



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/100

Order No.: 66 (GVA/2010)

Date: 9 August 2010

Original: English

**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

ASSWAD

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON SUSPENSION OF ACTION**

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**Counsel for applicant:**

Self-represented

**Counsel for respondent:**

Andreas Ruckriegel, UNFPA

Alejo Eiriz, UNFPA

## **Facts**

1. By letter dated 30 July 2010, the Executive Director, United Nations Population Fund (UNFPA), informed the applicant of the decision to dismiss her for misconduct, in relation to the charges of attempts to commit four acts of fraud in a total amount of USD500 (formally brought against the applicant on 8 June 2010). The dismissal was decided under staff regulation 10.1 (a) and provisional staff rule 10.2 (a) (ix) and was effective on close of business on the day on which she received notification.

2. On 30 July 2010, the applicant filed an application with the United Nations Dispute Tribunal contesting the said decision. On the following day, she filed an application for suspension of action concerning her dismissal.

3. The Tribunal transmitted both applications to the respondent on 3 August 2010 for reply. The respondent's reply to the request for suspension of action was submitted on 6 August 2010.

4. On 9 August 2010, the applicant requested leave to submit an *addendum* to her application for suspension of action.

## **Parties' Contentions**

5. The applicant's main contentions are:

- a. The decision is unlawful as there is no evidence linking her to the attempted frauds and her due process rights have been undermined;
- b. The matter is urgent in order to allow the applicant to defend herself before the Tribunal during the proceedings on the merits;
- c. The implementation of the contested decision would tarnish the applicant's reputation and destroy her employment prospects. It would leave her unemployed and without resources while she and her mother are under medical treatment. The moral, physical and financial consequences of the contested decision will create an

insurmountable and irreparable hardship for the applicant and her family.

6. The respondent's main contentions are:
  - a. This request for suspension of action should be considered as irreceivable. On the one hand, no management evaluation has been requested by the applicant. On the other hand, the contested decision is one concerning "termination", whereas articles 10.2 of the Tribunal's statute and 14.1 of its rules of procedure, when foreseeing the possibility for an applicant to request suspension of action during the pendency of the proceedings, expressly exclude cases regarding "appointment, promotion or termination";
  - b. The material conditions required for a suspension of action to be granted are not met in the present case, particularly the *prima facie* unlawfulness and irreparable damage resulting from the contested decision.

### **Considerations**

7. The applicant seeks the suspension of the implementation of the disciplinary sanction consisting of her dismissal as of the date she received notification thereof. The Tribunal stated in Judgment UNDT/2009/071, *Corcoran*,

[T]he Dispute Tribunal can release two different types of interim measures. These are related to the stages of the application. One of them is connected to the administrative review, now called management evaluation. The other one has its place during the proceedings of judicial review.

8. Indeed, article 2.2 of the Tribunal's statute gives grounds for a staff member to request the suspension of the implementation of a certain administrative decision "during the pendency of management evaluation", under a number of specified conditions. This possibility is reiterated in article 13.1 of the Tribunal's rules of procedure.

9. Besides, article 10.2 of the Tribunal's statute, as well as article 14.1 of its rules of procedure, foresee that "[a]t any time during the proceedings, the Tribunal

may order interim measures to provide temporary relief”, including the suspension of the implementation of the decision under review, “except in cases of appointment, promotion or termination”.

10. Therefore,

As a result of this configuration these two types of interim measures have to be clearly distinguished. Every application for interim measures has to be considered either under art. 13 UNDT RoP or under art. 14 UNDT RoP. It is not possible to apply both provisions simultaneously to a single application (see Judgment UNDT/2009/071, *Corcoran*).

11. It is plain from the wording of articles 2.2 of the statute and 13.1 of the rules of procedure that the first type of suspension of action application may only take place when management evaluation has been duly requested and is ongoing. However, no management evaluation has been requested in the present case, since the contested decision is a disciplinary measure – under staff rule 10.2 - and management evaluation is not required regarding such sanctions, according to provisional staff rule 11.2 (b), which reads:

A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation.

12. In view of the foregoing, no suspension of action under article 2.2 of the statute can be granted.

13. It must be noted at this juncture that the applicant submitted, one day before her request for suspension of action was addressed to the Tribunal, an application contesting the legality of her summary dismissal as notified by letter of 30 July 2010. Hence, the present application fulfils the important condition of the proceedings before the Tribunal being already initiated and, as a result, it may fall, in principle, within the scope of article 10.2 of the Dispute Tribunal statute and article 14.1 of its rules of procedure.

14. Having said that, the afore-mentioned provisions spell out a number of conditions and restrictions for the Tribunal to order the suspension of the contested decision on these grounds. In particular, both above-cited articles clearly exclude for that matter “cases of appointment, promotion or termination”.

15. In this connection, the decision impugned by the appellant concerns “termination”. As a matter of fact, provisional staff rule 9.6 (a) defines “Termination” as follows:

A termination within the meaning of the Staff Regulation and Staff Rules is a *separation form service initiated by the Secretary-General*. (Emphasis added)

16. In addition, staff regulation 9.3 provides that:

The Secretary-General may, giving the reasons therefor, *terminate* the appointment of a staff member ... for any of the following reasons:

... (iv) If the conduct of the staff member indicates that the staff member does not meet the highest standards of integrity required by Article 101, paragraph 3, of the Charter... (Emphasis added)

17. In the same vein, provisional staff rule 9.6 (c) further establishes:

The Secretary-General may, giving the reasons therefor, *terminate* the appointment of a staff member ... on any of the following grounds:

... (iv) Disciplinary reasons in accordance with staff rule 10.2 (a) (viii) and (ix)... (Emphasis added)

18. In view of the foregoing, the Tribunal cannot but declare irreceivable the present application for suspension of action.

19. The Tribunal decides not to grant leave for the applicant to present an *addendum* to this application, considering that the circumstance determining the irreceivability of same, i.e., the fact that it essentially concerns termination, may not possibly be changed by any new argument raised at this stage.

**Decision**

20. The application is hereby rejected.

*(Signed)*

Judge Thomas Laker

Dated this 9<sup>th</sup> day of August 2010

Entered in the Register on this 9<sup>th</sup> day of August 2010

*(Signed)*

Víctor Rodríguez, Registrar, UNDT, Geneva