



Before: Duty Judge
Registry: Geneva
Registrar: René M. Vargas M.

PAYENDA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON A MOTION FOR
INTERIM MEASURES PENDING
PROCEEDINGS**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Matthias Schuster, UNICEF

Introduction

1. By application filed on 11 May 2020, the Applicant, a former staff member of the United Nations Children’s Fund (“UNICEF”), requests the Tribunal, as an interim measure, to suspend the enforcement of the decision to dismiss him from service pending consideration of his application on the merits.

2. The application was served on the Respondent, who filed his reply on 11 May 2020.

Facts

3. The Applicant served as a Finance Assistant with UNICEF Afghanistan Country Office.

4. By letter dated 14 September 2018, the Applicant was informed of the decision by the UNICEF Deputy Executive Director, Management (“DED-M”) to impose on him the disciplinary measure of dismissal. The DED-M considered that it had been established by clear and convincing evidence that the Applicant intentionally misstated the truth in the application that he submitted in April 2017 for the post of Finance Assistant within UNICEF, Kabul Office, and that such misrepresentation amounted to serious misconduct.

5. In September 2018, the Applicant was separated from UNICEF service.

6. On 14 November 2018, the Applicant filed an application with the Tribunal contesting the decision to dismiss him from service.

Consideration

7. In his application for interim relief, the Applicant asks this Tribunal to suspend the implementation of the disciplinary measure by reinstating him into service, or in the alternative, by expediting the consideration of his application on the merits before the Tribunal.

8. An application for interim measures pending the determination of a case is provided for under art. 10.2 of the Tribunal's Statute as follows::

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.* (emphasis added)

9. Art. 14.1 of the Tribunal's Rules of Procedure contains a similar provision.

10. It follows from the wording of art. 10.2 of the Tribunal's Statute and art. 14.1 of its Rules of Procedure that the Tribunal does not have jurisdiction to suspend the proceedings pending determination of a case when the contested administrative decision relates to appointment, promotion or termination.

11. The term "termination" is defined in staff rule 9.6 as follows:

Termination

Definitions

(a) A termination within the meaning of the Staff Regulations and Rules is a separation from service initiated by the Secretary-General.

...

Reasons for termination

(c) The Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance with the terms of the appointment or on any of the following grounds:

...

(iv) Disciplinary reasons in accordance with staff rule 10.2 (a) (viii) and (ix);

12. Pursuant to the above definitions, the Applicant's separation from service under staff rule 10.2(a)(ix) constitutes a termination for the purpose of art. 10.2 of

the Tribunal's Statute. The Tribunal is therefore not competent to review the request for interim measure.

13. The Tribunal notes the Applicant's argument that he may suffer irreparable harm if the Tribunal does not suspend the contested decision because of the critical financial situation in which he is as the only provider of his family in Kabul, where the situation has worsened due to the current COVID-19 pandemic. While the Tribunal understands the Applicant's concerns, it cannot exceed the jurisdiction granted to it in art. 10.2 of its Statute.

14. That being said, the Tribunal is mindful of the practical consequences of the contested decision on the Applicant's professional and personal life and, after having checked the Tribunal's docket of cases, it will deal with the matter in the next months.

Conclusion

15. In view of the foregoing, the application for interim measures is rejected.

(Signed)

Judge Teresa Bravo

Dated this 15th day of May 2020

Entered in the Register on this 15th day of May 2020

(Signed)

René M. Vargas M., Registrar, Geneva