



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

REHMAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON A MOTION FOR
INTERIM MEASURES**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Miles Hastie, UNICEF

Introduction

1. On 8 March 2016, the Applicant filed an application, which she completed on 30 March 2016, contesting the non-renewal of her fixed-term appointment as Programme Assistant GS-6, Education Section, United Nations International Children's Emergency Fund ("UNICEF"), Islamabad, Pakistan.

2. In relation to the above application, the Applicant filed a request for interim measures on 1 September 2016, asking the Tribunal to suspend the decision taken by UNICEF Pakistan Country Office ("UNICEF PCO"), Islamabad, on 1 August 2016, to fund a newly created post of Programme Assistant, GS-6, Education Section, Peshawar, Pakistan, instead of funding the existing vacant post of Programme Assistant GS-6, Education Section, Islamabad.

Facts

3. The Applicant joined UNICEF, Islamabad, Pakistan, on 1 November 2006, as Project Assistant, GS-5, on a Temporary Fixed Term contract with the Construction Unit. On 17 March 2010, she was selected as Program Assistant GS-6, Construction Unit; this appointment expired on 31 December 2012. Subsequently, she was granted a fixed-term contract as Programme Assistant, GS-6, Education Section, on 1 January 2013, and was separated from service on 31 December 2015, upon the expiration of her fixed-term contract.

4. The decision not to renew her fixed-term appointment as Programme Assistant, GS-6 Education Section, UNICEF, Islamabad, Pakistan, was notified to the Applicant on 7 October 2015, and she requested management evaluation on 27 November 2015. She received a response to her request for management evaluation on 23 December 2015.

5. On 8 March 2016, the Applicant filed a motion for extension of time to file an application, which was granted. She filed her application contesting the non-renewal of her contract on 30 March 2016.

6. On 1 August 2016, the decision to fund the post of Programme Assistant, GS-6, Education Section, Peshawar, Pakistan, was taken. The Applicant filed a request for interim measures, requesting the suspension of that decision on 1 September 2016.

Applicant's contentions

7. The Applicant's principal contentions are:

a. The decision to establish a new post of Programme Assistant, Peshawar, at the GS-6 level, on a TA contract, with existing financial resources after seven months of her separation from service as Programme Assistant, Islamabad, and at the same GS-6 level demonstrates that the non-renewal of her contract on the basis of funding constraints was purely biased; it can be qualified as an act of retaliation and appears *prima facie* unlawful;

b. The discretionary power of the Administration not to fund existing vacant post is tainted, and constitutes a violation of the principle of good faith in dealing with former staff members; and

c. The selection process for the newly created post is still ongoing, hence, the urgency of the matter; the selection and award of a contract to any selected candidate as a result of the on-going selection process will create a complex situation to reverse, and cause irreparable harm to her should the Tribunal's decision on the merits of the instant case be in her favour.

Consideration

8. Article 10.2 of the Tribunal's Statute states:

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.

9. In addition, art. 14 of the Dispute Tribunal's Rules of Procedure provides, along the same lines that:

At any time during the proceedings, the Dispute Tribunal may order interim measures to provide temporary relief 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.

10. Before entering into a consideration of the above cumulative conditions, the Tribunal has to examine whether it can grant the requested relief, that is, to suspend the decision to fund a newly created post of Programme Assistant in Peshawar, taken on 1 August 2016.

11. In contrast to the provisions on suspension of action pending management evaluation, the above referenced provisions on interim relief give wide latitude to the Tribunal in determining the nature of the relief to be awarded. Particularly, they do not restrict the interim measures to address strictly the contested decision. The foregoing notwithstanding, the Tribunal finds that to grant the requested interim measure, there has to be a sufficient nexus between the contested decision that forms part of the application on the merits, and the decision that the Applicant wishes to have suspended.

12. In this respect, the Tribunal recalls what the Appeals Tribunal held in *Shkurtaj* 2011-UNAT-148, namely that "a former staff member has standing to contest an administrative decision concerning him or her if the facts giving rise to his or her complaint arose, partly arose, or flowed from his or her employment. There must be a sufficient nexus between the former employment and the impugned decision" (*Khan* UNDT/2016/097). The Tribunal has to apply the same *rationale* in determining whether the request for interim measures can be granted.

13. In the case at hand, in her application on the merits, the Applicant contests the non-renewal of her appointment beyond 31 December 2015. In her request for interim measure, she requests the suspension of the decision to create and fund a post effective August 2016, that is, eight months after her separation from service.

14. The Tribunal first notes that the creation of the new post happened not before or close to, but a considerable amount of time after the non-renewal of the Applicant's appointment (seven months). The Tribunal is satisfied that already in light of the time elapsed between the non-renewal of the Applicant's appointment (31 December 2015) and the creation and funding of the new post (August 2016), in another city of Pakistan, it is not possible to establish a sufficient nexus between these two events.

15. The request for interim measures is therefore beyond the scope of the jurisdiction of the Tribunal, and has to be rejected.

Conclusion

16. In view of the foregoing, the Tribunal DECIDES:

The motion for interim measures is rejected.

(Signed)

Judge Rowan Downing

Dated this 9th day of September 2016

Entered in the Register on this 9th day of September 2016

(Signed)

René M. Vargas M., Registrar, Geneva