



Introduction

1. On 31 January 2011 and 29 March 2011, the Applicant requested

the President of the FSU. On 5 July 2011, the Respondent filed a Reply to the FSU's "friend-of-court" brief.

6. On 8 July 2011, the Tribunal issued Order No. 71 (NBI/2011) in which it refused the Application for suspension of action for not having satisfied the three conditions required under the Statute and Article 13 of the Tribunal's Rules of Procedure for its grant. The Tribunal also informed the parties that a reasoned Judgment on this Application would be issued on 29 July 2011 and that it would formulate questions that ought to be further and properly addressed by the Parties and the *amicus curiae* in the hearing on the merits.

7. On 29 July 2011, the Tribunal issued Judgment No. UNDT/2011/136 in which it refused the Applicant's request for suspension of action and acknowledged that the impugned decision would impact on a large number of staff members. The Tribunal observed that this case serves as a test case in that regard and that the subject matter of this suit cannot properly be addressed and determined in a suspension of action application.

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matter on the merits has rendered your request for management evaluation to be moot. Accordingly, we are proceeding to close your file.

10. On 24 August 2011, the Respondent filed a motion, requesting 30 days to respond to the Applicant's submissions on the merits, to start from the date of filing of the same.

11. On 31 August 2011, the Applicant filed a Motion entitled "Withdrawal of Application". The Applicant's submission-5.1(t)64ewog(m)7.2(e,n)-5.3(od(e,n)-5.e6.3(ud Mt)6.73(u)5(r)io

adversarial nature of which ensures that positions become entrenched and resolution is less likely.

f. The Applicant has never filed an application on the merits and does not feel that the same is appropriate until the MEU has rendered its evaluation.

g. For the above reasons, the Applicant respectfully requests clarification that it was not the Tribunal's intention to wrest jurisdiction from the MEU, which should still fulfil its mandated role in rendering an evaluation of the contested decision in a timely manner and that absent an application on the merits, which has yet to be submitted, the Dispute Tribunal is not and cannot be seized of the substantive matter;

h. Alternatively, the Applicant requests an extension of the time in which to file an application on the merits.

Consideration

12. Article 8(1) and (3) of the Statute of the Dispute Tribunal stipulate that an application shall be receivable if, *inter alia*

14. Not only is the management evaluation process totally independent of the Tribunal's jurisdiction as stipulated above, the MEU failed to respond to the Applicant before the requisite deadline and she was well within her rights to not only file the request for suspension of action but also an application on the merits. In addition, in taking the decision above, the Officer-in-Charge of MEU is asserting that the Tribunal has impliedly waived the requirement for conducting a management evaluation and has therefore unilaterally closed the case. This implied waiver would be inconsistent with art. 8(3) of the Statute of the Dispute Tribunal and of the GA Resolution providing for the independence of the MEU. The Tribunal's decision to place the case in a general cause list with a view to expediting the hearing of the application on the merits does not in any way oust the jurisdiction of the MEU to conduct a management evaluation of the decision.

ORDERS

14. The Tribunal:

- a. Grants the Applicant's request for an extension of time in which to file an application on the merits. The application shall be filed by or before Monday, 19 September 2011.
- b. Grants the Respondent's motion requesting 30 days to respond to the Applicant's submissions on the merits, to start from the date of filing of the same.
- c. The Parties shall be informed of the hearing dates for the case in due course.

(Signed)

Judge Nkemdilim Izuako
Dated this 1st day of September 2011

Entered in the Register on this 1st day of September 2011

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi