



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

SEBILLOT

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**ORDER**

**ON AN APPLICATION FOR  
SUSPENSION OF ACTION**

---

**Counsel for Applicant:**  
Robbie Leighton, OSLA

**Counsel for Respondent:**  
ALS/OHRM, UN Secretariat

## **Introduction**

1. On 12 October 2016, at 11:57 a.m., the Tribunal received an application from a staff member of the United Nations Stabilization Mission in Haiti (“MINUSTAH”), seeking suspension, pending management evaluation, of the “decision to terminate [her] continuing appointment.” The Applicant states that she was notified of the contested decision on 12 October 2016, and that it would be implemented on 13 October 2016.

2. The Applicant submits that the Mission failed to make good faith efforts to retain the Applicant’s service against vacant posts, as required by staff rule 9.6(e). Further, no efforts have been made to place the Applicant within the broader Secretariat, i.e., outside MINUSTAH. She states that, even within MINUSTAH, there are suitable available posts against which she can be placed.

3. In view of the fact that the contested decision was received by the Applicant on short notice, it required most urgent consideration by the Tribunal. Accordingly, as this was clearly a pressing matter requiring urgent intervention, the Tribunal did not seek the Respondent’s reply (*Khambatta* UNDT/2012/058, affirmed in *Khambatta* 2012-UNAT-252).

## **Relevant background**

4. The following outline of the relevant background is based on the application and the documentation on file.

5.

certified sick leave. While she was on sick leave, a civilian staffing review process was conducted at MINUSTAH.

6. On 15 February 2016, the Applicant received a letter informing her that her appointment would not be renewed beyond 30 June 2016. The same letter indicated that the nature of the Applicant's post <sup>to</sup> <sup>com</sup> meant that it could not be subject to comparative review.

7. On 17 February 2016, the Applica

Nations on the grounds of abolition of post in accordance with Staff Regulation 9.3 (a)(i) and Staff Rule 9.6 (c)(i).

Your separation will be effective 30 September 2016. This letter constitutes the formal notice of termination of your appointment in line with Staff Rule 9.7.

The Under-Secretary-General for Management also approved payment of termination indemnity pursuant to Staff Regulation 9.3 (c), Staff Rule 9.8 and in accordance with the rates set out in Annex III of the Staff Regulations as well as three months' salary of compensation in lieu of notice in accordance with staff rule 9.7 (d).

I take this opportunity to express the mission's sincere appreciation for your dedication and contribution to the work of the United Nations and wish you the best in your future endeavors.

11. On 12 October 2016, the Applicant submitted a management evaluation request with regard to the decision to terminate her contract. The management evaluation of the Applicant's request is pending.

## **Consideration**

### *Legal framework*

12. Article 2.2 of the Statute of the Dispute Tribunal provides:

The Dispute Tribunal shall be competent to hear and pass judgement 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. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

13. Article 13.1 of the Tribunal's Rules of Procedure states:

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.

14. In accordance with art. 2.2 of the Dispute Tribunal's Statute, the Tribunal may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular

(NY/2013); *Gallieny* Order No. 60 (NY/2014), the Tribunal may grant a request for a suspension of action.

18. The Applicant submits that close of business in Haiti is 4:40 p.m., so the letter was sent by the Mission after working hours. Further, at the time the email was sent the Applicant was in France. This was known to the Mission as she was on R&R combined with annual leave. At the time the message was sent in Haiti, it was already 12.29 a.m. on the 12 October 2016 in France. Since notice can only be deemed served on receipt, it is submitted that the document was not served until 12 October 2016. Thus, she should be deemed to have been served the termination letter on 12 October 2016 and the decision cannot be implemented until the end of 12 October 2016 at the very earliest.

19. The Tribunal finds that the letter was provided to the Applicant after working hours and the effective date of notification and implementation cannot be earlier than 12 October 2016. It is clea

22. The Applicant has a continuing appointment and her post has been abolished.

23. Staff regulation 1.2(c) provides:

**General rights and obligations**

(c) Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations. In exercising this authority the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them;

24. Staff rule 9.6(e) states:

**Rule 9.6**

...

**Termination for abolition of posts and reduction of staff**

(e) Except as otherwise expressly provided in paragraph (f) below [concerning staff members in the General Service category and thus not relevant to the present case] and staff rule 13.1, if the necessities of service require that appointments of staff members be terminated as a result of the abolition of a post or the reduction of staff, and subject to the availability of suitable posts in which their services can be effectively utilized, provided that due regard shall be given in all cases to relative competence, integrity and length of service, staff members shall be retained in the following order of preference:

(i) Staff members holding continuing appointments;

(ii) Staff members recruited through competitive examinations for a career appointment serving on a two-year fixed-term appointment;

(iii) Staff members holding fixed-term appointments.

25. Section 11 of ST/AI/2010/3 (Sta



there is nothing in the staff rules permitting the Administration to process such termination retroactively, as was done in this case.

28. The Tribunal is also gravely concerned with the manner in which the Applicant was notified of the contested decision. The Tribunal notes that, at 5:29 p.m. in Haiti, it would have been 6:29 p.m. in New York, at which time the Tribunal would be closed. The service

33. The Applicant filed the present application on the same day she was notified of the contested decision to terminate her continuing appointment. This matter is of particular urgency, and the urgency in this case is not self-created.

34. In the circumstances and on the papers before it, the Tribunal finds the requirement of particular urgency to be satisfied.

*Irreparable damage*

35. It is generally accepted that mere economic loss only is not enough to satisfy the requirement of irreparable damage. Depending on the circumstances of the case, harm to professional reputation and career prospects, harm to health, or sudden loss of employment may constitute irreparable damage (*Adundo et al.* UNDT/2012/077; *Gallieny* Order No. 60 (NY/2014)). In each case, the Tribunal has to look at the particular factual circumstances.

36. It is established law that loss of a career opportunity with the United Nations may constitute irreparable harm for the affected individual (see, for instance, *Saffir* Order No. 49 (NY/2013); *Finniss* Order No. 116 (GVA/2016)).

37.

to terminate the Applicant's continuing appointment shall be suspended pending management evaluation.

**Orders**

40. In light of the foregoing, the Tribunal ORDERS:

The application for suspension of action is granted and the contested decision is suspended pending management evaluation.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 12<sup>th</sup> day of October 2016