



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

BRANGLIDOR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION
PURSUANT TO ART. 14 OF THE
UNDT RULES OF PROCEDURE**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Miryoung An, AAS/ALD/OHR
Matthias Schuster, AAS/ALD/OHR

Introduction

1. The Applicant was a Civil Affairs Officer working with the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). He served on a fixed-term appointment at the P-4 level.
2. On 4 June 2019, the Applicant filed an application before the United Nations Dispute Tribunal in Nairobi challenging the decision to impose on him the disciplinary measure of separation from service.
3. The Respondent filed a reply on 11 July 2019.
4. On 28 July 2019, the Applicant filed an application for suspension of action pursuant to art. 10.2 of the UNDT Statute and art. 14 of the UNDT Rules of procedure. He seeks suspension of the decision to separate him from service pending the UNDT proceedings in his substantive application.
5. The Tribunal considers that a reply from the Respondent is not necessary for the determination of this application for suspension of action.¹

Facts

6. The Office of Human Resources Management (OHRM) initiated disciplinary proceedings against the Applicant by a memorandum dated 21 January 2019, which charged him with submitting, between September 2014 and April 2017, documentation for education grant claims that contained false information. The Applicant provided comments on the allegations of misconduct on 10 February 2019.
7. By memorandum dated 18 March 2019, the Assistant Secretary-General for Human Resources informed the Applicant that the allegations against him had been established by clear and convincing evidence and that the disciplinary measure of

¹ *Andelic* Order No. 51 (GVA/2018).

separation from service with compensation in lieu of notice and without termination indemnity, in accordance with staff rule 10.2(a)(viii) would be imposed on him. The Applicant was also informed that the Organization would recover EUR13,079.95 as an overpayment of the education grant entitlement with respect to one of his children.

8. Consequently, the Applicant was separated from service on 2 April 2019.

Applicant's submissions

9. The Applicant submits that the contested decision is *prima facie* unlawful because the Office of Internal Oversight Services (OIOS) failed to interview key witnesses and that the finding of misconduct was based on circumstantial evidence and factual inaccuracies.

10. The matter is urgent because his health is deteriorating and he is unable to obtain medical care as his United Nations medical coverage has been suspended. Additionally, his precarious financial situation is worsening. As a result, he is unable to look after his young children who are between 8 and 10 years.

11. The contested decision has caused him irreparable harm because it has undermined his psychological wellbeing and his reputation. His March 2019 salary has been withheld and he has not received retroactive boarding expenses from the 2017-2018 school year. He has failed to pay his debts on time and is now in delinquency status with his banks.

Considerations

12. The application is made under art. 10.2 of the UNDT Statute and art. 14 of the UNDT Rules of Procedure, which allow the Tribunal to suspend the implementation of the impugned decision pending proceedings where the decision appears *prima facie* to be unlawful, where it is a case of particular urgency and where the implementation would cause irreparable damage. All three elements of the test must be satisfied before the impugned decision can be stayed. Additionally, the Tribunal lacks competence to

grant suspension of action under articles 10.2 of the Statute and 14 of the Rules of Procedure in cases of appointment, promotion or termination.²

13. Since the Applicant seeks suspension of implementation of the impugned decision as temporary relief under art. 10.2, the Tribunal will first address the issue of whether the contested decision falls into the category of “termination”.

14. Staff rule 9.6(a) defines “termination” as a separation from service initiated by the Secretary-General and pursuant to staff rule 9.6(c), the Secretary-General may terminate the appointment of a staff member for disciplinary reasons in accordance with staff rule 10.2(a)(viii) and (ix).

15. The Applicant in the current case was separated from service on 2 April 2019 on the basis staff rule 10.2(a)(viii), which means that his fixed-term appointment was terminated. The contested decision falls into the category of “cases of appointment, promotion or termination” that constitutes exceptions to the UNDT authority to grant suspension of action as an interim measure.

16. Consequently, the Tribunal cannot order suspension of implementation in this case because of the limitation imposed by art. 10.2 of the UNDT Statute and art. 14 of the UNDT Rules of Procedure. In light of the foregoing, it is not necessary for the Tribunal to examine whether the three statutory requirements of *prima facie* unlawfulness, urgency and irreparable damage are met in this case.

Conclusion

17. The application is refused.

² Asswad Order No. 66 (GVA/2010)

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 30th day of July 2019

Entered in the Register on this 30th day of July 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi