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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/113  
Order No.: 277 (NY/2017)  
Date: 19 December 2017

Registrar: Morten Albert Michelsen, Officer-in-Charge

EL-BAGHIR

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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ORDER

ON SUSPENSION OF ACTION

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## Introduction

1. On 17 December 2017, the Applicant, a Senior Reviser, Department for General Assembly and Conference Management, Documentation Division, Translation Services ( DGACM/DD/ATS ) at the P-5 level on a permanent appointment with United Nations, filed an application for suspension of action pursuant to art. 13 of the Dispute



General or the Under-Secretary for Management and that such process is usually finalized in a couple of months and not a couple of days





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19. Article 8. states that an application shall be receivable if:

[a]n applicant has previously submitted the contested administrative decision for management evaluation, where required.

20. 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.

21. 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 evalu nBT/(c)4(onc 0 07p6c 100001W\*nB(be)420 g)4(B(be)420 g)4(B(be)BT4(h e)

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IT IS ORDERED THAT:

26. The application for suspension of action is rejected.

27. The present Order o submit an application before the Tribunal, including a suspension of action in relation to future decisions, if any, regarding his contract, including a termination decision.

Observation

28. The Tribunal considers necessary to underline the following due to the particular circumstances of the present case:

29. Regarding the request made by Ms. CE, Ms. RA-C and Mr. MMG during the meeting with the Applicant that he should inform the Administration on 20 December 2017 if he would elect to apply for early retirement, as an alternative to the termination of his contract for unsatisfactory services, the Tribunal observes that even if the Applicant is to be considered eligible to apply for early retirement, such request made by the Administration represents an invitation since an application for early

imposed by the Administration at any level. Imposing on a staff member to apply for an early retirement, especially as an alternative to a termination of his contract and separation from the Organization for unsatisfactory performance initiated by the Organization, may appear to constitute a termination and not an exercise of the staff

10.1, 10.2 and 10.3 of ST/AI/2010/5 (Performance Management and Development System) which state as follows:

10.1 During the performance cycle, the first reporting officer should continually evaluate performance. When a performance shortcoming is identified during the performance cycle, the first reporting officer, in consultation with the second reporting officer, should proactively assist the staff member to remedy the shortcoming(s). Remedial measures may include counselling, transfer to more suitable functions, additional training and/or the institution of a time-bound performance improvement plan, which should include clear targets for improvement, provision for coaching and supervision by the first reporting officer in conjunction with performance discussions, which should be held on a regular basis.

10.2 If the performance shortcoming was not rectified following the remedial actions indicated in section 10.1 above, and, where at the end of the performance  
meets performance  
plan shall be prepared by the first reporting officer. This shall be done in consultation with the staff member and the second reporting officer. The performance improvement plan may cover up to a six-month period.

10.3 If the performance shortcoming was not rectified following the remedial actions indicated in section 10.1, a number of administrative actions may ensue, including the withholding of a within-grade salary increment pursuant to section 16.4, the non-renewal of an appointment or the termination of an appointment for unsatisfactory service in accordance with staff regulation 9.3.

30. The Tribunal also observes that no legal provisions exist regarding the initiation and the preliminary steps to be followed for taking a termination decision based on unsatisfactory services and recommends that such clear provisions are to be adopted as soon as possible to prevent any misunderstandings and misinterpretations of such a process.

31. As results from the appraisal conducted by the Applicant's supervisor on 10/10/16, it appears that the Applicant's performance during his six months PIP was considered to be satisfactory and the shortcoming in his performance evaluated in the previous 2016-