



**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

TAL

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**ORDER ON AN APPLICATION FOR  
SUSPENSION OF ACTION PURSUANT  
TO ARTICLE 13 OF THE RULES OF  
PROCEDURE**

---

**Counsel for the Applicant:**

Michael Brazao, OSLA

**Counsel for the Respondent:**

Paulos Weldesellasie, ALS/OHRM









International Organizations Department in the Sudanese Ministry of Foreign Affairs that his visa application was being processed.

24. On 5 June 2017, the Applicant filed an MER challenging the decisions: not to renew his appointment beyond 30 June 2017; to expel him from participating in the ongoing first semi-annual POLNET Managed mobility Exercise of 2017; and the violation of his right to receive work as a United Nations employee as established by the United Nations Appeals Tribunal (UNAT) *jurinof hsedse al[re]7(n)-9(e)4u.384 696.22 Tm[I]13(n)-9 17*

UNAMID at the El Geneina duty station would continue to be renewed for an extended period of time.

c. He was declared PNG on 23 December 2015. Rather than being

Case No. UNDT/NBI/2017/051

Order No.: 109 (NBI/2017



a. His first MER was declared moot by MEU because FPD granted him an appointment extension until 28 February 2017, for the express purpose of participating in a POLNET Placement Exercise, which was supposed to be completed by 31 January 2017. By way of direct negotiation between Counsel and the Applicant, his appointment was further extended until 30 April 2017 when it became abundantly clear that this POLNET recruitment process would not be completed on time.

b. At the time of the present filing, the second semi-annual POLNET Placement Exercise of 2016 is still not complete, nearly half a year after it

That letter makes it clear that, FPD granted the Applicant an extension of his appointment for the express purpose of participating in a POLNET Placement Exercise until its completion. At the time of the filing of the present submission, two of the positions in the compendium for which he has applied

Inspira.

c. his appointment beyond 30 June 2017, which will deprive him of the opportunity to participate in the ongoing POLNET Placement Exercise until its completion, expressly violates the

his first MER.

28.

work.

a. It is undisputed that he has been left without any professional functions to perform whatsoever since 6 August 2016, when his final UNMISS temporary assignment expired and he was repatriated to his home country of Jordan.

b. Whilst it is acknowledged that UNAMID has continued to pay him his salary and other benefits and emoluments owed to him under his appointment

e of the UNDT and UNAT. It is also a state of affairs that the Applicant neither desired nor sought; to the contrary, for the past year he has been extremely proactive in attempting to exercise his right of substantive employment, having applied for approximately 30 positions within the Organization for which he is qualified. Through his repeated emails to various stakeholders, he has persistently expressed his desire and willingness to deploy to any United Nations mission or office to which, as a rostered P-5 candidate in the field of Administration and a rostered D-1 candidate in the field of Political Affairs, he could add value to the Organization.

c. In *Applicant* UNDT/2011/187, UNDT held that work, in addition to being a duty for staff members, is also a right. This pronouncement was reiterated in *El-Awar*, Order No. 59 (GVA/2017). In *Lauritzen* UNDT/2010/172, the Tribunal specifically held that the right to work related to the post for which the staff member was hired; a proposition that was later affirmed by UNAT in Judgment no. 2013-UNAT-282.

d. The Applicant appreciates that the contested administrative decision at issue in the decision not to renew his appointment beyond 30 June 2017. On this point, he illegal deprivation of work over the past 10 months informs the illegality of his appointment non-renewal, as the decision to separate him from service prior to completing the ongoing POLNET exercise would preclude him from any possibility of rectifying this prevailing illegal situation.

Case No. UNDT/NBI/2017/051

Order No.: 109 (NBI/2017)

physically encumber the position he was required to abandon one and a half years

39. A suspension of action is the only remedy available which can prevent the Administration from unlawfully depriving him of continued employment with the United Nations. If his appointment is allowed to expire, the Administration is under no legal obligation to ever reinstate him, even if his application for a Sudanese visa is ultimately approved. According to art. 10.5(a) of the Statute of the Dispute Tribunal, even if he were to ultimately succeed in an application on the merits in this case, the Administration always enjoys the prerogative of paying a staff member monetary compensation in lieu of reinstatement.

40. No amount of monetary compensation can adequately repair the damage caused by such an egregious violation of his fundamental rights. He is a D-1 level Head of Office in the prime of his career, who has worked tirelessly over the past one and a half years to preserve his continuity of service within the Organization, preferably through a reversal of the PNG decision that banished him from the country where he dutifully, happily and competently served his mission. Now that he finally stands on the threshold of this ordeal potentially being resolved, the Administration unconscionably and inexplicably remains resolute in obstructing the possibility of such a satisfactory outcome.

### ***Respondent***

41. The Applicant has not demonstrated that the contested decision is *prima facie* unlawful. The prerequisite of *prima facie* unlawfulness requires that an applicant establish that there are serious and reasonable doubts about the lawfulness of the contested decision.

42.

fixed-term appointment carries no expectancy of renewal, irrespective of length of service. Nor does the Organization have an obligation to renew the fixed-term appointment of a staff member whose work visa is not renewed by a host country. Any obligation that the Organization has in such circumstances has been met.

43. The Organization in the present case has taken appropriate steps to alleviate

-

work visa, the Organization facilitated his temporary assignment to UNMISS for a period of six months, while honoring the remainder of his appointment through 11

is entitlement to the full and fair consideration of any pending job applications or his ability to apply as an external candidate. In addition, any harm the Applicant might suffer can be adequately compensated through a monetary award.

### **Considerations**

48. Applications for suspension of action are governed by art. 2 of the Statute and art. 13 of the Rules of Procedure of the Tribunal. Article 13 provides, in the relevant part:

1. The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

49. All three elements of the test must be satisfied before the impugned decision can be stayed. Accordingly, an application for the suspension of action must be adjudicated against the stipulated cumulative test, in that an applicant must establish that the impugned decision is *prima facie* unlawful, calls for urgent adjudication and that implementation of the impugned decision would cause him/her irreparable harm.

50. The Tribunal is not required at this stage to resolve any complex issues of disputed fact or law. All that is required is for a *prima facie* case to be made out by an applicant to show that there is a judicable issue before the court.<sup>1</sup>

---

<sup>1</sup> See *Hepworth* UNDT/2009/003 at para. 10, *Corcoran* UNDT/2009/071 at para. 45, *Berger* UNDT/2011/134 at para. 10, *Chattopadhyay* UNDT/2011/198 at para. 31; *Wang* UNDT/2012/080 at para. 18.











Entered in the Register on this 15<sup>th</sup> day of June 2017

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi