



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2025/023

Order No.: 46 (GVA/2025)

Date: 2 May 2025

Original: English

Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: Liliana López Bello

TURCANU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON A MOTION FOR
INTERIM MEASURES**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alister Cumming, UNICEF

Rosangela Adamo, UNICEF

Introduction

1. On 25 April 2025, the Applicant, a staff member of the United Nations Children's Fund ("UNICEF"), filed an application against the decision to abolish his post and not renew his fixed-term appointment ("FTA") beyond 30 April 2025 (the "contested decision"). With the application, the Applicant also filed a motion for interim measures to suspend the implementation of the contested decision.
2. The application on the merits and the motion for interim measures were served on the Respondent on the same day, with an instruction for the Respondent to refrain from taking any further action relating to the decision that the Applicant seeks to suspend until an Order on the motion for interim measures is issued.
3. The Respondent filed his reply on 29 April 2025 contesting, *inter alia*, the receivability of the Applicant's motion for interim measures.

Facts

4. By letter dated 21 October 2024, the Applicant was informed that, due to service necessities, change of programme requirements, and restructuring of the office based on the office-wide Programme Critically exercise, the post he encumbered of Child Protection Specialist would be abolished on 30 April 2025, and his contract would not be extended beyond that date.
5. The Applicant was furthermore encouraged to apply for all available posts within UNICEF and the United Nations system between the date of the letter and the expiration of his FTA.
6. On 16 December 2024, the Applicant requested management evaluation of the contested decision.
7. On 29 January 2025, the outcome of the management evaluation was issued. The contested decision was upheld.

Consideration

8. Art. 10.2 of the Tribunal's Statute provides that, at any time during the proceedings, the Dispute Tribunal may order an interim measure to provide temporary relief to either party, where the contested administrative decision appears *prima facie* to be unlawful, in case 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 decision, except in cases of appointment, promotion or termination.

9. The three requirements above are cumulative. In other words, they must all be met for an interim measure to be granted. Furthermore, the burden of proof rests on the Applicant.

10. The Respondent submits that the motion for interim measures is not receivable *ratione materiae* because the decision to abolish the Applicant's post is not a challengeable administrative decision as it has no direct impact on the terms and conditions of his employment. Furthermore, the decision not to renew the Applicant's FTA is a case of appointment within the meaning of art. 10.2 of the Tribunal's Statute, which means that the Tribunal lacks jurisdiction to suspend the implementation of the decision not to renew the Applicant's FTA.

11. The Tribunal recalls that, as the jurisprudence of the Appeals Tribunal quoted by the Respondent provides, a decision to abolish a post is not a reviewable administrative decision because it has no direct impact on a staff member's terms of appointment or contract of employment (*Nouinou* 2019-UNAT-902, para. 38).

12. As held in *Fasanella* 2017-UNAT-765:

20. [...] It is the role of the Dispute Tribunal to adequately interpret and comprehend the application submitted by the moving party, whatever name the party attaches to the document, as the judgment must necessarily refer to the scope of the parties' contentions. Thus, the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review.

13. In the present case, the Applicant is clearly challenging the decision not to renew his contract due to the abolishment of his post. In his motion for interim measures, he is seeking to suspend the implementation of said decision.

14. In this connection, the Respondent is correct in that suspending the implementation of the contested decision during the pendency of these proceedings would require the Administration to issue a new letter of appointment to the Applicant and, as provided by art. 10.2 of its Statute, the Tribunal cannot grant temporary relief in cases of appointment (*Auda* 2016-UNAT-671, para. 28-29).

15. Therefore, the Tribunal finds that it does not have jurisdiction to suspend the contested decision pending determination of the case on its merits.

16. Lastly, the Tribunal highlights that, even if the motion for interim measures had been found receivable, it would still fail in the cumulative criteria of art. 10.2 of its Statute.

17. The Applicant did not successfully demonstrate that the contested decision is *prima facie* unlawful, and, most prominently, the Tribunal does not consider this case of particular urgency, even though the Applicant's FTA is due to expire on 30 April 2025, five days after the Applicant initiated these proceedings.

18. That is because the Applicant was informed of the decision to abolish his post and not renew his contract on 21 October 2024. He requested management evaluation of this decision on 16 December 2024, and received its outcome on 29 January 2025.

19. It is well established in the jurisprudence of the Dispute Tribunal that the *urgency* criteria for an order on suspension of action or interim measures is not satisfied when the alleged urgency is self-created (*see* Order No. 348 (NY/2014), para. 32, *Villamoran* UNDT/2011/126, para. 26).

20. The Applicant could have filed an application on the merits and his motion for interim measures since 29 January 2025, but unjustifiably chose to act only on

25 April 2025, five days before his FTA was due to expire. He, therefore, created the urgency with respect to his imminent separation.

21. The Applicant furthermore argued that there is particular urgency due to his imminent separation. Any later favourable ruling in these proceedings would be unable to reinstate him with the same legal, financial, and professional status, rendering ineffectual the Tribunal's final judgment.

22. In this connection, the Tribunal recalls art. 10.5(a) of its Statute, by which it has the authority to order the rescission of a contested decision, including by determining the reinstatement in service of a staff member unlawfully separated. The Applicant, therefore, is simply misguided in his interpretation of the Tribunal's role, purpose and authority.

Conclusion

23. In view of the foregoing, the motion for interim measures is dismissed.

(Signed)

Judge Sun Xiangzhuang

Dated this 2nd day of May 2025

Entered in the Register on this 2nd day of May 2025

(Signed)

Liliana López Bello, Registrar, Geneva