



Case No UNDT/NBI/2014/048

Order No.167 (NBI/2014

7. On 31 March 2014, the Applicant sought management evaluation of the decision to place him on ALWOP taking issue with the deprivation of salary rather than the administrative measure as a whole.
8. On 14 April 2014, the Applicant received a letter from Ms. Ruth de Miranda, Chief, Human Resources Policy Service, Office of Human Resources Management, charging him with misconduct related to distribution of pornographic material through the UN email system and with storing various pornographic images. The letter offered the Applicant the opportunity to comment on these charges of misconduct.<sup>2</sup>
9. The Applicant responded to the charges on 14 April and 16 May 2014.
10. On 16 May 2014, the USG/DFS requested that the USG/DM extend the placement of the Applicant on ALWOP.<sup>3</sup> This request was approved.<sup>4</sup>
11. On 21 May 2014, the USG/DFS wrote to the Applicant informing him of the decision to extend the ALWOP for a further three months or until the completion of the disciplinary process, whichever is earlier.<sup>5</sup>
12. The Human Resources Section at UNOCI contacted the Applicant several times to have the letter picked up/delivered to him, to no avail.
13. On 23 May 2014, the Chef de Cabinet wrote to the Applicant informing him that the Secretary General had decided to “endorse the findings and

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<sup>2</sup> Respondent's Exhibit A.

<sup>3</sup> Respondent's Exhibit B.

<sup>4</sup> Respondent's Exhibit D.

<sup>5</sup> Respondent's Exhibit E.

<sup>6</sup> Respondent's Exhibit F.



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inability to meet his financial obligations covering such basic needs as food, rent, and tuition fees.

26. The extended period of administrative leave without pay is harmful to the Applicant's reputation and career prospects

*Respondent*

27. The Respondent submits that the impugned decision has already been implemented and is therefore not properly a subject for an application for suspension of action.

28. Even if the Tribunal was minded to find the Application receivable, the Applicant has not met the tripartite test.

29. The impugned decision is not *prima facie* unlawful. The USG/DM made the decision to extend the ALWOP based on a review by the USG/DFS of the record and all relevant facts. The deprivation of income "does not inherently create an element of urgency." Should the administrative measure be found to have been improperly imposed or unwarranted, the Applicant stands to be compensated and have his salary refunded. The harm in question is therefore not irreparable.

Deliberations

30. Applications for suspension of action are governed by article 2 of the Statute of the United Nations Dispute Tribunal ("the Tribunal") and article 13 of the Tribunal's Rules of Procedure. The three statutory prerequisites contained in art. 2.2 of the Statute, i.e. *prima facie* unlawfulness, urgency and irreparable damage, must be satisfied for an application for suspension of action to be granted. Under article 13.3 of the UNDT Rules, the Tribunal has five working days from the service of an application on the respondent to consider an application for interim measures.

31. This Tribunal has previously held that<sup>11</sup>

A suspension of action order is, in substance and effect, akin to an interim order of injunction in national jurisdictions. It is a temporary order made with the purpose of providing an applicant temporary relief by maintaining the *status quo* between the parties to an application pending trial. It follows therefore, that an order for suspension of action cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented.

*Has the decision been implemented?*

32. Both Parties have made submissions on the status of the implementation of the impugned decision.

33. Before entering into a discussion on whether the Applicant has met the requirements for the test of suspension of action, the Tribunal must first determine whether or not the impugned decision has been implemented.

34. The Applicant has been on ALWOP since 28 February 2014. Before the three month period, two administrative decisions were issued by the Respondent. On 21 May 2014, the USG/DM approved the USG/DFS' request to extend the duration of the administrative leave for a further three months. On 23 May 2014, the Chef de Cabinet, further to the Applicant's request for management evaluation at the end of March 2014, informed the Applicant that the Secretary General was upholding the decision to place him on ALWOP. Both decisions, albeit with some difficulty, were communicated to the Applicant.

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<sup>11</sup> See *inter alia* Applicant Order No. 087 (NBI/2014).

35. Having examined the chronology of events in this, the Tribunal finds that the Applicant is in fact challenging the decision of the USG/DM as made on 21 May 2014 and communicated to the Applicant on 23 June 2014. It is a decision which ha



44. An application for a suspension of action cannot be granted if the impugned administrative action has been implemented. Neither a staff member nor the Tribunal has any control on the timing for the implementation of an administrative decision.

Judge *(signed)*