



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/006
Order No.: 077 (NBI/2022)
Date: 12 July 2022
Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

TURK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S
MOTIONS FOR INTERIM MEASURES
PENDING PROCEEDINGS**

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. The Applicant was a P-4 Political Affairs Officer (“PAO”) with the United Nations Assistance Mission for Iraq (“UNAMI”).
2. On 7 January 2022, he filed an application with the Dispute Tribunal contesting the decision to not renew his fixed-term appointment beyond its expiration date of 31 December 2021.
3. The Respondent filed a reply to the application on 9 February 2022.
4. By a motion filed on 1 July 2022 and supplemented by email on the same date, the Applicant seeks an order for interim measures to be paid basic salary from the date of separation to the present date and to “put on hold” the P-4 PAO vacancy in UNAMI until UNAMI agrees to apologize to him and compensate him.
5. Following a round of clarifications sought from the Applicant regarding his multiple filings, by way of correspondence with the UNDT Registry and case management discussion held on 6 July 2022, the Respondent filed a response to applicant’s motions on 7 July 2022.

Submissions

The Applicant’s submissions

6. The Applicant’s case is summarized below:
 - a. UNAMI acted unlawfully in issuing the decision of his retrenchment following an unlawful reclassification exercise which led to the loss of his job.
 - b. UNAMI obtained the classification downgrading his position on the false premise of budget constraints yet the post was advertised on 19 June 2022 as job opening No. 30048407.

c. The matter is urgent because UNAMI made him unemployed from 1 January 2022 causing him stress and health problems. He has no other income apart from his salary. He will be rendered homeless because he will be unable to meet his mortgage obligations.

d. The irreparable harm that he will suffer includes worsening of his medical condition and loss of 24 years career reputation in diplomacy and international affairs because after working for the United Nations as PAO at the P-4 level, potential employers will question why he left the Organization at almost 50 years of age.

7. The Applicant requests the Tribunal to grant him the following reliefs: (a) payment of his salary for the period starting from the unlawful date of separation from UNAMI, which is 1 January 2022 until the present date; (b) an order to put job opening No. 30048407 on hold until UNAMI agrees to apologize and compensate him “in accordance with the UNDT rules and regulations”.

The Respondent's submissions

8. On the first motion, the Respondent submits that the UNDT lacks jurisdiction to grant temporary relief in this case because it is a case of appointment. Pursuant to arts. 10(2) of the Statute and 14(1) of the Rules of Procedure, the Dispute Tribunal may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination. As relief, the Applicant requests, *inter alia*, that the UNAMI decision not to renew his appointment be rescinded therefore, none of the requested relief may be granted as an interim measure.

9. On the second motion, the Respondent makes the following submissions:

a. UNAMI did not advertise the P-4 post the Applicant previously encumbered. From 19 June to 3 July 2022, UNAMI advertised a P-4 PAO position that was vacated after the Applicant's separation. The incumbent of

that position was reassigned to the United Nations Support Mission in Libya (“UNSMIL”) on promotion in April 2022. The reassigned staff member encumbered post number 30050635, not post number 30048407 that was previously encumbered by the Applicant. Accordingly, the job opening for the P-4 PAO position was advertised against the post number 30050635. There is nothing to support the Applicant’s claim that the P-4 job opening was for the exact number and grade as the post he encumbered.

b. Contrary to the Applicant’s claim, the P-4 post that he encumbered was classified downward in line with the General Assembly’s creation of a new P-3 post. The new P-3 post number 30048407 was also advertised from 19 June to 3 July 2022. The Applicant neither applied for the P-3 nor the P-4 job opening.

Considerations

10. 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.

11. Given that the Applicant’s case of non-extension of appointment falls under the broadly construed¹ notion of “termination”, the possibility of suspending the implementation of the contested decision pending proceedings on the merits is not allowed. As the Applicant cannot be restored to service by way of a temporary measure, the relief that he claims, i.e., payment of the salary, is not available. The application regarding the first claim is, therefore, not receivable.

¹ *Siri* 2016-UNAT-609, para. 33 and jurisprudence cited therein.

12. Regarding the second claim, the Respondent has documented facts captured under para. 9 above.² In filing the present application, the Applicant seems to have acted in error. The post that he had encumbered was indeed classified and downgraded. The Applicant has no legal interest in halting the advertised P-3 position, as his claim concerns a reinstatement in a P-4 position. This renders the application not receivable

ORDER

13. The application for interim measures is refused with respect to both requests.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 12th day of July 2022

Entered in the Register on this 12th day of July 2022

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

² Respondent's annexes 17-20.