



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2021/063
Order No.: 232 (NBI/2021)
Date: 20 October 2021
Original: English

Before: Judge Eleanor Donaldson-Honeywell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

SHUMBA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S
MOTION FOR INTERIM MEASURES**

Counsel for the Applicant:

Oscar Asima Taulo

Counsel for the Respondent:

Wambui Mwangi, UNFPA

Introduction

1. The Applicant is a former staff member of the United Nations Population Fund (“UNFPA”). He filed an application on 3 August 2021 to contest the decision by the Executive Director of UNFPA to impose on him the disciplinary measure of dismissal pursuant to staff regulation 10.1(a) and staff rules 10.1(a) and 10.2(a)(ix).
2. The Respondent filed a reply on 10 September 2021.
3. On 19 October 2021, the Applicant filed a motion for interim measures seeking suspension of the dismissal decision, payment of his salary from the date he was placed on administrative leave without pay (“ALWOP”) to the date of his dismissal, and access to emails and CCTV footage that he submits would support his case.

Facts

4. The Applicant was placed on ALWOP on 6 April 2021 during the pendency of an investigation by the UNFPA Office of Audit and Investigation Services (“OAIS”) and disciplinary proceedings into allegations of misconduct against him.
5. On 20 May 2021, the UNFPA Executive Director issued a disciplinary measure of summary dismissal of the Applicant from the Organization for serious misconduct. The Applicant was separated from service in May 2021 in accordance with the Executive Director’s decision.

Considerations

6. Under art. 14 of the UNDT Rules of Procedure (“ROP”), the Tribunal may, at any time during the proceedings, 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. The Tribunal notes however that this temporary relief is not available in cases of appointment, promotion or termination.

7. The imposition of a disciplinary sanction in accordance with staff rule 10.2(a) (viii) and (ix) is a termination under staff rule 9.6.

8. In the current case, the Applicant was dismissed from service pursuant to staff regulation 10.1(a) and staff rules 10.1(a) and 10.2(a)(ix). His separation from service was therefore a termination, which in turn falls into the exception set out in art. 14 of the UNDT ROP.

9. In light of the foregoing, the Tribunal is not competent to grant the remedies the Applicant seeks in his motion.

ORDER

10. The motion for interim measures is REFUSED.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 20th day of October 2021

Entered in the Register on this 20th day of October 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi