UNITED NATIONS DISPUTE TRIBUNAL

Date: 30 October 2009

Original: English

Before:	Judge Vinod Boolell
Registry:	Nairobi
Registrar:	Jean-Pelé Fomété

TADONKI

v.

SECRETARY-GENERAL

OF THE UNITED NATIONS

IN THE MATTER OF INTERPRETATION OF AN
ORDER ISSUED ON 1 SEPTEMBER 2009

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Steven Dietrich, ALU/OHRM.

Notice: The format of this judgment has been modified for publication purposes in accordance with Article 26 of the Rules of Procedure of the United Nations Dispute Tribunal.

THE UNITED NATIONS DISPUTE TRIBUNAL ("Tribunal"),

SITTING in the person of Judge Vinod Boolell,

PROCEDURE

1. By order issued on 1 September 2009, the Tribunal granted the Applicant's request for suspension of action on the basis of Articles 13 and 14 of the Tribunal's Rules of Procedure and ordered:

> (a) "The suspension of the Respondent's decision not to renew the employment at any time from the date of the Order issuance pending the final determination of the substantive appeals of the Applicant";

> (b) That "The Respondent [pays] and shall pay to the Applicant half his salary from the date of the Order until the final determination of the case. On the ground of Article 14 of the Tribunal's Rules of Procedure".

2. Both Parties requested interpretation of the above order within the framework of Article 30 of the Rules of Procedure:

> i) On 9 September 2009 the Applicant submitted a "Motion for a Request for Clarification of the Tribunal's Order";
> ii) On 1 October 2009 the Respondent submitted a "Request for Interpretation of Order".

3. In accordance with the above Article, parties were given respectively the opportunity to reply within 30 calendar days. It is in the Registry's records that:

> i) The Applicant submitted his comments to the Respondent's request for interpretation on 7 October 2009 followed by an addendum dated 9 October 2009;

ii) The Respondent submitted his comments to the Applicant's motion for clarification dated 10 October 2009.

PARTIES' ARGUMENTS

4. In his 9 September 2009 "Motion for a Request for Clarification of the Tribunal's Order", the Applicant seeks clarification as to whether:

(a) The Order is effective until the final

(b) On Paragraph 15.3, the Respondent states that Article 14.1 of the Rules of Procedure which is based on Article 10(2) of the Tribunal's Statute does not apply to the present case as the Applicant has only filed a request for suspension of action on the ground of Article 13 of the Rules of Procedure.

(c) In light of the foregoing, it is the Respondent's understanding that the interim

shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

6.3   The provisions of Article 2.2 of the UNDT Statute state that,

The Dispute Tribunal shall be competent to hear and pass judgment 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. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

6.4   Article 13(1) of the UNDT Rules of Procedure provides that,

The Dispute Tribunal shall make an order 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.

6.5   Article 13.1 of the Rules of Procedure read together with Article 2.2 of the Statute of the Tribunal clearly state that an application may be filed for suspension of action of a disputed administrative decision that is the subject of an ongoing management evaluation. Staff Rule 111.2 required a staff member to first request a review of the contested decision. The underlying philosophy of these provisions is to allow management the opportunity to rectify an erroneous, arbitrary or unfair decision, as well as to provide a staff member the opportunity to request a suspension of the impugned decision pending an evaluation by management while retaining the option to file an appeal with the

8.2.1 The purpose of management evaluation is to *give management a chance to correct an improper decision, or provide acceptable remedies in cases where the decision has been flawed, thereby reducing the number of cases that proceed to formal litigation[4].*

In light of its purpose, the Management Evaluation Unit's functions include:

i) Reviewing contested administrative decisions to assess whether such decisions were made in accordance with the Organization's applicable policies, rules and procedures;

ii) Proposing appropriate remedies to the Under-Secretary-General for Management in case of improper administrative decision(s) and, as appropriate, proposing alternative means of settling disputes between staff members and the Administration;

iii) Making recommendations to the Under-Secretary-General for Management regarding any trends discerned in respect of the decision-making authority of managers;

iv) Assisting the Under-Secretary-General for Management to strengthen managerial accountability by ensuring managers' compliance with their responsibilities while respecting the Organization's Rules and Regulations and ethical standards[5].

9.   The Management Evaluation Unit and the powers exercisable by the Tribunal

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[4]

establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of just

Effective Reform of the United Nations cannot happen without an efficient, independent and well resourced internal