



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

ELBAGHIR OSMAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON INTERIM MEASURES

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Elizabeth Gall ALD/OHR, UN Secretariat

Introduction

1. On 17 January 2019, the Applicant, a Senior Reviser at the P-5 level, step 7, filed an application on the merits in which he contests the decision to terminate his permanent appointment on the alleged ground of unsatisfactory service.

2. The following day (18 January 2019), the Applicant filed a motion for interim measures under art. 10.2 of the Dispute Tribunal's Statute and art. 14 of its Rules of Procedure in which he requested the suspension of the contested decision.

3. On 18 January 2018, the case was assigned to the undersigned Judge and the Registry acknowledged receipt of the application and the motion for interim measures, instructing the Respondent to file a response to the motion on 21 January 2019 and a reply to the application on 18 February.

4. On 21 January 2019, the Respondent filed a response to the motion for interim measures in which, in essence, he submits that (a) the motion is not receivable as the Tribunal does not have competence to suspend the implementation of the contested administrative decision as an interim measure in termination cases under art. 10.2 of the Dispute Tribunal's Statute, (b) the interim measures requested by the Applicant are not appropriate for discretionary relief, and (c) the motion does not have any merit.

Consideration

5. In the motion for interim measures, the Applicant submits that he seeks the suspension of the contested termination decision as he explicitly requests that "the termination decision of 1 November 2018 to be put on hold". He further clarifies that he does not request the suspension of action during the pendency of the management evaluation under art. 2.2 of the Dispute Tribunal's Statute (and art. 13 of its Rules of Procedure), but the suspension of the contested decision during the Tribunal's proceedings pursuant to art. 10.2 of the Statute (and art. 14 of the Rules of Procedure)

as he specifically underlines that “[t]his application is not a request for the suspension of the implementation of the termination decision pending the completion of the management evaluation” (emphasis omitted). The Applicant further contends that

... Notably, the Tribunal in the *Melpignano* Order [Order No. 93 (GVA) 2015], stated that its “authority regarding cases of ... termination is only limited as far as it concerns the suspension of the implementation of the contested decision” and does not prevent the Tribunal from “ordering other kinds of interim measures.” [Ibid] Consequently, I am respectfully requesting the Tribunal to apply other interim measures such as a preservation of the *status quo* for the ends of justice and fairness to be fulfilled,

... Since the administrative decision takes effect on 31 January 2019 and literally coincides with [the Management Evaluation Unit’s] evaluation - expected on 30th January 2019, it would be futile for me to pursue an SOA that would be *ipso facto* ineffectual given the closeness and constraints of the two separate time limits at issue.

6. Under art. 10.2 of the Statute of the Dispute Tribunal, the authority vested in the Tribunal to grant an interim measure during its proceedings does specifically not include the suspension of a termination decision, as it provides that,

... At any time during the proceedings, the Dispute Tribunal may order an interim measure ... to provide temporary relief to either party ... 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. Consequently, the Tribunal does not have the competence to suspend the contested termination decision, even if it is to preserve the *status quo*, as requested by the Applicant

8. The Applicant makes reference the Dispute Tribunal’s Order in *Melpignano*. However, the Tribunal observes that the contested decision under review in *Melpignano* was not a termination decision as in the present case. Rather, it concerned a decision “declaring the [a]pplicant ineligible” to file for a certain job advertised in a vacancy announcement, which led the relevant Dispute Tribunal to find that this was not a decision of appointment or promotion in accordance with art.

10.2 of its Statute. The *Melpignano* order therefore has no relevance to the present motion.

IT IS ORDERED THAT:

9. The motion for interim measures is rejected.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 22nd day of January 2019