



Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

TURK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Fatuma Mninde-Silungwe, AAS/ALD/OHR, UN Secretariat

Introduction

1. On 7 January 2022, the Applicant, a former Political Affairs Officer, P-4, working with the United Nations Assistance Mission for Iraq (“UNAMI”), filed an application with the United Nations Dispute Tribunal (“UNDT”) contesting the decision to not renew his fixed-term appointment beyond its expiration date of 31 December 2021.

2. The Respondent filed a reply to the application on 9 February 2022.

3. On 10 February 2022, the Applicant filed a motion for interim measures to be reinstated in the United Nations, to be paid basic salary in full, to be placed on administrative leave until the Tribunal renders its judgment, and to recalculate his period of service for pension purposes. The Respondent filed a response to the Applicant’s motion on 16 February 2022.

Submissions

Receivability

The Respondent’s submissions

4. The Respondent submits that the UNDT lacks jurisdiction to grant relief in cases of appointment, promotion or termination. Under art. 10.2 of the UNDT Statute and art. 14.1 of the UNDT’s Rules of Procedure, the UNDT “may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination”. The Respondent underscores that a case contesting the non-renewal of a staff member’s appointment is a case of appointment that falls under this exception.

5. The Respondent further argues that the Tribunal lacks jurisdiction to suspend the implementation of a contested decision where the decision has been implemented. The Applicant’s contract expired on 31 December 2021, and he was subsequently

separated from service. The Tribunal lacks the power to restore a situation or reverse a contested decision that has already been implemented.

Considerations

6. Article 10.2 of the UNDT Statute stipulates that;

“at any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, 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.”

7. Pursuant to the United Nations Appeals Tribunal (“UNAT”) jurisprudence on the interpretation of the exception, i.e., ‘in cases of appointment, promotion or termination’ under art.10.2 of the UNDT statute, the motion is not receivable. UNAT has consistently held that:

“Cases of separation following non-renewal constitute a case of appointment and fall under the exclusionary clause of Article 10(2) of the UNDT Statute. In these cases, the reversal of the underlying contested decision results in the issuance of a new appointment reflecting “expressly or by reference all the terms and conditions of employment” as provided for in Staff Rule 4.1”¹.

8. In view of the clear and established jurisprudence on the issue, the Tribunal lacks jurisdiction to consider the merits of the motion.

ORDER

9. The Applicant’s motion for interim measures is rejected.

(Signed)

Judge Rachel Sophie Sikwese
Dated this 18th day of February 2022

¹ *Siri* 2016-UNAT-609, para. 33.

Entered in the Register on this 18th day of February 2022

(Signed)

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