**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

ABEDRABOH

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

6. On 14 March 2012, the Chief of the Procurem

**Applicant's submissions**

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

Prima facie *unlawfulness*

a. Whereas the reason provided to the Applicant regarding the contested decision is that as a result of a retrenchment exercise her appointment can not be extended, the 2012–2013 budget actually appears to increase the number of fixed-term Field Service ("FS") staff members in the Procurement Section. Similarly, it appears from a staffing table provided by the MEU that the number of FS staff members in the Procurement Section would remain constant. Consequently, the non-renewal of the Applicant's appointment due to the Applicant's post being abolished appears unsubstantiated, and is *prima facie* unlawful;

b. Due to a number of transfers and resignations there are a number of vacant FS level posts in the Procurement Section;

c. Should the retrenchment exercise be deemed 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 though there is no actual obligation for the reporting officer to include any type of comments;

*Urgency*

d. The implementation of the decision on 30 June 2012 renders this application for suspension of action urgent;

*Irreparable damage*

e. The implementation of the decision will cause harm such as "loss of self-esteem and career prospects, in particular after more almost [sic] twelve years of continuous servicer" that cannot be compensated by a financial remedy.

**Respondent's submissions**

13. The Respondent's principal contentions may be summarised as follows:

Prima facie *unlawfulness*

a. The General Assembly approved reduced staffing levels for the Procurement Assistant positions at the FS-5 level and each of the seven current Procurement Assistants were evaluated by the CRP in accordance with the established criteria for the six remaining posts. Following the evaluation process, the Applicant was ranked last out of the seven FS-5 Procurement Assistants;

b. While the Procurement Section currently has two vacant P-3 level posts, the Applicant is mistaken in stating that there are vacant positions as a result of resignation and reassignment as professional level posts cannot be used to retrain retrenched staff at the FS-5 level and below;

c. The Applicant was not recruited against a specific post number and the assignment of a post number did not create any continued right to remain on that post. All the staff members holding fixed-term appointments in occupational groups were part of the retrenchment exercise and all of them were evaluated for the remaining posts, regardless of the status of the post they encumbered;

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). Such appl

the document sets out the general budget for MINUSTAH but makes no reference to the post of the Applicant.

22. Based on the information before it, the Tribunal finds that the only reasonable inference to be drawn from the information before it, particularly the organisational tables, is that the reduction of the FS posts in the Procurement Section only relates to temporary posts, which are to be reduced from four to two. This means that the six other FS post in the Procurement Section are not to be affected by the retrenchment.

23. The next question is then whether the Applicant encumbered one of those two temporary FS post that are to be cut down, or one of the six FS posts that are unaffected by the retrenchment exercise.

24. The Tribunal notes that it follows from the "Update to MINUSTAH Staff regarding the Retrenchment Exercise" dated 5 December 2011" (Information Circular No. DMS/028/2011), submitted in evidence by the Respondent, that the downsizing was to counter the fact that:

> [T]he majority of MINUSTAH's operations in response to the 2010 earthquake are expected to phase out by mid-2012, as the Mission refocuses its efforts on core stability and institution-building tasks … As a result, the structure of the Mission will change and most of the temporary positions established as part of the surge effort will be abolished by the end of the 2011/2012 budget year.

25. Furthermore, the Respondent in his reply observes that staff members hired prior to and in connection with the 2010 earthquake were to be subjected to the retrenchment exercise. This submission appears to contradict the scheme outlined in the update of 5 December 2011, which states that only positions "established as part of the surge effort" are to be abolished. This is confirmed by an interoffice memorandum dated 2 March 2012 from the Special Representative of the Secretary-General, MINUSTAH, to the Chairperson, Field Staff Union Committee, in which it is indicated that MINUSTAH was informed through two code cables that:

completion of the management evaluation is 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. The Respondent does not deny this, but contends that the urgency is self-inflicted in that the application for suspension of action was only filed four days before the expiration of her contract.

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 as she filed her application with the Dispute Tribunal. Accordingly, the Tribunal finds that the urgency is not self-

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

> 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 (see also *Tibouti* UNDT/2012/093). Thus, the Tribunal finds that the implementation of the decision not to renew the Applicant's fixed-term contract would cause her irreparable harm.

**Observation**

36. This is one of three applications for suspension of action received on the same day arising from the same retrenchment exercise in MINUSTAH. On the face of it, it appears that the retrenchment exercise was to apply not across the board, but only to post earthquake temporary positions. If indeed this assertion is correct, it may be prudent for the Respondent

**Order**

38. 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 29th day of June 2012

Entered in the Register on this 29th day of June 2012

(*Signed*)

Hafida Lahiouel, Registrar, New York