



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/010
Order No.: 029 (NY/2023)
Date: 5 April 2023
Original: English

Before: Duty Judge
Registry: New York
Registrar: Isaac Endeley

MOUCHABEK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON INTERIM MEASURES DURING
THE PROCEEDINGS**

Counsel for Applicant:

Cristian Gimenez Corte

Counsel for Respondent:

Jenny Kim, AS/ALD/OHR, UN Secretariat

Introduction

1. On 28 March 2023, the Applicant, a former Travel Processing Officer with the United Nations Economic Commission for Latin America and the Caribbean (“ECLAC”), filed an application with the Tribunal contesting the decision to separate her from service on 31 December 2022 despite the withdrawal of her request for early retirement.
2. On the same day, the Applicant filed a Motion for Interim Measures during the proceedings.
3. On 3 April 2023, the Respondent filed a reply to the Applicant’s motion for interim measures.

Consideration

4. Interim measures during the proceedings are governed by art. 10.2 of the Tribunal’s Statute and art. 14.1 of its Rules of Procedure. The former, which contains almost the same text as the latter, provides in relevant part 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.

5. For the Tribunal to consider interim measures, several cumulative conditions set forth in the above-mentioned provisions must be met (see *Nadeau* Order No. 116 (NY/2015), *Auda* Order No. 156 (GVA/2016), *Harvey* Order No. 10 (GVA/2020), and *Adelegan* Order No. 112 (GVA/2020)):

- a. The motion for interim measures must have been filed in connection with a pending application on the merits before the Tribunal and at any time during the proceedings;

- b. The interim measure(s) ordered by the Tribunal must provide solely a temporary relief to either party, such relief being neither definite by nature nor having the effect of disposing of the substantive case in relation to which the application for interim measures is filed;
- c. The required temporary relief must not concern appointment, promotion or termination;
- d. The contested decision appears *prima facie* to be unlawful;
- e. There is a particular urgency in requesting the interim measure; and
- f. The implementation of the contested decision would cause irreparable damage.

6. It can be reasonably understood from the condition indicated in para. 5.f above that an application for interim measures during the proceedings requires that the contested decision has not yet been implemented.

7. Indeed, relief under an application for interim measures during the proceedings is, in substance and effect, akin to an interim order of injunction in national jurisdictions. It is an order limited in scope and time to provide temporary relief by maintaining the *status quo* between the parties. It follows, therefore, that an order for interim measures during the proceedings cannot restore a situation or reverse an allegedly unlawful decision that has already been implemented (see *Harvey* (Order No. 10 (GVA/2020)).

8. In the present case, the Tribunal notes that the contested decision has already been implemented as the Applicant was separated from service on 31 December 2022. Consequently, there is nothing to suspend, and the requested interim measure cannot be granted.

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IT IS ORDERED THAT:

9. The motion for interim measures during the proceedings is rejected.

(Signed)

Judge Joelle Adda

Dated this 5th day of April 2023