UNITED NATIONS DISPUTE TRIBUNAL	Case No.:	UNDT/NY/2017/095
	Order No.:	220 (NY/2017)
	Date:	6 October 2017
	Original:	English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

DUVERNÉ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON

SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Miles Hastie, UNICEF

Introduction

1. On 2 October 2017, the Applicant, a former Ethics Specialist, at the P-3 level, step 9, in the United Nations Children's Fund ("UNICEF") Ethics Office in New York, filed an application for suspension of action pending management evaluation of the decision to "[t]erminat[e] …[her] fixed-term contract following a 'low achievement' rating [she] received for the 2016 Performance Appraisal, the result of assessments relating to allegations of retaliation and a Management Evaluation".

2. On 2 October 2017, the Registry acknowledged receipt of the application and transmitted it to the Respondent, directing him, upon the instructions of the Tribunal, to file a r4(c) 1 959s99 Tm[( )] 0 0 1 1pliachiev15.06 60(th)-19 647.m[(2017,)-39(the)-4(a)25 959s99 Tm

communications with OIA did not constitute a proper report of misconduct and that the Applicant's allegations that the poor grading in her PER and subsequent non-extension of her contract were retaliatory were not substantiated. The UNHCR Ethics Office also concluded that there was no evidence to suggest that the Applicant's supervisor was aware of the alleged protected activity and, therefore, there was no evidence of a connection between the alleged reports of misconduct and the alleged retaliation.

8.

The submissions of the parties

11. The Applicant's principal contentions and allegations as included in the application for suspension of action

(GVA/2013), and *Applicant* Order No. 167 (NBI/2014)). A non-renewal decision is fully implemented at the date of separation (see Order No. 43 (GVA/2015), at para. 11). In her application, the ApplicancaFpo8t,g2(c)70104 Tm[( )] TJ,p8Td8o,1ETo(c)7(a)- 0 1 443
-renewal.

Prima faca.1.1*unlawfulness*

d. The Applicant's

> 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.

16. The Tribunal considers that, for an application for suspension of action to be successful, it must satisfy the following mandatory and cumulative conditions:

a. The application concerns an administrative decision that may properly be suspended by the Tribunal;

b. The Applicant requested management evaluation of the contested decision, which evaluation is ongoing;

c. The contested decision has not yet been implemented;

d. The impugned administrative decision appears *prima facie* to be unlawful;

e. Its implementation would cause irreparable damage; and

f. The case is of particular urgency.

Whether the Applicant requested management evaluation of the contested decision and whether the evaluation is ongoing

17. It follows from art. 2.2 of the Tribunal's Statute and art. 13.1 of its Rules of Procedure that the suspension of action of a challenged decision may only be ordered when management evaluation for that decision has duly been requested and is still ongoing (see, for instance, *Igbinedion* 2011-UNAT-159 and *Benchebbak* 2012-UNAT-256).

18. The Tribunal notes that, as results from the case record, the Applicant submitted her request for management evaluation on 6 April 2017,

19. The Tribunal further notes that, as indicated by both parties, UNICEF completed its review of the request for management evaluation on 26 July 2017 and informed the Applicant that it upq39sETBT1 0 0 1 236.45617.922 Tm[(inforJETBT1 0 0 1 233.4568.3722