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Case No.: UNDT/NY/2012/006

Judgment No.: UNDT/2012/017

Date:

## **Introduction**

1. On 30 January 2012, the Applicant, a United Nations Reform Specialist at the P-3 level (“the P-3 post”) with the United Nations Populations Fund (“UNFPA”), filed an application for suspension of action, pending management evaluation, of what he alleges is a decision to abolish the post of United Nations Reform Adviser at the P-5 level (“the P-5 post”). Both the P-3 and the P-5 posts were located in the Executive Board and External Relations Branch (“EBERB”) of the Information and External Relations Division (“IERD”). Following his request that he be considered for a special post allowance (“SPA”) for performing the duties of Acting Advisor, United Nations Reform since October 2010, the Applicant was granted an SPA effective 1 January 2011 to date, which is currently at the P-4 level, step 9.. The Applicant requested management evaluation of the impugned decision on 27 January 2012.

2. The Applicant appeals the alleged decision to abolish the P-5 post as he had previously applied for it, but was not selected, and contends that its abolition subverts due process, is in bad faith and is an attempt to create an *ex post facto* justification for the decision not to select him. The Applicant has separately appealed the non-selection decision and the case is at present pending before the Dispute Tribunal under Case No. UNDT/NY/2011/096.

3. On 30 January 2012, the New York Registry of the United Nations Dispute Tribunal transmitted the application for suspension of action to the Respondent, directing him to reply by 1 February 2012, which he did.

## **Background**

4. The following factual information is based on the parties’ written submissions and documents included in the case record.

5. As background for this instant application, the Applicant contends that:
- a. In 2007, while encumbering his present post, the Applicant was informed by his line manager, Mr. Kwabena Osei-Danquah, Chief, EBERB, that his post had been recommended for reclassification from the P-3 to the P-4 level as he was undertaking functions above the original job description;
  - b. The reclassification of the P-3 post was never implemented, and Mr. Osei-Danquah instead proposed that the Applicant should wait and apply for job openings advertised at a higher level, including the P-5 post;
  - c. The Applicant alleges it was only after he challenged the selection process for the P-5 post that the issue of reclassification was recently “revisited as a result of the present challenge as a possible bridging solution, but no decision has been made”. In May 2011, the Applicant was advised by the Director, Human Resources, “to find out what had happened with the reclassification request ... and to ask [Mr. Osei-Danquah] to re-launch the recommendation for consideration in the next biennium budget”;
  - d. Since October 2011, he has “continued to carry out higher level functions and an increasingly heavier work load, including the responsibilities of [the P-5 post], since its prior incumbent left for another job”;
  - e. His performance evaluation from 2009 rated him as “fully proficient”, noting that he continued to perform “above the level of [the P-3 post] ... virtually ... without supervision ... and can perform exceptionally well at higher levels, if given the opportunity”. In his 2010 performance rating he was graded as “fully achieved outputs”, and it was stated that “the work he currently does and the quality of his work is higher than the position he occupies. He deserves a higher level position”.
6. Concerning the selection process for the P-5 post, which he alleges has been abolished, the Applicant submits that he was shortlisted and interviewed for it, but

not selected, albeit already being on a “[United Nations Secretariat] P-5 roster”. He contends that the process was tainted by several fatal flaws. The Respondent avers that the Applicant, in fact, came in third in the selection process and that there was  
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application for suspension of action is premature. There being no contested decision worthy of suspension, the application stands to be rejected.

*The mandatory conditions for granting suspension of action*

12. Even if the decision to abolish the P-5 post had been taken, the Applicant would have to satisfy the Tribunal on the papers filed to grant the suspension of action. Article 2.2 of the Statute of the Tribunal provides that it 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 cases of particular urgency, and where its implementation would cause irreparable damage. The Tribunal can suspend the contested decisions only if all three requirements of art. 2.2 of its Statute have been met.

13. Applications for suspension of action pending management evaluation require consideration by the Tribunal within five days of service of the application upon the Respondent. Due to their urgent nature, such applications must articulate the basic requirements with sufficiency for the Tribunal to deal with the matter on the papers. As time is of the essence, it would be in any applicant's interests to very clearly set out, under separate headings, the particular facts which satisfy each of the three essential requirements for a successful application.

14. The Dispute Tribunal's standard form contains clearly demarcated sections with regard to the mandatory requirements for a suspension of action, for completion by an applicant. The instant application contains only a mixed "Statement of Facts and Arguments" attached to the Dispute Tribunal's standard application form, and unfortunately does not clearly set out or articulate the three mandatory requirements, either separately or at all, that need to be satisfied for the granting of the suspension of action. The Applicant has failed to insert any details on the standard application form, leaving it to the Tribunal to attempt to identify the relevant facts pertaining to the relevant submissions from the unstructured document attached to the application.



**Conclusion**

18. For the reasons stated above, the present application for suspension of action is rejected.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 3<sup>rd</sup> day of February 2012

Entered in the Register on this 3<sup>rd</sup> day of February 2012

*(Signed)*

Hafida Lahiouel, Registrar, New York