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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2012/17  
Order No.: 057 (NBI/2012)  
Date: 12 April 2012  
Original: English

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**Before:** Judge Vinod Boolell

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

BA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON APPLICATION FOR  
SUSPENSION OF ACTION**

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**Counsel for the Applicant:**

Alexandre Tavadian, OSLA  
Louis-Philippe Lapicerella, OSLA

**Counsel for the Respondent:**

Susan Maddox, ALS/OHRM, UN Secretariat  
Cristiano Papile, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant, a staff member of the United Nations Economic Commission for Africa (ECA), based in Niamey, Niger, is applying for suspension of the decision to charge her with misconduct by letter dated 9 March 2012.
2. The Applicant filed an Application on the Merits regarding the same decision, on therefore applying for suspension of action as an interim measure pursuant to Article 10.2 of the Statute of the Dispute Tribunal.
3. On 5 April 2012, the Respondent filed a Reply to the Application for Suspension of Action.

## **Facts**

4. The Applicant joined the ECA on 14 November 2009 as Director of the Niamey Sub-Regional Office for West Africa (SRO-WA).
5. When she took up her duties the Applicant began a restructuring and reform programme in the office. However, within months, a number of staff members lodged complaints against the Applicant with the Executive Secretary of ECA, Mr. Abdoulie Janneh, alleging *inter alia* that the Applicant had repeatedly accused them of dishonesty or incompetence; that she had threatened their contractual status; that she repeatedly shouted at them; that she delayed payment of, or threatened not to pay, entitlements; and that she improperly used office property. These complaints amounted to allegations of harassment, discrimination and abuse of authority, and indeed formal complaints pursuant to ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) were presented to Mr. Janneh on 28 February and 30 March 2011.



10. On 15 March 2012, the Applicant received a memorandum dated 9 March 2012, from Martha Helena Lopez, Officer-in-Charge of the Office of Human Resources Management. The memorandum details the investigative process to date and concludes by charging e C>200569046>5niB m



## Considerations

### *Receivability*

18. Before considering whether the substance of the Application for Suspension of Action has merit, the Tribunal must consider whether or not it is receivable *ratione materiae*.

19. The first issue raised is whether the failure of the Applicant to file a Request for Management Evaluation renders her Application not receivable.

20. Article 8 of the Statute of the Tribunal allows that an application shall be receivable if an applicant has previously submitted the contested decision for appropriate deadlines. The requirement for first submitting a decision to management evaluation is set out in the Staff Rules, not the Statute of the Tribunal.

21. Staff Rule 11.2 states:

### **Management evaluation**

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1(a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.







[w]here a party has manifestly abused the proceedings before it, it may award costs against that party.

31. The Respondent argues that the present Application is frivolous since