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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/051  
Order No.: 111 (NY/2019)  
Date: 22 July 2019  
Original: English

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**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

FAYEK-REZK

v.

SECRETATA/F11STA/F11STA/F11ST

## **Introduction**

1. On 15 July 2019, the Applicant, a Public Information Officer at the P-3 level, with the Department of Global Communications (“DGC”) in New York, filed an application for suspension of action pending management evaluation under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure, seeking to suspend

and projects and another staff member would join the team managing the content of social media accounts in French from 1 August 2019. The Tribunal notes that this appointment is a result of the selection process for the above-referenced temporary job opening.

7. On 15 July 2019, the Applicant requested a management evaluation of the decision to appoint another staff member as Chief of the French Unit of the Social Media Section.

### **Consideration**

#### *Oral hearing*

8. After filing the application for suspension of action, the Applicant requested that an oral hearing be held, but provided no arguments as to why such hearing would be necessary. As the Tribunal considers that the documents on file are adequate for a fair and just determination of the present case, it finds no reason to hold an oral hearing. Therefore, the Applicant's request is denied.

9. The Tribunal further notes that a suspension of action procedure is an urgent matter that, pursuant to art. 13 of Dispute Tribunal's Rules of Procedure, shall be considered by the Tribunal within five days of serving the application on the Respondent—an application for suspension of action is therefore generally determined on its founding papers and, possibly, also the Respondent's reply.

#### *Receivability of the application for suspension of action*

10. Under art. 2.2 of the Dispute Tribunal's Statute and art. 13.1 of the Rules of Procedure, 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 urgency, and where its implementation would cause irreparable damage. The Dispute Tribunal can suspend the contested decision only if all three requirements have been met.

11. In the present case, the Respondent submits that the application is not receivable on the grounds that the Applicant did not apply for the contested position and therefore has no standing to challenge the are56.98q0.00000912 0 612 792 re VQ.00000912 0 612 7

17. Section 2.5 of ST/AI/2010/3 (Staff selection system) provides that “[h]eads of departments/offices retain the authority to transfer staff members within their departments or offices ... to job openings at the same level without advertisement of the job opening” and job opening is defined as vacancy announcement issued for a position. Therefore, the Administration’s authority to transfer a staff member is premised on the fact that the relevant post is vacant. Albeit in a different context, the Appeals Tribunal held that a staff member has no right to be considered against a position encumbered by another staff (*Timothy* 2018-UNAT-847, para. 42). Since the Applicant has no right to be considered against a position already filled through a selection process, the contested decision did not produce any direct legal consequences affecting her terms and conditions of appointment and therefore the disputed decision is not an administrative decision subject to judicial review.

### **Conclusion**

18. In light of the foregoing, the present application for suspension of action is