



Before: Duty Judge
Registry: Nairobi
Registrar: René M. Vargas M., Officer-in-Charge

LIKUKELA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Albert Angeles, DAS/ALD/OHR, UN Secretariat
Sergei Gorbylev, DAS/ALD/OHR, UN Secretariat

Introduction

1. On 24 May 2024, the Applicant filed an application to contest the decision to impose on her the disciplinary measure of separation from service with compensation *in lieu* of notice, and without termination indemnity, in accordance with staff rule 10.2(a)(viii).
2. By motion dated 17 June 2024, the Applicant requested, under art. 10.2 of the Tribunal's Statute, the suspension of a travel authorization, issued on 10 June 2024, by the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo Human Resources, an UMOJA generated personnel action that changed her initiated and then changed travel request upon separation and put conditions on her to seek medical and security clearances in Lusaka, Zambia.
3. The Respondent filed a response to the Applicant's motion on 19 June 2024. The following day, the Applicant filed for permission to comment on the response.
4. The Tribunal has considered the Applicant's comments as noted below.

Consideration

5. Requests for interim measures during the proceedings are governed by art. 10.2 of the Statute of the Dispute Tribunal, as also reflected in art. 14.1 of the Tribunal's Rules of Procedure.
6. Article 10.2 of the Statute stipulates:

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. Article 14.1 of the Rules of Procedure is similarly worded:

At any time during the proceedings, the Dispute Tribunal may 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. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion, or termination.

8. In the present case, as correctly argued by the Respondent, the travel authorization constitutes a distinct administrative action separate from and irrelevant to the decision to terminate the Applicant's employment. The action regarding the Applicant's travel authorization pertained to her entitlement to terminal benefits (i.e., repatriation travel), and not to the legality or reasonableness of her separation from service.

9. Article 10.2 of the Tribunal's Statute does not allow the suspension of an action or decision (in this case, the travel authorization) unrelated to an appeal; only the contested administrative decision itself can be suspended, provided the requisite elements for suspension have all been met. Nothing on the case record indicates that the Applicant requested management evaluation of the travel authorization, which is a jurisdictional prerequisite for the Tribunal's review. To the contrary, the Applicant admits that she did not seek management evaluation.

10. The Applicant argues that "there was no time and need for [her] to seek a management evaluation". However, that is incorrect as explained above. The ability to access the Dispute Tribunal directly in disciplinary cases, without first seeking management evaluation, is not a blanket excuse from the requirement of management evaluation regarding other decisions that the Applicant may wish to challenge.

11. The Applicant also says that she submitted without first seeking management evaluation "due to its urgency and [her] right to preserve [her] life to effectively participate in these proceedings". This is premised on her claims of political persecution in Zambia.

12. However, it is important to be clear about the nature of the impugned decision. The Applicant is challenging the decision to authorize her repatriation travel to her place of home leave, Zambia, rather than to her preferred destination of Hawaii in the United States. The travel authorization does not mandate that she travel to Zambia, merely that the Organization will pay the cost of that travel as her terminal benefits. If she genuinely fears persecution and threats to her personal safety in Zambia, then the Applicant is free to decline the travel authorization.

13. Finally, even if the application was receivable, the Tribunal does not find any specific and relevant provision of the Staff Regulations and Rules or administrative issuances that were violated with the issuance of the travel authorization.

Conclusion

14. In view of the foregoing, it is ORDERED THAT the Applicant's motion for interim measures is rejected.

(Signed)

Judge Sean Wallace (Duty Judge)

Dated this 25th day of June 2024

Entered in the Register on this 25th day of June 2024

(Signed)

René M. Vargas M., Officer-in-Charge, Nairobi