

Background

5. The Applicant joined the United Nations 15 years ago and the DGACM publishing team in 2013 as a Publishing Assistant when the 1st r j cug"qh"öRtqlgev"lqt" f ki kcrk cwp"y kj "FI CEO ö"y cu"rwpej gf "y kj "yj g"hwf lpi "o ckn{ "r tqxkf gf "d{ "yj g" State of Qatar. According to the Respondent, the project team consisted of 11 staff members, seven of them on permanent appointment and four on fixed-term appointment.

6.

e. Alternatively, if the Applicant is not retained, she should be placed in a position of equivalent rank and grade pursuant to staff rules 9.6(e) and 9.6(f), staff members holding fixed-term appointments shall be retained by preference to staff members with a lower level of protection. The Applicant applied to a number of vacancies within the United Nations Secretariat, 12 of which are pending, and 11 of pending applications are with DGACM. It cannot be said that there are no suitable alternative positions onto which she could be placed pursuant to staff rule 9.6;

Urgency

f. On 26 September 2018, the Applicant received a notification that her contract was not to be extended beyond 31 October 2018. On 5 October 2018, the Applicant filed a management evaluation request. However, on 23 October 2018, she learned that the reasons provided in the notification were not accurate;

g. In light of new information, on 26 October 2018, the Applicant amended her management evaluation request specifying that the non-renewal decision was not based on a genuine reason but was rather a strategy designed to remove her from post;

h. The matter is urgent as the non-renewal decision could be implemented by the time the management evaluation is due (4 November 2018);

i. It is not a case of self-created urgency since she only learned about the strategy and underlying facts on 23 October 2018;

Irreparable damage

j. It is trite law that loss which can be adequately compensated through a monetary award will not constitute irreparable damage justifying a suspension

or sudden loss of employment may constitute irreparable damage

in 2016-UNAT-659); *Beqai* 2014-UNAT-434, para. 21). The Appeals Tribunal recognizes the broad discretion of the Secretary-General to determine the needs of the Organization, including organization of work, staffing and budgetary needs (*Lee* 2014-UNAT-481, para. 28). The Dispute Tribunal cannot substitute its own views for those of the Secretary-General on matters such as how to organize work and meet operational needs (*Sanwidi* 2010-UNAT-084, para. 40; *Pacheco* UNDT/2012/008, paras. 39-41). The Organization however has a duty to act fairly, justly and transparently in dealing with its staff members (*Fasenella*

appointment expires (that is, non-renewed) due to abolition of post or reduction in staff is not entitled to the rights set out in staff rule 9.6(e) upon termination of fixed-term appointment due to abolition of post or reduction in staff;

g. Under staff rule 9.4, a fixed-term appointment expires automatically and without prior notice on the expiration date in the letter of appointment. Under staff rule 9.6(a), a termination of appointment is a separation from service initiated by the Secretary-General. Further, termination of appointment brings the appointment to an end, prior to the expiry date of the appointment. Staff rule 9.6(b) expressly provides that separation as a result of

h. The Dispute and Appeals Tribunal have recognized that separation from service as a result of termination of fixed-term appointment cannot be equated to separation as a result of non-renewal of a fixed-term appointment (*Badawi* 2012-UNAT-261, para. 32; *Pacheco* UNDT/2012/008, para. 74 (affirmed by 2013-UNAT-281)). In *Pacheco*, the Dispute Tribunal recognized that only staff members whose fixed-term appointments are terminated due to abolition of post or reduction in staff are entitled to invoke the provisions of staff rule 9.6(e): the rule does not apply to a staff member whose fixed-term appointments expire (See also *Obdeijn* UNDT/2011/032, para. 24; *Abundo* UNDT/2012/077, para. 34; *Dalipi* UNDT/2013/020, paras. 14 and 55; *Kotanyan* UNDT/2018/077, paras. 74 and 75);

Urgency

i. The Dispute Tribunal has consistently held that the requirement of urgency will not be satisfied if the urgency was created or caused by an

the first available opportunity, taking the particular circumstances of her or his

20. Parties approaching the Tribunal for a suspension of action order must do so on a genuinely urgent basis, and with sufficient information for the Tribunal to preferably decide the matter on the papers before it. An application may well stand or fall on its merits. It should be complete to the extent possible in all relevant respects, and be succinctly and precisely pleaded. Parties should bear in mind that the matter is not at the merits stage at this point of the proceedings, and that the luxury of time is unavailable. Urgent applications disrupt the normal day-to-day business of the Tribunal, thus delaying the disposal of other older outstanding cases.

21. As the Respondent has not contested the irreparable harm aspect of the application, the Tribunal will now turn to the matter in hand and deal with this aspect first.

Irreparable damage

22. 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.

25. The Tribunal accepts that the Tribunal a4 Tm0 g0 G(7c)bo TJETQqx11 0 0 1 396/0 0 1 1g1 698.3

preservation project and that there is still a second phase of the project to be completed. The detailed project initiation document, which one would presume is only prepared once funding has been received or secured, or at least an undertaking of the kind that the FI CEO would expect to see, will be provided with a contract for one year from July 2018 which would mark the beginning of the second phase of the project. This would make logical sense that institutional memory was retained into the second phase of the project. In all these circumstances, there is reasonable doubt as to whether the digitization project is complete and at closure stage, and the personnel no longer required.

29. In the reply, the Respondent suggests that the project has ended as funding for the digitization project has been exhausted. On the one hand, the Respondent submits that the project funding was exhausted by 31 October 2018 and thus the

also raise serious and reasonable doubts about the lawfulness of the contested decision.

31. In the circumstances and on the papers before it, the Tribunal finds that the Applicant has made out a fairly arguable case that the contested decision is unlawful and the requirement of *prima facie* unlawfulness to be satisfied.

Urgency

32. Ceeqtf kpi "vq"ctv0'40"qh'v j g'F kur wwg"Vtkdwpcn"Ucwwg"cpf "art. 13 of its Rules of Procedure, a suspension of action application is only to be granted in cases of particular urgency.

33. Urgency is relative and each case will turn on its own facts, given the exceptional and extraordinary nature of such relief. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the applicant (see, for instance, *Villamorán* UNDT/2011/126, *Dougherty* UNDT/2011/133 and *Jitsamruay* UNDT/2011/206).

34. In the present case, v j g"Vtkdwpcn'pqvgu"v cv"v j g"gzr kcvkqp"qh"v j g"Cr r kcpv" fixed-term appointment was imminent and was to take effect on 31 October 2018, and thus the matter is urgent. In light thereof and on the facts before it, the Tribunal ceegr w" v j g"Cr r kcpv" uwdokukqp" v cv" v j g" wti gpe{ "ku"pqv" ugrh-created as new underlying facts have recently arisen such that the Applicant, having initially filed a management evaluation request on 5 October 2018, was constrained to file an amended management evaluation request on 26 October 2018.

35. In the circumstances and on the papers before it, the Tribunal finds that the matter is urgent as the contested decision is impending and will be implemented before the management evaluation is rendered, and the Tribunal finds the requirement of particular urgency to be satisfied.

Conclusion

36. 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.