



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2012/012
UNDT/NY/2013/015
UNDT/NY/2013/096
Order No.: 102 (NY/2014)
Date: 29 April 2014
Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

WISHART

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICANT'S URGENT MOTION
FOR RECONSIDERATION OF
DISCHARGE OF INTERIM
MEASURES**

Counsel for Applicant:
Janelle Melissa Lewis

Counsel for Respondent:
Seth Levine, UNDP

Introduction

1. The Applicant, a permanent staff member of the United Nations Development Programme (“UNDP”), has three cases before the Tribunal:

a. Case No. UNDT/NY/2012/012, in which the Applicant contests UNDP’s alleged failure to protect her from harassment and abuse of authority by her supervisors;

b. Case No. UNDT/NY/2013/015, in which the Applicant contests the decision of 20 December 2012 to issue her a written reprimand; and

c. Case No. UNDT/NY/2013/096, in which the Applicant contests, *inter alia*, the decision to place her on a “search period” (i.e., a period of time to look for a new position) and subsequent notice of separation.

2. On 31 July 2013, the Tribunal issued Order No. 181 (NY/2013) in Case No. UNDT/NY/2013/096, suspending “the implementation of the decision to end the Applicant’s search period and to separate her from service”. The interim measures were subsequently extended by Orders No. 223 (NY/2013), dated 6 September 2013, and 292 (NY/2013), dated 7 November 2013.

3. The Tribunal thereafter directed that the three cases be heard jointly and on an expedited basis. The Tribunal’s extraordinary efforts to expedite the hearing of these three cases as well as to facilitate their amicable resolution were, regrettably, unsuccessful.

4. On 24 April 2014, the Tribunal issued Order No. 94 (NY/2014), ordering, for reasons stated therein, that “the order on interim relief, first made in para. 62 of Order No. 181 (NY/2013) and subsequently extended by Orders No. 223 (NY/2013) (para. 11) and 292 (NY/2013) (para. 11), is hereby discharged with effect from

the date of the present Order”. In para. 46 of Order No. 94 (NY/2014), the Tribunal also directed that the Respondent “shall ensure that all appropriate benefits and entitlements lawfully due to the Applicant be duly processed”.

5. On 25 April 2014, Counsel for the Applicant filed a submission entitled “Applicant’s urgent request for reconsideration of discharge of interim measures”. She states that, at 7:34 p.m. on 24 April 2014, the Applicant received an email from UNDP with a letter stating that her permanent appointment was terminated effective immediately. Counsel for the Applicant submits that this is in violation of staff rule 9.7(a), which provides that “a staff member whose continuing appointment is to be terminated shall be given not less than three months’ written notice of such termination”. The Applicant states that upon the discharge of the interim measures she should have been placed on notice of separation. Counsel for the Applicant states that the Applicant is “very ill as a result of Organization’s actions”, and thus her appointment was terminated while on sick leave, effectively leaving her without health coverage. Counsel for the Applicant submits that the Respondent thus failed to ensure that all appropriate benefits and entitlements were fully processed, as directed in Order No. 94. Counsel for the Applicant therefore requested a reconsideration of the discharge of interim measures “in light of the fact that the Respondent has violated Order No. 94 (NY/2014) in willful disobedience of the Tribunal’s instructions to the detriment of the Applicant”.

6. On 25 April 2014, the Respondent replied to the Applicant’s request of the same date, stating that the Statute of the Tribunal provides no provision for the “reconsideration” of Orders on interim measures, which are without appeal. The Respondent submits that, in any event, the Applicant’s request is without merit. The Respondent submits that the Applicant was placed on notice period even before Order No. 181 (NY/2013), when she filed her original application for suspension of action. The Respondent further submits that, following Order No. 94 (NY/2014), the final decision to terminate her appointment was communicated to the Applicant

and her separation was effected. The Respondent submits that in light of the discharge of the interim measures the separation of the Applicant has now been implemented and is not amenable to suspension. Further, as mentioned in Order No. 94 (NY/2014), the Applicant is entitled to after-service health insurance. The Respondent submits that, following Order No. 94 (NY/2014), despite her earlier assertions that she was ill and required proceedings to be suspended, the Applicant was actively communicating with UNDP and the United Nations Medical Services on 24 and 25 April 2014 regarding her status and the status of her sick leave request, which has not been certified. The Respondent submits that he is “considering the appropriate application to the Tribunal to reflect what appears, on the face of it, to be an advertent and sustained attempt to subvert the jurisdiction of the Tribunal”. The Respondent states that he “notes at this stage that bad faith and a failure to diligently prosecute a case might justify the striking out of a claim”.

Consideration

7. The interim measure in Case No. UNDT/NY/2013/096—suspension of the decision to end the Applicant’s search period and to separate her from service—was granted on 30 July 2013 (Order No. 181 (NY/2013)) and extended on 6 September 2013 (Order No. 223 (NY/2013)) and 7 November 2013 (Order No. 292 (NY/2013)). The interim measure was discharged in a fully reasoned order on 24 April 2014 (Order No. 94 (NY/2014)).

8. Following the discharge of interim relief, UNDP proceeded to separate the Applicant. On 24 April 2014, the Respondent informed the Applicant in writing that her appointment was terminated and she was separated from the Organization with immediate effect. The Respondent also stated in the letter dated 25 April 2014 that UNDP “will ensure that [her] outstanding benefits and entitlements are processed with all due speed”, in compliance with the Tribunal’s direction in Order No. 94.

9. Having reviewed the parties' submissions, the Tribunal finds that there is no basis in law or in fact to revisit, reconsider, or revise the matter.

10. The Tribunal notes that, in her submission of 25 April 2014, Counsel for the Applicant fails to properly quote the relevant part of Order No. 181 on interim measures. Order No. 181 suspended "the decision to end the Applicant's search period and *to separate her from service*" (emphasis added), whereas Counsel for the Applicant states that Order No. 181 suspended "the implementation of the decision to end the Applicant's search period", omitting to mention that it also suspended her separation, which at the time was imminent and which, as clearly stated in Order No. 181, was preceded by a notice of separation. Counsel for the Applicant is reminded that it is her professional obligation to act diligently and in good faith when making submissions before the Tribunal.

IT IS ORDERED THAT:

11. The Applicant's motion dated 25 April 2014, seeking reconsideration of Order No. 94 (NY/2014), is rejected.

(Signed)

Judge Ebrahim-Carstens

Dated this 29th day of April 2014