



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2014/070  
Order No.: 339 (NY/2014)  
Date: 12 December 2014  
Original: English

Before: Judge Alessandra Greceanu  
Registry: New York  
Registrar: Morten Albert Michelsen, Officer-in-Charge

OMWANDA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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ORDER

ON SUSPENSION OF ACTION

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Counsel for Applicant:  
Self-represented

Counsel for Respondent:  
Stephen Margetts, ALS/OHRM, UN Secretariat

Notice: This Order has been corrected in accordance with the Rules of Procedure of the Dispute Tribunal.

## Introduction

1. On 5 December 2014, the Applicant, a ~~Senior~~ Officer at the S-2/6 level in the Security and Safety Service (“SSS”), ~~Department of Safety and Security (“DSS”),~~ filed an application for suspension of action pending management evaluation, pursuant to art. 2.2 of the Statute of ~~Dispute Tribunal~~ and art. 13 of its Rules of Procedure. The Applicant seeks the ~~suspension~~ of the decision of 21 November 2014 made by the Under-Secretary-General (“~~USG~~”, ~~DSS~~), to initiate a preliminary investigation against the Applicant ~~by~~ appointing a fact-finding panel to investigate the Applicant’s possible unsatisfactory conduct.

2. On 5 December 2014, the Registry ~~acknowledged~~ receipt of the application and, on behalf of the Tribunal, ~~ordered~~ the Respondent to submit his reply by 5:00 p.m., 9 December 2014.

3. On 9 December 2014, the Respondent filed his reply.

4. On 11 December 2014, the Applicant filed, without leave from the Tribunal, a submission in response to ~~the~~ Respondent’s reply. ~~Considering~~ the urgent nature of the application and the particular ~~circumstances~~ of the case, the Tribunal will allow this submission.

## Submissions of the parties

5. In support of his claim, the Applicant ~~asserts~~ contends that the contested decision is *prima facie* unlawful on the grounds that a ~~panel~~ investigation is being conducted on some of the issues ~~that~~ currently pending before the Tribunal in another case (UNDT/NY/2014/057). The Applicant ~~submits~~ that the investigation panel will require confidential information which ~~can~~ only be shared with the Dispute Tribunal. The Applicant also submits that “the ~~decision~~ [of the USG/DSS] to get more facts from [the Applicant] through the panel is *sub judice*”. Further, the Chief of SSS, “has recorded statements from alleged witnesses and submitted a full investigation report



General, Department of Management (“USG/DM”) to whether to report this matter to the ASG/OHRM. Further, no determination or recommendation has been made by

[The USG/DSS] and [the Chief, SSS] did not have [the] authority to freshly review, change or make new recommendations and decisions on matters, which had passed them. [...]

...

[...] There would be no finality of justice to the applicant, if any administrator can, at will, bring back re-open and review the same issues, regardless of the justice process.

...

The [contested decision is] a further punishment on the applicant, beyond the withdrawal of his weapon and the retraining which he has already endured.

11. The Applicant also submits that the allegations relating to his access to restricted area without authorization are unfounded. The Applicant contests the alleged breach of security on the grounds that the said area was not restricted as he was in the Security Office, which is not a restricted area for security officers, not in the Consultation room, where the President of the United States was.

12. The Applicant requests the Tribunal "to receive and grant a fair and just termination of the matter".

#### Relevant background facts

13. The background facts are set out in the parties' submissions and the written documentation on the record. The relevant facts to the present application for suspension of action are those set out below.

14. On 27 February 2014, the Applicant was posted at an entrance to the United Nations Secretariat building in New York. While he was operating the gate controls, the gate closed on a car, causing minor damage. Following an investigation, it was determined that the incident occurred due to the Applicant's negligence. A performance notice was issued to the Applicant.

15. On 12 September 2014, the Applicant notified his superior of his refusal to abide by his order to attend a re-training program on how to operate the gate.

16.

22. On 8 December 2014, the Applicant indicated to the MEU that the contested decision was attached to his previous ~~email~~ that nevertheless ~~attached~~ the requested

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suspension of action before the Tribunal. The Registry of the Dispute Tribunal in New York acknowledged receipt of the application and transmitted the application to the Respondent on that day, at 12:36 p.m. The Applicant was later informed, at 4:36 p.m., that the MEU did not consider initial email as constituting a request for management evaluation and suggested that the Applicant duly filed the appropriate form. The Applicant complied on Monday, 8 December 2014.

32. In view of the foregoing, the Tribunal considers that the request for management evaluation has been initiated by the Applicant prior to the filing of the application for suspension of action. There being no evidence on the record that the MEU responded to the Applicant's request for management evaluation, the contested decision is to be considered by the Tribunal as being the subject of an ongoing management evaluation. This condition is fulfilled.

#### Implementation of the contested decision

33. There is no evidence on the record as to whether the contested decision has been implemented, namely whether the members of the panel have been appointed and whether an investigation is being carried out. The Tribunal therefore accepts that the decision has not yet been implemented. The second condition is fulfilled.

#### The application concerns an administrative decision that may be properly suspended by the Tribunal

34. As the Dispute Tribunal stated in *Hocking & al* UNDT/2009/077, *Wilkinson et.al* UNDT/2009/089 and *Ishak* UNDT/2010/085, in order for the Tribunal to suspend an administrative decision, the contested decision must be a unilateral decision that is taken by the Administration in a precise individual case and which produces direct legal consequences to the legal order, including the Applicant's rights. The Tribunal has the competence to determine whether the contested decision is an administrative decision and whether it was made in compliance with 3(t) TJ a6d579g899 Tw [(



misconduct, the head of office or responsible officer should immediately report the matter to the Assistant Secretary-General, Office of Human Resources Management, giving a full account of the facts that are known and attaching documentary evidence, such as cheques, invoices, administrative forms, signed written statements by witnesses and any other documents or record relevant to the alleged misconduct.

37. Paragraphs 4 to 8 of ST/AI/371, as amended by ST/AI/371/Amend.1, read as follows:

4. If the conduct appears to be of such a nature and of such gravity that administrative leave may be warranted, the head of office or responsible official shall make a recommendation to that effect, giving reasons. As a general principle, administrative leave may be contemplated if the conduct in question might pose a danger to other staff members or to the Organization, or if there is a risk of evidence being destroyed or concealed and deployment is not feasible.

5. On the basis of the evidence presented, the Assistant Secretary-General, on behalf of the Secretary-General, shall decide whether the matter should be pursued, and, if so, whether administrative leave is warranted. Administrative leave under staff rule 10.4 is normally with pay, unless the Secretary-General decides that exceptional circumstances warrant administrative leave without pay, in both cases without prejudice to the staff member's rights.

6. If the case is to be pursued, the appropriate official in the administration at headquarters duty stations, and the head of office or mission at duty stations away from headquarters, shall:

- (a) Inform the staff member in writing of the allegations and his or her right to respond;
- (b) Provide him or her with a copy of the documentary evidence of the alleged misconduct;
- (c) Notify the staff member of his or her right to seek the assistance of counsel in his or her defence through the Office of Staff Legal Assistance, or from outside counsel at his or her own expense, and offer information on how to obtain such assistance.

7. The staff member should be given a specified time to answer the allegations and produce corroborating evidence, if any. The amount of time allowed shall take account of the seriousness and complexity of the matter. If more time is required, it shall be granted upon the staff member's written request for an extension, giving

cogent reasons why he or she is unable to comply with the deadline. If no response is submitted within the time-limit, the matter shall nevertheless proceed.

8. The entire dossier is then submitted to the Assistant Secretary-General, Office of Human Resources Management. It shall consist of the documentation listed under subparagraphs 6 (a), (b) and (c) above, the staff member's reply and the evidence, if any, that he or she has produced. In cases arising away from New York, the responsible official shall promptly forward the dossier to the Assistant Secretary-General, Office of Human Resources Management

38. The decision to launch an investigation and the manner in which it is carried out is not, in view of the record, ~~highly~~ unlawful in light of ST/AI/371 and ST/AI/371.Amend.1. The Tribunal considers that ~~this~~ particular case, there is no reason warranting departing from the general principle that the contested decision to initiate an investigation by appointing ~~an~~ fact-finding panel is a preliminary decision which does not have an immediate and ~~adverse~~ effect on Applicant's terms of appointment. The third condition is not ~~fulfilled~~. Therefore, the application is not receivable.

39. In view of the findings above, it is ~~not~~ necessary to make any determinative conclusions with respect to whether the contested decision appears to be *prima facie* unlawful, whether it is urgent ~~or~~ would cause irreparable harm.

#### Conclusion

1. The application for suspension of action is dismissed.

(Signed)

Judge Alessandra Greceanu

Dated this 12<sup>th</sup> day of December 2014