



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/061

Order No.: 135 (NY/2010)

Date: 27 May 2010

Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

FERNANDEZ DE CORDOBA BRIZ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**INTERIM MEASURES
UNDER ART. 10.2 OF THE STATUTE**

Counsel for applicant:
Bart Willemsen, OSLA

Counsel for respondent:
Bettina Gerber, HRMS/UNOG

Procedural background

1. On 21 May 2010, the applicant filed an application for interim measures under art 10.2 of the Statute after submitting the underlying application on the merits on the same day. On 26 May 2010, the respondent submitted its response. A hearing was held today (27 May 2010) where both parties presented their cases and after which I advised them that a short written ruling would be issued later today to be followed by a reasoned order on a later date.

Facts (longer version to be provided)

2. In a memorandum of 20 January 2010, the applicant, an economist working at the P-3 level for United Nations Conference of Trade and Development (UNCTAD) in New York, was informed that the Secretary-General of UNCTAD had decided to move him to Geneva on a lateral transfer on 1 April 2010. Prior to this, the applicant and the Officer-in-Charge of the Human Resources Management Section in UNCTAD had had a telephone conversation and an exchange of emails about the transfer. On 5 March 2010, it was decided to postpone the transfer due to the applicant's medical situation (a broken wrist) to the end of May 2010. On 6 April 2010, the current post of the applicant, albeit with redefined responsibilities, was advertised on Galaxy (the online UN jobsite) but the applicant did not apply for it. On 26 May 2010, it was decided that the applicant would assume his duties in Geneva on 1 August 2010 subject to his medical clearance.

Applicant's and respondent's submissions in brief

3. In his application on the merits the applicant appealed the decision to transfer him, and in this application he requests that this decision be suspended until the substantive case is determined. The applicant submits that the application for interim relief is in all respects compliant with art 10.2 of the Statute of the Tribunal in that the

contested decision appears prima facie to be unlawful, that it is a matter of particular urgency, and that the implementation of the contested decision would cause him irreparable damage. In particular, the applicant contends that the contested decision is fraught with procedural irregularities and lack of transparency and requests that the respondent be ordered not to offer the appointment for his current post in New York to a third party in the interim.

4. The respondent on the other hand contends that the applicant has not satisfied the requirements of art 10.2 in any respects. The respondent also challenges the competency of the Tribunal concerning the applicant's prayer for relief as requested in the last sentence of paragraph 3 above.

Conclusion

5. Having carefully considered the facts placed before me and the submissions made by both parties, I find that this application stands to be dismissed in accordance with art 10.2 of the Statute. A reasoned order shall follow in due course.

(Signed)

Judge Ebrahim-Carstens

Dated this 27th day of May 2010