



## **Introduction**

1. On 6 December 2017, the Applicant, a G-4 level Inventory and Supply Assistant with the United Nations Economic Commission for Africa (“ECA”), in Addis Ababa, Ethiopia, filed an application for suspension of action pending management evaluation of the decision to place, in his official status file, the report of a rebuttal panel.

2. The application was accompanied by seven annexes, including a copy of his request for management evaluation and several emails between him and ECA’s Human Resources Services Section (“HRSS”) on the composition of the rebuttal panel.

## **Considerations**

3. On 17 July 2017, the Applicant, who disagreed with the rating of “partially meets performance expectations” in his 2016/2017 e-PAS, submitted a rebuttal statement to the ECA Chief of Human Resources Services Section (“C/HRSS”).

4. The Rebuttal Panel, which was e

6. On 6 December 2017, the Applicant submitted a request for management evaluation.

**Consideration**

7. Requests for suspension of action pending management evaluation are to

Respondent is all that is required under the Rules. The request for suspension of action stands or falls on its merits as presented at the time.

10. A request under art. 2.2 of the Statute is also predicated upon an ongoing and pending management evaluation of an administrative decision that may properly be suspended by the Tribunal and any order to suspend a contested administrative decision ends on the date on which the management evaluation is completed. Further, the Tribunal must proceed on the basis of an impression regarding whether the Applicant satisfies the three cumulative requirements in art. 2.2 of the Statute and art. 13 of the Tribunal's Rules of Procedure, namely that the decision appears to be prima facie unlawful, that the matter appears of particular urgency, and that the implementation of the decision would appear to cause irreparable damage.

11. In considering an application for urgent injunctive relief, the Tribunal is not required to make a conclusive finding but merely to apply the statutory test by forming and expressing an opinion based on the material presented in support of the application. Whether this preliminary indication is upheld when the substantive issues of fact and law are subsequently considered will depend on the evidence, arguments and submissions of the parties. However, the benefit afforded by the suspension of action procedure is to indicate a preliminary view which may assist either party to consider its position.

12. Since an application for suspension of action is a request for urgent injunctive relief it is important that the action that needs to be suspended is described with clarity and precision and that the reasons in support thereof, together with any annexes deemed to be necessary, be presented in a manner that facilitates an expeditious disposal of the application.

13. Where the application lacks clarity the Tribunal has a duty to do its best to ascertain the nature of the impugned decision and the relief being sought. The United Nations Appeals Tribunal ("UNAT") held in *Massabni* 2012-UNAT-238<sup>1</sup> that:

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<sup>1</sup> See also *Zachariah* 2017-UNAT-764

25. The duties of a Judge prior to taking a decision include adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content, as the judgment must necessarily refer to the scope of the parties' contentions. Otherwise, the decision-maker would not be able to follow the correct process to accomplish his or her task, making up his or her mind and elaborating on a judgment motivated in reasons of fact and law related to the parties' submissions.

26. Thus, the authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and subject to judicial review, which could lead to grant, or not to grant, the requested judgment.

27. It follows from the above that the UNDT did have a legal basis to define the administrative procedure and decisions subject to review [...].

14. Although the Applicant refers to a number of issues that give him cause for concern the Tribunal will deal solely with the decision for suspension identified in Section V of the application viz. the placing of the rebuttal report as an attachment to the completed e-PAS for 2016/2017.

15. Section 15 of ST/AI/2010/5 (Performance management and development system) concerns the rebuttal process.

15.4 The rebuttal panel shall prepare, within 1

management and development rebuttal and the final rating recommended by the rebuttal panel.

16. It is clear from article 15.4 that the Administration is obliged to place the