



**Before:** Judge Alexander W. Hunter, Jr.

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

NAIR

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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

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**Counsel for the Applicant:**

Sétondji Roland Adjovi, *Etudes Vihodé*

**Counsel for the Respondent:**

Jonathan Croft, AAS/ALD/OHR, UN Secretariat

Jacob van de Velden, AAS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant is the Chief Human Resources Officer at the United Nations Economic Commission for Africa (“ECA”) in Addis Ababa, Ethiopia.<sup>1</sup>

2. On 15 July 2021, he filed an application on the merits challenging what he terms as “the decision to impose the disciplinary measures for a loss of two steps in grade, and deferment for two years of eligibility for consideration for promotion in accordance with staff rule 10.2(a)(ii) and (iv), and administrative measures of training for at least three months in the human resources section of another department or office of the Organization and mentoring for a period of, at least 12 months by a senior human resources professional, in both cases, to be arranged, and any expenses paid, by ECA” (“the contested decision”).<sup>2</sup>

3. On 31 October 2021, the Applicant filed a motion for interim measures pending proceedings seeking suspension of the implementation of the decision to impose administrative measures of training for at least three months in the human resources section of another department or office of the Organization and mentoring for a period of at least 12 months by a senior human resources professional, in both cases, to be arranged, and any expenses paid, by ECA.

4. The motion was served on the Respondent who filed his reply on 3 November 2021.

## **Facts**

5. On 21 April 2021, the Under Secretary-General for Management Strategy, Policy and Compliance (“USG/MSPC”) concluded that the Applicant had committed prohibited conduct. On this basis, the USG/MSPC imposed the contested decision.<sup>3</sup>

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<sup>1</sup> Application, section I.

<sup>2</sup> Application, section II.

<sup>3</sup> Application, annex 3.

6. On 18 October 2021, the Applicant met with the Executive Secretary, Economic Commission for Africa (“ES/ECA”) and they discussed the details of the Applicant being assigned for a period of three months to work with the Human Resources Management Service, United Nations Office at Vienna/United Nations Office on Drugs and Crime (“UNOV/UNODC HRMS”) team as part of his training.<sup>4</sup>

7. By way of an email, on 21 October 2021, the ES/ECA confirmed in writing that the Applicant’s training would take place at HRMS/UNOV/UNODC in Vienna. By the same email, the Applicant was also advised to make necessary travel arrangements as soon as possible.<sup>5</sup>

## **Submissions**

### *The Applicant’s Submissions*

8. The Applicant’s position is that the decision forms part of the hidden agenda to move him away from ECA. He contends that the terms of reference for the training as designed by the ES/ECA have no nexus with the subject misconduct and they are therefore out of order and disproportionate.

9. The Applicant further submits that the incident that resulted in the sanction occurred in June 2017 under circumstances of extreme provocation. He now has five years of experience at the senior level, whereas at the time of incident he had only been in the Organization for seven months. He has had an unblemished record since then and without any similar incidents and has received excellent performance appraisals which have been achieved without him being mentored in Vienna.

10. The Applicant also submits that the urgency of the matter is self-explanatory given that the implementation of the contested decision is clearly imminent. The Applicant has been advised to make necessary arrangements for Vienna and he, therefore, believes that the decision may be implemented soon.

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<sup>4</sup> Application, annex 13.

<sup>5</sup> Ibid.

11. With regard to irreparable harm, the Applicant submits that the assignment to Vienna to undergo “harassment training” is in fact a punitive action designed to remove the Applicant from the ECA duty station which undermines his reputation and future career prospects. Irreparable harm is a prospective concept. The high level of concern and probability that negative consequences will occur to the detriment of the Applicant if the suspension of the implementation of the contested decision is not granted is apparent.

*Respondent’s submissions*

12. The Respondent’s position is that the motion should be rejected because the Applicant has not met the three conditions for an interim measure.

13. The Applicant has failed to show how the decision is *prima facie* unlawful. He only refers to his application on the merits, where the merits of the contested decision are, however, not addressed. He only asserts, but without providing proof, that the ill-intent on the side of the Organization demonstrates an unreasoned lack of proportionality of his training and the lack of any nexus between a training to prevent harassment and his conduct of harassment. The Respondent, therefore, argues that the Applicant’s bare assertions and clearly unfounded contentions on the merits fail to raise serious and reasonable doubts of lawfulness and cannot justify interim measures.

14. On irreparable harm, the Respondent submits that the sole consequence of implementation of the contested decision is that the Applicant might learn something at his training. Learning is intrinsically a positive experience and cannot, without more, be considered harmful. The Applicant has not made out a case that his training would cause him harm, let alone irreparable harm.

15. With regard to urgency, the Respondent opines that since the Applicant has not made out a case of *prima facie* unlawfulness and irreparable harm, there is no need for him to establish whether this is a case of particular urgency.

## Considerations

16. Under art. 10.2 of the Statute and art. 14 of the Rules of Procedure of the Tribunal, an applicant for suspension of action must establish that the impugned decision is *prima facie* unlawful, calls for urgent adjudication and that implementation of the decision would cause him/her irreparable harm. The Tribunal is not required at this stage to resolve any complex issues of disputed fact or law. All that is required is for a *prima facie* case to be made out by an applicant to show that there is a judicable issue before the Court (*Hepworth* UNDT/2009/003 at para. 10).

17. Upon thorough review of the parties' submissions and the annexes to their respective filings, the Tribunal is not persuaded by the Applicant's submissions as to the unlawfulness of the contested decision.

18. The Applicant's main concern is that the decision forms part of the hidden agenda to move him away from ECA. This however, runs contrary to the content of the contested decision. In her email to the Applicant dated 21 October 2021, the ES/ECA stated "*you are expected to travel to Vienna as the training will be most effective if it takes place in person rather than remotely. ECA will fund the cost of your travel and DSA for the three-month period. You will also be engaged full time during your time in UNOV, but please be assured that once you return to ECA, you will resume your functions as the Chief HR*".

19. The Tribunal notes that the Applicant is assured of his position in ECA once his training is over.

20. The Tribunal agrees with the Respondent that the Applicant stands to gain something from the training rather than suffering an irreparable harm.

## ORDER

21. The motion for interim measures pending Tribunal proceedings has not satisfied the necessary requirements and is accordingly **REJECTED**.

Case No.: UNDT/NBI/2021/055

Order No.: 248 (NBI/2021)

*(Signed)*

Judge Alexander W. Hunter, Jr.

Dated this 4<sup>th</sup> day of November 2021

Entered in the Register on this 4<sup>th</sup> day of November 2021

*(Signed)*

Eric Muli, Legal Officer, for  
Abena Kwakye-Berko, Registrar, Nairobi