



UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NY/2019/011
Order No.:	45 (NY/2020)
Date:	6 March 2020
Original:	English

Before: Judge Eleanor Donaldson-Honeywell

Registry: New York

Registrar: Nerea Suero Fontecha

FRAENKEL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Daniel Trup, OSLA

Counsel for Respondent:
Camila Nkwenti, UNEP

Introduction

1. The Applicant, a staff member of the United Nations Environment Programme (“UNEP”) filed an application contesting the decision to abolish her post. As relief, the Applicant requested her placement on a director-level position on a non-competitive basis. She also sought moral damages for “the subversion of the administrative and procedural rules which has resulted in her being singled out for abolition”. The Applicant indicated that she was undergoing treatment and would provide medical documentation “for the purposes of future proceedings”.

2. The Respondent replied that the application was not receivable because the Applicant had not formally been notified of her separation. After an unsuccessful attempt to resolve this case amicable, on 11 February 2020, the Respondent informed the Tribunal that the Applicant had been appointed to the position of Executive Secretary, Convention on Migratory Species, UNEP, at the same level of the Applicant’s current contract and sought a finding that the Administration has fulfilled his obligations to find an alternative position for the Applicant under staff rule 9.6(a).

3. At the request of the Tribunal, on 5 March 2020, the Applicant responded to the Respondent’s 11 February 2020 submissions on receivability.

4. In its recent submission, the Applicant argues that her selection for the new position does not resolve this matter because the abolition of the Applicant’s post “was part of a series of steps by [the former Executive Secretary of the Secretariat of the Convention on Biological Diversity, UNEP] to strip the Applicant of her responsibilities, isolating her and then ultimately attempting to terminate her appointment” which lead the Applicant to file a complaint under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).

5. The Applicant argues further that “the issue under review relates to the unlawful removal of the Applicant’s functions and consequent abolition of her post”. She claims further that “[t]he facts as submitted by the Applicant have subsequently been established through the investigation/disciplinary process and eventual [...] resignation of [the Executive Secretary]. [The Executive Secretary’s] actions vis-à-vis the Applicant were determined by the Administration to have constituted misconduct”.

6. The Applicant finally requests a full hearing in this case to determine the lawfulness of the decision to abolish her post.

7. For a fair determination of this case, the Tribunal will further seek the Respondent’s observations on the scope of the issue before the Tribunal in light of the Applicant’s 5 March 2020 submission.

IT IS ORDERED THAT:

8. By **4:00 p.m. on Wednesday, 11 March 2020**, the Respondent shall file his response to the Applicant’s 5 March 2020 submission.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 6th day of March 2020