



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

GANBOLD

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON APPLICANT'S MOTION FOR
INTERIM MEASURE**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Katrina Waiters, UNFPA

Christina Zantis, UNFPA

Introduction

1. The Applicant, a former Finance and Administrative Associate at the United Nations Population Fund (“UNFPA”), Ulaanbaatar, Mongolia Country Office, filed an application on 24 October 2017, challenging the decision to separate her from service with compensation in lieu of notice and without termination indemnity.

2. In her application, the Applicant requested the Tribunal to grant her the following remedies:

that (a) the disciplinary decision be rescinded or lessened, (b) she is to be reinstated in her position, (c) the recruitment process of her replacement to be put on hold until the decision is made by the United Nations Disputes Tribunal, and (d) she is to be paid reasonable compensation which she would have been entitled to if she were in the employment of the UNFPA and compensate her for health and moral injury, and mid-career suffering resulting from the unfair decision made by the organization.

3. On 24 January 2018, the Applicant by email to the Registry, inquired of the interim action to be taken with regard to “the suspension of the replacement recruitment process.” The Applicant indicated that UNFPA had proceeded with the recruitment process while the current case is pending before the Tribunal. The Applicant inquired of the Tribunal, if it could issue an “order to UNFPA to put on hold the recruitment process?”

4. Having reviewed the Applicant’s submission and considering that the Applicant is self-represented, the Tribunal will treat her submissions as an application for interim measures.

Consideration

5. An application for interim measure pending the determination of case is provided for under art. 10 of the Tribunal’s Statute and art 14.1 of its Rules of Procedure. Art 10 provides that:

1. The Dispute Tribunal may suspend proceedings in a case at the request of the parties for a time to be specified by it in writing.

2. 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.**

6. The Organisation imposed on the Applicant a disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity.

7. The Tribunal finds that the facts as thus presented in this matter clearly relate to appointment and /or termination within the exclusion provided in Article 10 (2) above. The UNDT Statute prohibits the suspension of the implementation of such an administrative decision.

8. In *Siri* 2016-UNAT-609, the Appeals Tribunal, *inter alia*, held that:

[C]ases of separation following non-renewal constitute a case of appointment and fall under the exclusionary clause of Article 10(2) of the UNDT Statute. In these cases, the reversal of the underlying contested decision results in the issuance of a new appointment reflecting “expressly or by reference all the terms and conditions of employment” as provided for in Staff Rule 4.1.

9. In this matter, the Tribunal finds that the facts in this case relating to the separation from service of the Applicant are related to appointment and/or termination. The Tribunal has no jurisdiction to consider or issue the requested interim measures. Moreover, the Applicant has not substantiated her request for interim measure with respect to the cumulative conditions required to examine it.

IT IS ORDERED THAT:

10. The Applicant’s motion for interim measure is rejected.

(Signed)

Judge Rowan Downing

Dated this 29th day of January 2018

Entered in the Register on this 29th day of January 2018

(Signed)

René M. Vargas M., Registrar, Geneva