



UNITED NATIONS DISPUTE TRIBUNAL

Cases No.: UNDT/NY/2019/006
UNDT/NY/2019/007
Order No.: 48 (NY/2019)
Date: 22 March 2019
Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Nerea Suero Fontecha

RUSSO-GOT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON MOTION FOR INTERIM
MEASURES, MEDIATION AND
FURTHER CASE MANAGEMENT**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Jameel Baasit, UNOPS

Introduction

1. On 5 February 2019, the Applicant, a former Project Manager at the P-3 level, step 7, at the United Nations Office of Project Services (“UNOPS”) filed an application on the merits, which was registered under Case No. UNDT/NY/2019/006, in which he challenged, “the decision of the Administration not to select him for the position of Business Development Specialist P3 and the position of Process Design Advisor P4”.

2. Later the same date (5 February 2019), the Applicant filed another application on the merits, which was registered under Case No. UNDT/NY/2019/007, contesting,

a. “[T]he decision of the Administration to abolish his current post of Project Manager at the P-3 level, and to subsequently not renew his fixed-term contract beyond the close of business (COB) 31 January 2019 and the Administration failed to meet commitment”;

b. “[T]he decision of the Administration not to make good faith efforts to assist him in finding an alternative position after it decided to abolish his post”; and

c. “[T]hat he is retaliated, and his human rights were violated”.

3. On 5 and 6 February 2019, the Registry acknowledged receipt of the two applications and instructed the Respondent to file the replies within the mandatory 30-day time limit set out in art. 10 of the Dispute Tribunal’s Rules of Procedure. Neither case was assigned to a specified Judge.

4. On 7 March 2019, the Respondent duly filed his reply in Case No. UNDT/NY/2019/006 in which he claims that the application is without merit. On 8 March 2019, the Respondent duly filed his reply in Case No. UNDT/NY/2019/007 submitting that the application is not receivable and, in any event, without merit.

5. On 18 March 2019, the Applicant filed an “application” regarding “urgency of a decision and suspension of action” referencing both substantive cases on the merits (Cases No. UNDT/NY/2019/006 and 007). In this submission, the Applicant seeks “to have a mediation session, to urgent those two cases [*sic*], and for a permission to add more evidences and facts”.

6. Whilst the substantive cases remain unassigned, due to the apparent urgency of the latest filing, the instant ‘application’ was assigned to the undersigned Judge. Upon the instruction of the Tribunal, on 20 March 2019, the Respondent filed a response to the Applicant’s 18 March 2019 submission in which he contends that this motion for urgent relief is not receivable under art. 10.2 of the Dispute Tribunal’s Statute because, *inter alia*, it concerns the matters of appointment and promotion, the decisions have already been implemented, and the Tribunal cannot grant interim relief that would constitute a final resolution. The Respondent further submits that the Tribunal should reject the Applicant’s request for additional or further evidence.

Factual background

7. With the sole purpose of providing context and without making any factual findings on the merits of any of his cases, and for the sake of convenience and judicial efficiency, the Tribunal sets out the chronology of facts as presented *verbatim* by the Applicant in his submission of 18 March 2019, to which the Respondent makes no comment in his response of 20 March 2019:

... [The Applicant] has served as a Project Manager at the P-3 level at the United Nations Office of Project Services (UNOPS). He has worked at UNOPS for approximately 2.5 years and is on a fixed-term appointment [reference to annex omitted]. He is outsourced to [United Nations/Department for Management/Office of Information and Communications Technology (“OICT”)].

... On 1 August 2018, [the Applicant] and UNOPS signed an agreement [reference to annex omitted], this agreement did not state explicitly that his contract will ends on 31 January 2019 without to have the chance to be renewed. In case that Respondent intended to

give to [the Applicant] six months more to find a new position outside of the [United Nations], this fact must be stated clearly, without ambiguity, in the agreement.

... On 25 October 2018 at 11:00 AM - 11:30 AM, [the Applicant] held a meeting with [name redacted, Ms. JF], Chief Enterprise Project Management Office (ePMO) [unknown abbreviation] and [name redacted, Ms. YS, Sr. Portfolio Manage UNOPS/UNDG/ECR [unknown abbreviations] and he was informed that, based on budget restriction, his post will be abolished. [The Applicant] requested to receive, as per contract “Director of UNOPS will give 30 days’ written notice”, a letter of written notice. On the same day at 12:10 p.m. EST, [Ms. YS] has called [the Applicant], and she confirmed that written notification from Director of UNOPS would be sent with two months in advance in case that the decision will not be changed. Note: [name redacted, Mr. EI] was my first line manager.

... On 14 December 2018, [the Applicant] received the information that nobody from OICT staff and contractors will lose their jobs from [name redacted, Mr. AM] (D2 – [Mr. EI] first line manager), during a meeting with the entire team related reform topic. [Mr. EI] and other colleagues also attended this meeting. The outcome of this meeting was not contested by the Respondent. [Mr. EI] was designated as the Applicant supervisor [references to annex and footnote omitted]. The meeting was recorded and [Mr. EI] participa[t]ed via videoconference system.

... On 2 January 2019, [Mr. EI] has called a meeting with the entire cloud team and said, “all of you will continue to work on the same team and is no discrimination between UN Secretariat staff members and UNOPS staff members ([the Applicant] was the only one from UNOPS) and that we have budget for entire year”. Th[e] outcome of this meeting was not contested by the Respondent. [Mr. EI] was designated for the Applicant as supervisor [reference to annex omitted]. At this moment in time, the OICT’s budget was approved and the reform implemented. The meeting was recorded. As a result of reorganisation, a transfer session was held between [name redacted, Mr. CC], Deputy Chief RTC [unknown abbreviation] Americas, and [Mr. EI and Mr. CC] was designated as [the Applicant’s first line manager.

... On 16 January 2019, [the Applicant] was informed by [Mr. CC], Deputy Chief RTC Americas, that he discussed with [Mr. EI] about the 2019 work plan and [Mr. EI] requested to remove [the Applicant] from this plan due to “[the Applicant’s] contract will not be renewed”. Another comment was related to my previous tentative to challenge a decision (July 2018). It is without any equivoque that on 2

January 2019, [Mr. EI] during the transfer meeting to [Mr. CC] sent the information that the Applicant will continue to be part of Hybrid Cloud Team with OICT. This is the single reason that [Mr. CC] had included the Applicant on the work plan.

... On 16 January 2019, [the Applicant] has contacted UNOPS to see the status of his contract, and the answer was: "I did not receive any indication from OICT that there was a change in your situation which remains: no funding for your position. The separation letter will be forwarded to you as soon as possible."-[Ms. YS], Sr. Portfolio Manage UNOPS/UNDG/ECR – [reference to annex omitted] UNOPS).

... From 1 December till 16 January 2019, [the Applicant] did not receive any information about new opportunities with UNOPS as per [reference to annex omitted] "Unless the Staff Member informs UNOPS that he prefers otherwise: during the 1 December 2018 - 31 January 2019 period, UNOPS will send the Staff Member all vacancy announcements for the UNOPS projects for UN OICT, and the Staff Member will submit applications for those vacancies that he is interested in". It is indubitable that when the Respondent signed the agreement [reference to annex omitted] he took in consideration to offer to the Applicant possibility to be moved laterally or through a short recruitment process in maximum two months. A usual recruitment process take more than six months. In his Reply, the Respondent sent those vacancies to Applicant between 1 December 2018 to 22 January 2019, at 5:01 PM EST when the Applicant asked about the status of his contract. The Respondent attached an email which is out of this interval, stipulated in the agreement. Moreover, the Respondent stipulated "Said [Human Resources] person subsequently left UNOPS in early 2019 and apparently did not reassign this task to another person".

... By 22 January 2019, [the Applicant] did not receive any written notice, as per contract "Director of UNOPS will give 30 days' written notice" [reference to annex omitted]. On 22 January 2019, at 5:01 PM EST, [the Applicant] received an email with an attachment [reference to annex omitted] with a text that his post will be ceasing to exist in 7 working days.

... On 23 January 2019, [the Applicant] raised a Management Evaluation Request [reference to annex omitted]

... On 30 January 2019, [the Applicant] has received the outcome of Management Evaluation Request, signed by [name redacted, Mr. JP], General Counsel, Legal Group & Director, [New York] Office [reference to annex omitted]. This the outcome of Management

Evaluation Request is not according with minimum requirements [reference to footnote omitted].

Consideration

8. The undersigned Judge is presiding over the present urgent matter although both substantive cases on the merits (Cases No. UNDT/NY/2019/006 and 007) are currently unassigned for consideration by any particular Judge of the Dispute Tribunal in New York.

Interim measures

9. Upon perusing the relief the Applicant seeks in his “application” of 18 March 2019 regarding “urgency of a decision and suspension of action”, it is unclear to the Tribunal whether, in addition to seeking mediation and requesting to file additional evidence and facts, he also seeks the Tribunal to suspend the contested decisions, or either of them, on an interim basis during the pendency of the present substantive proceedings, pursuant to art. 10.2 of the Dispute Tribunal’s Statute and/or requests an expedited hearing. However, considering that the Applicant is self-represented and not a native English speaker, and as he presents his submission of 18 March 2019 in the template for a motion for interim measures under art. 10.2, for avoidance of any doubt and for the Applicant’s benefit, the Tribunal will regard the matter as such, as the Respondent too has done.

Applicable law

10. Article 10.2 of the Dispute Tribunal’s Statute, as also reflected in art. 14 of its Rules of Procedure, provides that,

... At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the

implementation of the contested administrative decision, *except in cases of appointment, promotion or termination.*

11. A motion for interim measures is an extraordinary discretionary relief, which is generally not appealable, and which requires consideration by the Tribunal within five working days of the service of the motion on the Respondent pursuant to art. 14.3 of the Rules of Procedure.

12. An interim measures order is a temporary order made with the purpose of providing an applicant temporary relief by maintaining the *status quo* between the parties to an application pending the Dispute Tribunal's consideration of the contested decision (see *Gizaw* Order No. 151 (NY/2017), para. 31). Furthermore, as interim relief is intended to preserve the *status quo*, it is not meant to make a final determination on the merits or the substantive claims (see, for instance, *Nadeau* Order No. 145 (NY/2018), para. 19).

13. It further follows from art. 10.2 of the Statute that if a contested decision has been fully implemented, the Tribunal generally will no longer have the authority to order the suspension of the contested decision pending the completion of the judicial proceedings. However, in cases where the implementation of the decision is of an ongoing nature (see, e.g., *Calvani* UNDT/2009/092; *Hassanin* Order No. 83 (NY/2011); *Adundo et al.* Order No. 8 (NY/2013)), the Tribunal may grant a request for a suspension of action or possibly another type of interim relief.

14. The Tribunal observes that, in the application in Case No. UNDT/NY/2019/006, the Applicant states he was “informed that he was not selected for the Business Development Specialist position on 28 November 2018 [and] was informed that he was not selected for the Process Design Advisor position on 11 December 2018”. In the application in Case No. UNDT/NY/2019/006, the Applicant states that he was separated from service on 31 January 2019. The Respondent accordingly submits that the contested decisions have already been implemented.

15. Regarding the non-selection decisions, the decision to abolish his post, and the decision not to renew his fixed-term contract, the Tribunal observes that these decisions have already been implemented and that none of them are of an ongoing nature. An order for interim measures cannot be granted to restore a situation or reverse an allegedly unlawful act which has already been implemented (see, similarly, *Tadonki* UNDT/2009/016; *Applicant* UNDT/2011/158; *Kweka* UNDT/2011/122; *Tiwathia* UNDT/2012/109; *Laurenti* Order No. 243 (NBI/2013)). The application for interim measures regarding these claims therefore stands to be rejected. Furthermore, temporary relief by way of suspension of action is not permissible in cases of appointment, promotion or termination under art. 10.2 of the Dispute Tribunal's Statute. As for the alleged failure to find the Applicant a new post, since he has already separated from the Organization, if an interim measure were to be granted, the Tribunal would be adjudicating on the merits of the matter and, thus, effectively disposing of the substantive case. Concerning the alleged retaliation and violation of human rights, under the specific circumstances of the instant cases, the Tribunal finds that it cannot grant any temporary relief as, to all intents and purposes, this too would entail a final determination on the merits of the Applicant's substantive claims and the competency of the Tribunal to entertain the claims.

16. Accordingly, based on the Applicant's 18 February 2019 motion, the Tribunal is not in a position to grant the Applicant any interim measures in accordance with art. 10.2 of its Statute.

Mediation

17. The Tribunal always encourages parties appearing before it to explore options for informal resolution of their dispute such as, for instance, mediation under the auspices of the Ombudsman or *inter partes* negotiations. In the General Assembly's resolutions regarding administration of justice at the United Nations, the importance of resolving workplace disputes at the United Nations amicably is also consistently

emphasized, and this saves valuable resources all round and also contributes to inculcating a harmonious working environment and culture within the Organization.

18. Under art. 15.1 of the Dispute Tribunal's Rules of Procedure, the Tribunal may "propose" to the parties that the case be referred for mediation and suspend the proceedings. In accordance with art. 15.2, such referral requires the "consent" of both parties to such mediation. The Tribunal therefore cannot order the parties to submit to mediation or any other type of informal method to resolve their dispute. However, in keeping with the General Assembly's resolutions, the parties are encouraged to engage with a view to informal resolution.

Further case management, including new facts and evidence and an expedited hearing

19. The undersigned Judge notes that Cases No. UNDT/NY/2019/006 and 007 remain unassigned for consideration of the substantive matters. Any submissions or requests for the filing of new facts and additional evidence and an expedited hearing, are case management matters that concern the substantive cases in which the relevant motions may be filed. The Applicant may wish to consider seeking the assistance of the Office of Staff Legal Assistance (for more information, please see <http://www.un.org/en/internaljustice/osla/>).

IT IS ORDERED THAT:

20. In all the above circumstances, the application of 18 March 2019 is rejected in its entirety.

(Signed)

Judge Ebrahim-Carstens

Dated this 22nd day of March 2019