
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/035
Order

UNOMS, was requesting a meeting concerning a staff member she had previously advocated for as President of UNPAD. The next day, the Ombudsman responded to the Director of DHMOSH that the Applicant was not acting on UNOMS's behalf and had no authority or standing to discuss such private sensitive issues.

7. On 1 April 2020, the Applicant began a temporary assignment with the United Nations Economic Commission for Africa.

8. In early March 2021, the Ombudsman was notified that the Applicant would be returning to UNOMS, effective 1 April 2021.

9. On 8 March 2021, the Ombudsman reached out to the Ethics Office to request an opinion as to whether the Applicant's service as President of UNPAD represents a conflict of interest with her duties as a Conflict Resolution Officer in UNOMS.

10. On 12 March 2021, the Director of the Ethics Office responded that it

of UNPAD in order to make an informed decision on her workplan. The Ombudsman reminded the Applicant that it had been determined that there is a conflict of interest between the work of a Conflict Resolution Officer in UNOMS and her position as President of UNPAD.

13. On 28 April 2021, the Ombudsman wrote an email to the Applicant. She stated that she understood that the Applicant was still the President of UNPAD and would not step down and asked the Applicant to clarify in writing. The Ombudsman warned that in the absence of any clarification in writing, she would proceed to take the administrative actions that she deemed appropriate.

14. On 30 April 2021, the Ombudsman wrote to the Applicant that until her status with UNPAD was clarified, the Ombudsman could not complete any discussions around work assignments and stated that she had not been given any assigned work.

15. On 12 May 2021, the Ombudsman issued a written reprimand to the Applicant for the continuation of the conflict of interest.

16. On 16 June 2021, the Applicant was notified that her fixed-term appointment would not be renewed beyond its expiration on 31 August 2021. The Applicant requested the reasons for the non-renewal decision and received the

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Prima facie unlawfulness

31. In considering whether to suspend an administrative decision pending management evaluation, the Dispute Tribunal's Statute does not require the Tribunal to make a definitive finding that the decision is unlawful. The test is not particularly onerous since all the Tribunal is to do at this stage is to decide as to whether it appears that, if not rebutted, the claim will stand proven on a *prima facie* basis. Any such determination is not binding should the Applicant subsequently file an application on the merits and the matter would proceed to a full judicial review. It is merely an indication as to what appears to be the case at this preliminary stage.

32. Under the applicable legal framework, a fixed-term appointment does not carry any expectancy of renewal and expires automatically without prior notice on the

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had engaged in misconduct and sanctioned her without due process, and separating her in this manner without undertaking an investigation or disciplinary process violates her due process rights guaranteed under ST/AI/2017/1 (Unsatisfactory Conduct, Investigations and Disciplinary process).

45. The Tribunal notes that the proffered reason for the contested decision does not state that the Ombudsman considered that the Applicant had engaged in misconduct. Rather, the Ombudsman considered that due to conflict of interest, she was not able to assign the Applicant any work related to conflict resolution, the role for which she was recruited. Therefore, the Tribunal rejects the Applicant's argument that the contested decision is a veiled disciplinary measure in violation of her due process rights under ST/AI/2017/1.

46. The Applicant finally argues that the contested decision amounts to harassment and abuse of authority by the Ombudsman. The Tribunal further rejects this argument based on the above finding that the contested decision was a lawful exercise of the Administration's discretion.

47. Considering all the information before the Tribunal, the Tribunal finds, on a *prima facie* basis, that the proffered reason for the non-renewal is supported by evidence and that the Applicant has not established that the contested administrative decision was *prima facie* unlawful.

Urgency

48. Urgency is relative and each case will turn on its own facts, given the exceptional and extraordinary nature of such relief. If an applicant seeks the Tribunal's assistance on an urgent basis, she or he must come to the Tribunal at the first available opportunity, taking the particular circumstances of her or his case into account (*Evangelista* UNDT/2011/212). The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the

Irreparable harm

54. As the Applicant has not satisfied the requirement of *prima facie* unlawfulness and urgency⁵

59. Further, in this case, the fact that the Applicant served as President of UNPAD as well as a Conflict Resolution Officer of UNOMS are the crux of the case and therefore the case cannot be properly analyzed without providing such details.

60. In light of the above, the Applicant's request for anonymity is rejected.

IT IS ORDERED THAT:

61. In light of the above, the Tribunal orders that:

- a. The application for suspension of action is rejected; and
- b. The Applicant's request for anonymity is rejected.

(Signed)

Judge Joelle Adda

Dated this 26th day of August 2021