



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2013/092

OrderNo.: 264 (NBI/2013)

Date: 20 December 2013

Original: English

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Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Eric Muli, Officer-in-Charge

GUZMAN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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ORDER

ON AN APPLICATION FOR  
SUSPENSION OF ACTION

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Counsel for the Applicant:  
Self-Represented

Counsel for the Respondent:  
Steven Dietrich, ALS/OHRM, UN Secretariat  
Alister Cumming, ALS/OHRM, UN Secretaria





*Prima facie unlawfulness*

- a. The contested decision is a breach of her due process rights.
- b. The reason given for her separation from service, namely that her post has been abolished is false. The Applicant contends that her post has not been abolished but has only been proposed for reclassification
- c. The proposed downsizing of posts in UNAMA and the proposed reclassification of her own post had not been presented to the Advisory Committee on Administrative and Budgetary Questions (ACABQ) and had not been approved by the General Assembly at the time she was issued with the notice of separation.
- d. Later on when the ACABQ report was issued, the Applicant contends that it did not propose to abolish her post, thereby rendering reasons given by the UNAMA Administration as false.

*Urgency*

- e. The impending separation from service takes effect on 31 December 2013 which is barely two weeks away from the date of the filing of this Application making it urgent.

*Irreparable damage*

- f. Should the Applicant be separated from service prior to the completion of her Performance Evaluation (PAS) rebuttal, she will be unable to effectively and judiciously defend her case.
- g. Denial of an opportunity to defend her PAS through a rebuttal will jeopardize her chances for further employment with the United Nations, and given her advanced age, it will be difficult for her to find a new job and to start a new career.
- h. The contested decision is damaging to her professional reputation and career

i. The decision will cause ~~er~~ financial loss and economic damage due to loss of employment, moral and emotional injuries, physical stress and a negative impact to her social status.

12. The Applicant's seeks the suspension of the decision to separate her from service effective 31 December 2013 pending the substantive hearing of her Application on the merits.

#### Respondent's case

13. The Respondent's case may be summarized as follows:

14. The two Applications are not receivable and even if the Tribunal deems them to be receivable, it does not have the power to grant an interim relief in this case under art.14 of the Rules of Procedure as read together with art. 10 of the Statute of the Dispute Tribunal.

15. To the extent that the administrative decision challenged is the Secretary General's proposal of the General Assembly that the Applicant be abolished or reclassified, it is not receivable as 3( )-5()-24( )] T 1 2004 Tm [(a)17(n)17(t)-410(R0 r

“administrative decision” within the meaning of the Statute of the Dispute Tribunal further implying that the Tribunal has no power to make an order for interim measures.

19. Even if the Tribunal was to understand the request for rescission of the MEU decision as a request to rescind the purported decision by UNAMA, then art. 10.2 of the Statute of the Dispute Tribunal precludes the Tribunal from granting orders of temporary relief in cases of appointment, promotion or termination.

20. In view of the foregoing, the Respondent avers that the Motion be dismissed as not being receivable. In the event that the Tribunal finds it receivable, the Respondent avers that the Tribunal has no power to make an interim measure in this case.

#### Considerations

#### Receivability

21. The Respondent has submitted that the Dispute Tribunal is excluded from ordering temporary relief in cases of appointment, termination and promotion.

22. The Respondent submitted further that

If the Dispute Tribunal finds that a decision has been made in this case, a decision to separate the Applicant from service in these circumstances would relate to her appointment. Accordingly, the Dispute Tribunal has no power to make an order for interim measures.

23. In considering the Application for interim relief, the Tribunal is mindful that both art.10.2 of the Statute of the Dispute Tribunal and art. 14 of the Rules of Procedure provide that temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

24. Each and every application that a staff member brings before the Dispute Tribunal must necessarily be based on their capacity as a staff member under an employment contract or appointment.

25. The Respondent's submission is that the Tribunal may not grant the order because it would be related to the Applicant's appointment. This interpretation is totally misleading. The effect of the words "appointment", "promotion" and "termination" as used in art. 10 of the Statute and art. 14 of the Rules of Procedure simply mean that where a suspension of action application challenges an appointment, termination or promotion, the Tribunal cannot grant interim relief. In other words, it is only in cases where the subject matter of an application seeks to impugn an appointment, termination or promotion that the interim relief cannot be ordered.

26. The Tribunal thus finds that the Application under art. 14 of the Tribunal Rules of Procedure is receivable and proceeds to determine whether the case meets the three requirements for the grant of a suspension of acts stipulated in the said art. 14

*Prima facie unlawfulness*

27. The Applicant submitted that the decision to separate her was *prima facie* unlawful because the reason given for her separation from service, namely that her post has been abolished is false. The Applicant contends that her post has not been abolished but has only been proposed for reclassification. The Respondent did not address the Tribunal on the issue of *prima facie* unlawfulness in the Reply.

28. The CCPO UNAMA, on 15 September 2013, sent a memorandum to the Applicant titled "separation notification due to downsizing of budgeted posts eff. C.O.B31 December 2013. The Applicant was informed therein that her post was to be downsized and that the decision was to take effect on 31 December 2013 on which date she would be separated.

29. The Respondent blows hot and cold claiming somewhat that this separation notice is a preparatory and hypothetical

manager with regard to a staff member conveying a date for separation of the said staff member is neither a preparation nor a hypothesis is an administrative decision. It beats the imagination that these same and meaningless phrases are manufactured to respond to this Application.

30. The words “appointment”, “promotion” and “termination” used in art. 10 of the Statute and art. 14 of the Rules of Procedure are not open sesame or magic words. In dispensing justice, the Tribunal has a clear duty to examine the circumstances in order to be satisfied and to determine whether the words employed by a party to an application are genuine and honest or whether they are merely used to manipulate the system of justice.

31. The Respondent seeks to interpret the word “appointment” in the context of this case to mean that an application under art. 14 of the Rules of Procedure can be successful when brought by a staff member. Since staff members cannot come before the Tribunal, it is a condition precedent that those who come before the dispute Tribunal must be serving or retired staff members or others acting on their behalf.

32. Curiously, the Respondent strives to explain that only the General Assembly can abolish posts and that as at the date of this Application, the General Assembly had not taken such a decision.

33. It is also claimed by the Respondent that the CCPO’s memo of 15 September 2013 to the Applicant “simply identifies that the post she encumbers has been identified for downsizing subject to the General Assembly’s decision.” The Reply also states that the Applicant will continue to serve a fixed-term appointment until 30 June 2014 and that there is no final administrative decision that is justiciable before the Dispute Tribunal.

34. Clearly, none of this is true since the notice of separation memorandum was unequivocal in informing the Applicant that she would be separated from service effective 31 December 2013.

35. The Administration’s agents must be genuine in their dealings with staff members. The claim that the Application challenges the Secretary-General’s



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## Conclusion

41. In view of the foregoing, the application for suspension of action is granted, and it is ordered that the implementation of the decision to separate the