



**Before:** Judge Sun Xiangzhuang

**Registry:** Geneva

**Registrar:** René M. Vargas M.

SAMARASINHA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**ORDER ON A MOTION  
FOR INTERIM MEASURES**

---

**Counsel for Applicant:**

Manuel Calzada

**Counsel for Respondent:**

Elizabeth Gall, UNDP

## **Introduction**

1. The Applicant, a staff member of the United Nations Development Fund (“UNDP”), seeks suspension of the 20 August 2024 decision to extend his Administrative Leave Without Pay (“ALWOP”) from 25 August to 24 November 2024 by means of a suspension of action during the proceedings, also known as a request for interim measures, under art. 14 of the Tribunal’s Rules of Procedure (“RoP”).

2. For the reasons set out below, the Applicant’s request for interim measures is dismissed.

## **Facts**

3. The Applicant joined UNDP on 6 March 2001. In November 2018, UNDP seconded the Applicant to the UN Secretariat to serve as Resident Coordinator to Fiji (D-1 level), Solomon Islands, Tonga, Tuvalu and Vanuatu.

4. From 11 May 2023 to 24 November 2023, the Applicant was placed on administrative leave with pay pending an investigation into allegations of sexual harassment, harassment and abuse of authority against him.

5. On 24 November 2023, the Applicant’s secondment with the UN Secretariat ended and he returned to UNDP.

6. By letter dated 1 December 2023, the Assistant Secretary-General, Assistant Administrator and Director, Bureau for Management Services (“ASG/BMS”), informed the Applicant of the decision to place him on ALWOP from 1 December 2023 through 24 February 2024.

7. On 14 January 2024, the Applicant requested management evaluation of the 1 December 2023 decision.

8. On 24 January 2024, the Applicant filed an application for suspension of action pending management evaluation against the 1 December 2023 decision to place him on ALWOP. By Order No. 9 (GVA/2024), dated 31 January 2024, the Tribunal rejected the Applicant's request based on its finding that the contested decision was not *prima facie* unlawful.

9. After 24 February 2024, the Applicant's placement on ALWOP was extended several times up to 24 August 2024.

10. On 9 May 2024, the Applicant filed an application contesting the 1 December 2023 decision to place him on ALWOP. The Tribunal registered the application under Case No. UNDT/GVA/2024/015.

11. On 20 August 2024, the Applicant was informed of the decision to extend his placement on ALWOP from 25 August to 24 November 2024.

12. On 10 September 2024, the Applicant filed, as a new case, a "motion for interim measures pending management evaluation". The Tribunal registered it under Case No. UNDT/GVA/2024/037.

13. On 11 September 2024, the Tribunal instructed the Applicant, *inter alia*, to clarify whether he intended to file an application for suspension of action under art. 13 of its RoP or a motion for interim measures under art. 14 of said RoP.

14. On 13 September 2024, the Applicant confirmed to the Tribunal that his intention was to file a motion for interim measures in another pending case before the Tribunal.

15. On 13 September 2024, the Applicant filed a motion for interim measures pending proceedings, although titled "pending management evaluation", in Case No. UNDT/GVA/2024/015. As temporary relief, the Applicant requested the Tribunal to order the suspension of the 20 August 2024 decision extending his placement on ALWOP.

16. On 16 September 2024, the Tribunal served the motion for interim measures on the Respondent, who filed his reply on 18 September 2024.

## Consideration

### *Suspension of action during proceedings – Interim measures*

17. Interim measures during the proceedings are governed by art. 10.2 of the Tribunal's Statute and art. 14.1 of its RoP. The latter, which replicates almost completely the former, provides 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.

18. For the Tribunal to order interim measures, several cumulative conditions set forth in the above-mentioned provisions must be met (see *Nadeau* Order No. 116 (NY/2015), *Awomeyi* Order No. 165 (GVA/2015), *Kazagic* Order No. 20 (GVA/2015), *Auda* Order No. 156 (GVA/2016) and *Harvey* Order No. 10 (GVA/2020):

- a. The motion for interim measures must have been filed in connection with a pending application on the merits before the Tribunal and at any time during the proceedings;
- b. The administrative decision contested in the application on the merits appears *prima facie* to be unlawful, relates to a case of particular urgency, and its implementation would cause irreparable damage; and
- c. The requested temporary relief must not concern appointment, promotion or termination.

19. The Applicant filed his motion for interim measures into a pending application (Case No. UNDT/GVA/2024/015). The cumulative condition referred to in para. 18.a above is met.

20. The condition referred to in para. 18.b above, requires that the decision contested in the pending application on the merits meet three other cumulative conditions, namely *prima facie* unlawfulness, urgency, and causing irreparable damage.

21. The Tribunal recalls that in his pending application, the Applicant contests the 1 December 2023 decision to place him on ALWOP. The Tribunal assessed the lawfulness of this decision in its consideration of the Applicant's 24 January 2024 application for suspension of action. The Tribunal found that the contested decision was not *prima facie* unlawful.

22. Having considered the Applicant's arguments in his motion for interim measures, the Tribunal finds no new element supporting a finding of *prima facie* unlawfulness of the 1 December 2023 decision.

23. Indeed, in essence, the Applicant argues that the decision-maker failed to consider all the evidence before him (e.g., the investigation report and the Applicant's response to it) when deciding to extend his placement on ALWOP. This, however, could be relevant, at best, in an examination of the 20 August 2024 decision extending the Applicant's placement on ALWOP.

24. The Tribunal finds that the contested decision underlying the application on the merits, in which the Applicant filed his motion for interim measures, does not meet one of the three cumulative conditions in art. 14 of its RoP and art. 10.2 of its Statute, i.e., *prima facie* unlawfulness. Consequently, the cumulative condition referred to in para. 18.b above is not met.

25. Given the cumulative nature of the requirements to order interim measures to provide temporary relief (see para. 18 above), the Tribunal does not consider it necessary to examine the remaining conditions, namely urgency, irreparable damage and whether the requested temporary relief concerns appointment, promotion or termination.

*Striking out of privileged and confidential information*

26. In his response to the Applicant's motion for interim measures, the Respondent's request to expunge from the record references to informal resolution include in said motion.

27. The Tribunal calls the Applicant's attention to art. 15.7 of its RoP, whereby "[a]ll documents prepared for and oral statements made during any informal conflict-resolution process or mediation are absolutely privileged and confidential and shall never be disclosed to the Dispute Tribunal". As such, the Tribunal will disregard all references to privileged and confidential information related to informal resolution that the Applicant included in his submissions. However, the Tribunal does not consider it necessary to instruct the Applicant to include a signed undertaking that his future submissions will comply with said provision.

**Conclusion**

28. In view of the foregoing, it is ORDERED THAT the Applicant's motion for interim measures under art. 14 of the Tribunal's Rules of Procedure is dismissed.

*(Signed)*

Judge Sun Xiangzhuang

Dated this 23<sup>rd</sup> day of September 2024

Entered in the Register on this 23<sup>rd</sup> day of September 2024

*(Signed)*

René M. Vargas M., Registrar, Geneva