
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/030

Order No.: 85 (NY/2019)

Date: 17 May 2019

Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Nerea Suero Fontecha

d. Overall Rating for Development Outputs

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*description requires and the
delivers. As stated last year this is not about the SM as a*

5.

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.

6.

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 urgency, and where its implementation would cause irreparable damage. The Dispute Tribunal can suspend the contested decision only if all three requirements of art. 2.2 of its Statute have been met.

7.

art. 13.1 of the Rules of Procedure that the suspension of action of a challenged decision may only be ordered when management evaluation of that decision has been duly requested and is still ongoing (*Igbinedion* 2011-UNAT-159; *Benchebbak* 2012-UNAT-

there is nothing in



-point review to indicate

Audit and Investigation Services, the only entity charged with addressing complaints of harassment and general allegations of misconduct;

11. The Tribunal notes that 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 instantly filed before it. An application may well stand or fall on its founding papers. Likewise, a reply should be complete to the extent possible in all relevant respects. Whilst pleadings should contain all relevant material to support a part be unwieldy and burdensome, nor frivolous nor an abuse of process. Parties should bear in mind that the matter is not at the merits stage at this point of the proceedings, no hearing is contemplated, nor are further pleadings envisaged, unless the Tribunal orders otherwise.

12. The Tribunal is surprised that the Respondent takes the point that the PPM clearly articulates that a fixed term appointment automatically expires without prior notice on its expiration date, and that there is no expectancy of renewal of a fixed term appointment, when the law regarding the legal hierarchical effect of manuals, and that regarding fixed term contracts and non-renewal has been long settled (see, for example, *Pint* [The Tribunal is surprised in finding that the Manuals are binding on the Administration since, according to the established Appeals Tribunal jurisprudence, rules, policies or procedures intended for general administrative issuance and regarding the submission of fixed term contracts

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performance. Unfortunately, after all the reviews of documents and the interviews, the panel was not able to see the S/M demonstrating performance up to her role and expectations.

16. The Tribunal notes that under the PPM, no reference is made to a PIP in the context of the separation of a UNFPA staff

However, the Tribunal agrees with the Applicant that if indeed it is decided to implement such remedial measure, the Administration is obliged to follow the directions included in the PIP and to execute its completion (*Kucherov, supra*). In addition, this is also a matter of legitimate expectations (see, for instance, the Appeals Tribunal in *Sina* 2010-UNAT-094, affirming *Sina* UNDT/2010/060) and the general legal doctrine of good faith and fair dealing.

17. However, the Applicant submits that she was only presented with the PIP once, namely when she signed it as a requirement for renewing her latest fixed-term appointment, that she was not provided with a copy of the PIP, that no follow-up was made with her in accordance with the PIP, and that no record-

the

first available opportunity, taking the particular circumstances of her or his case into account (*Evangelista* UNDT/2011/212). The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the applicant (*Villamorán* UNDT/2011/126; *Dougherty* UNDT/2011/133; *Jitsamruay* UNDT/2011/206).

24. The Applicant submits that the matter is urgent because her fixed-term appointment will expire on 31 Ma

Irreparable damage

28. It is generally accepted that mere economic loss only is not enough to satisfy the requirement of irreparable damage. However, it is clearly settled law that, 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. 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)).

29. The Applicant submits that, in the present case, if the impugned decision is implemented, she will suffer

of the Division for Human Resources dated 21 April 2019 in which the Applicant is informed about the non-renewal of her fixed-term appointment upon expiry on 31 May 2019. Furthermore, this matter is not at the merits stage requiring proof of damages, and the case law in this regard is well-settled as stated above. The in this regard is therefore spurious.

33. The Respondent further contends that since the Applicant argues that she is eligible for retirement on 11 September it was taken of her eligibility to retire having reached the the Administration should have provisions under Staff Rule 5.3(d) not seeking future career prospects with UNFPA if her intent is to retire on or near her next birthday. The Respondent appears to have totally misconstrued the argument as the Applicant is clearly referring to the possible disentanglement of her full retirement benefits on her due retirement date 6 months from now.

34. In the circumstances and on the papers before it, the Tribunal finds