
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/041

Order No.: 111 (NBI/2020)

Date: 12 June 2020

Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MENSAH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for the Applicant:

Introduction

1. The Applicant is a Program Officer working with the United Nations Development Program (“UNDP”). She serves on a fixed-term appointment at the NOB-9 level, and is based in Benin.
2. On 2 June 2020, she filed an incomplete application for suspension of action (“SOA”) pending management evaluation before the United Nations Dispute Tribunal in Nairobi contesting the decision of UNDP not to renew her fixed-term appointment beyond 30 June 2020.¹ She completed her application on 8 June 2020.
3. The Respondent filed his reply to the application on 10 June 2020.
4. The Applicant requested management evaluation of what she termed as “unfair dismissal” on 2 June 2020.² The matter is pending.³

Facts

5. The Applicant joined UNDP in July 2011 working as a Program Officer. In 2016, the project she was attached to closed.⁴ Thereafter, the Applicant was tasked to work on other assignments, including mobilization of resources and recently to design projects on COVID-19.⁵ In February 2020, the Applicant’s appointment was extended for three months. On 29 May 2020, the Applicant was informed by the Acting Resident Representative of UNDP in Benin that her appointment, expiring normally on 17 June 2020, would be extended only until 30 June 2020, to enable her to plan for her exit. The communication does not state the reasons for not extending the appointment any further.⁶

¹ Application, section V.

² Application, annex 3.

³ Application, section VI.

⁴ Application, section VII.

⁵ Ibid.

⁶ Application, annex 2.

9. With regard to urgency, the Respondent submits that the application does not establish the requirement of particular urgency. It is unclear why the Applicant believes

14. It is settled law that a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion to any other type of appointment. However, it is also settled law that the Administration has an obligation to state the reasons for an administrative decision not to renew an appointment when requested.

As held in *Obdeijn*:

The Administration cannot legally refuse to state the reasons for a decision that creates adverse effects on the staff member, such as a decision not to renew [a fixed-term appointment], where the staff member requests it or, a fortiori, the Tribunal orders it.⁸

15. In the same vein in *Pirnea*, the Appeals Tribunal, in determining whether a non-renewal of a fixed-term appointment was based on a valid reason, held that:

An administrative decision not to renew [a fixed-term appointment] must not be deemed unlawful on the sole ground that the decision itself does not articulate any reason for the non-renewal. But that does not mean that the Administration is not required to disc-

Urgency

18. Given that the Applicant's employment with UNDP will end on 30 June 2020, which is before the management evaluation is due, the urgency of the application is made out.

Irreparable Harm

19. Considering that as a a5