June 2012, i.e., the same day she filed her application with the Dispute Tribunal. Accordingly, the Tribunal finds that the urgency is not self-created.

*Irreparable damage*

33. The Applicant has 14 years of continuous service with the Respondent but now faces the possibility of unemployment. The harm that the Applicant contends that she will suffer from the non-renewal of her contract, and thereby also her separation from the Organization, is of a nature that will cause her harm that financial recompense alone cannot repair.

34. In *Khambatta* UNDT/2012/058, the Tribunal stated that:

Loss of employment is to be seen not merely in terms of financial loss, for which compensation may be awarded, but also in terms of loss of career opportunities. This is particularly the case in employment within the United Nations which is highly valued. Once out of the system the prospect of returning to a comparable post within the United Nations is significantly reduced. The damage to career opportunities and the consequential effect on one's life chances cannot

adequately be compensated by money. The Tribunal finds that the requirement of irreparable damage is satisfied.

35. The Tribunal finds the reasoning in *Khambatta* persuasive and applicable to this case. Thus, the Tribunal finds that the implementation of the decision not to renew the Applicant's fixed-term contract would cause her irreparable harm.

### **Conclusion**

36. The Tribunal finds that the three elements required for the granting of a suspension of action pending management evaluation have been established.

**Order**

37. The Tribunal orders that the decision not to renew the Applicant's current fixed-term contract be suspended during the pendency of management evaluation.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 29<sup>th</sup> day of June 2012

Entered in the Register on this 29<sup>th</sup> day of June 2012

*(Signed)*

Hafida Lahiouel, Registrar, New York