



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

ABALOS et al.

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON RECUSAL**

Counsel for Applicant:

Christopher Bollen and Mathis Kern

Counsel for Respondent:

Daniel Trup, WMO

Introduction

1. By its Judgments *Abrate et al.* 2020-UNAT-1031, *Rixen* 2020-UNAT-1038 and *Lynn* 2020-UNAT-1039, the Appeals Tribunal remanded to this Tribunal cases filed by 67 staff members of the World Meteorological Organization (“WMO”) in Geneva challenging “the decision of the Secretary-General of the WMO to accept the recommendation of the WMO’s Joint Appeals Board to implement the reduced post adjustment multiplier for staff members of the WMO”.

2. At the request of the Tribunal’s Geneva Registry, 63 of the 67 Applicants filed, through Counsel, a single application before it on 3 December 2020, which was registered under Case No. UNDT/GVA/2020/057 (*Abalos et al.*) and assigned to the undersigned Judge.

Consideration

3. As a preliminary matter, the Tribunal recalls that Judges serving the Dispute Tribunal, although not staff members of the Organization, are compensated in the same manner as staff members, with salaries and allowances equivalent to the D-2 level, following the recommendations of the Secretary-General to the General Assembly.¹

4. As a result, the undersigned Judge’s conditions of service are not independent of the United Nations staff salary system and, hence, are subject to the same as those affecting staff members based in the Geneva duty station.

5. Consequently, the undersigned Judge receives a monthly post adjustment amount as a component of her monthly salary, which has been affected by the Organization’s decision to implement a reduction in the post adjustment for Geneva based staff members.

¹ See para. 83 of A/63/314 (Administration of justice at the United Nations, Report of the Secretary-General) and para. 30 of General Assembly resolution 63/253 (Administration of justice at the United Nations).

Conflict of Interest

6. The above places the undersigned Judge in the same situation as the Applicants and raises fundamental questions of conflict of interest and judicial independence. In this respect, art. 27 of the Dispute Tribunal's Rules of Procedure provides that:

1. The term "conflict of interest" means any factor that may impair or reasonably give the appearance of impairing the ability of a judge to independently and impartially adjudicate a case assigned to him or her.

2. A conflict of interest arises where a case assigned to a judge involves any of the following:

...

(c) Any other circumstances that would make it appear to a reasonable and impartial observer that the judge's participation in the adjudication of the matter would be inappropriate.

7. Given the circumstances of this case, it is clear that any external and impartial observer would consider it inappropriate for the undersigned Judge to adjudicate over this matter.

8. Additionally, pursuant to art. 2(e) of the Code of Conduct for the Judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, adopted by the General Assembly in resolution 66/106, "Judges must disclose to the parties in good time any matter that could reasonably be perceived to give rise to an application for recusal in a particular matter".

9. In light of the foregoing, the undersigned Judge, first, discloses to the parties that due to the nature of her conditions of service with the United Nations, she is personally affected by the reduction of the post adjustment amount in the Geneva duty station, thus placing her in a position of conflict of interest.

10. Second, pursuant to art. 28(1) of the Tribunal's Rules of Procedure and in the interests of the rule of law, transparency, impartiality and respect for the ethical principles that beque the judicial mandate, the undersigned Judge must recuse herself from the case at hand.

Conclusion

11. In view of the foregoing, IT IS ORDERED THAT the present case be referred to the Judge President of the United Nations Dispute Tribunal, pursuant to art. 28(1) of the Tribunal's Rules of Procedure, informing her of the undersigned Judge's recusal.

(Signed)

Judge Teresa Bravo

Dated this 28th day of December 2020

Entered in the Register on this 28th day of December 2020

(Signed)

René M. Vargas M., Registrar, Geneva