



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

O'MULLANE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON MOTION FOR INTERIM
MEASURES**

Counsel for Applicant:

Cristian Gimenez Corte

Counsel for Respondent:

Lucienne Pierre, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a Director, at the D-2 level, in the Office of Information and Communications Technology (“OICT”). On 9 July 2023, he filed two separate applications before the Tribunal. The first application, registered under Case No. UNDT/NY/2023/019, contests the 10 January 2023 decision by the Office of Internal Oversight Services (“OIOS”) not to open an investigation into the Applicant’s complaint of “possible noncompliance of the [United Nations] Controller (“the Controller”) with [United Nations] financial rules and regulations”. The second application, registered under Case No. UNDT/NY/2023/020, contests the decision, also on 10 January 2023, by OIOS to decline to open an investigation into the Applicant’s complaint of “possible harassment and abuse of power” against the Controller.

2. On 26 September 2023, the Applicant filed a motion requesting the Tribunal to issue an order preventing the Controller and the Chief Information Technology Officer (“CITO”) from taking “any further retaliatory actions against him”. The Applicant alleges that since the filing of the two applications mentioned at para. 1 above, the Controller and the CITO have already taken at least three retaliatory measures against him. He adds that he “fears continued retaliation by the Respondent unless the Tribunal issues a protective and preventive order”.

3. The Respondent filed a response on 28 September 2023 stating that the motion is not receivable. The Respondent also submits that even if the motion were receivable, it should be rejected because it lacks merit.

Considerations

Legal framework for granting interim measures

4. The Tribunal recalls that 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 of the Tribunal’s Rules of Procedure.

5. Art. 10.2 of the Statute provides:

... 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.

6. The language of art. 14.1 of the Rules of Procedure is almost identical:

... 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.

7. From a plain reading of these provisions, it is clear that a request for interim measures can be granted only if the following three conditions are met: (a) the contested decision appears *prima facie* to be unlawful; (b) it is a case of particular urgency; and (c) implementation of the contested decision would cause irreparable damage to the Applicant. These three conditions are cumulative and must all be satisfied. If one of them fails, the request for interim measures cannot be granted.

Particular urgency

8. The Dispute Tribunal has consistently held that urgency is relative and that each case regarding suspension of action or interim measures will turn on its own facts, given the exceptional and extraordinary nature of such relief (see, for instance, *Farhadi* Order No. 131 (GVA/2017) and *Montecillo* Order No. 054 (NY/2019)). If an applicant seeks the Tribunal's assistance on an urgent basis, he or she must come to the Tribunal at the first available opportunity, taking the particular circumstances of his or her case into account (see, for instance, *Evangelista* UNDT/2011/212, *Nsubuga* Order No. 085 (NBI/2019), and *Gutierrez Rodriguez* Order No. 020 (NY/2023)).

9. The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of his or her actions. The requirement of particular urgency

will not be satisfied if the urgency was created or caused by the applicant (see, for instance, *Villamorán* UNDT/2011/126, *Dougherty* UNDT/2011/133, and *Jitsamruay* UNDT/2011/206).

10. The Tribunal notes that the acts of retaliation alleged by the Applicant occurred in the context of a proposed internal restructuring of OICT. Under the proposal, the Applicant would, with effect from 1 October 2023, be reassigned from one Division within OICT to another, still at the Director (D-2) level. Without going into the merits or lawfulness of the restructuring exercise, the Tribunal observes that contrary to the Applicant's claim that this alleged act of retaliation was initiated *after* he filed the two applications before this Tribunal in July 2023, the email trail attached to his own motion amply demonstrates that the internal restructuring discussions had been taking place since at least "late 2022 and early 2023". In other words, the restructuring plan was initiated *before* the filing of the applications.

11. The fact that the restructuring exercise, including the reassignment of the Applicant, has been under discussion for many months tends to show that this is a matter of self-inflicted urgency. The Tribunal therefore concludes that the Applicant has failed to show that this is a case of particular urgency.

12. Having determined that the Applicant has failed to satisfy one of the three cumulative requirements for the grant of interim measures, the Tribunal sees no need to examine whether the two other requirements are met. Accordingly, the Tribunal will reject the motion.

Case No. UNDT/NY/2023/019

Order No. 097 (NY/2023)

IT IS ORDERED THAT:

13. The Applicant's motion for interim measures is rejected.

(Signed)

Judge Joelle Adda

Dated this 3rd day of October 2023

Entered in the Register on this 3rd day of October 2023

(Signed)

Isaac Endeley, Registrar, New York