



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/049

Judgment No.: UNDT/2014/129

Date: 30 October 2014

Original: English

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**Before:** Judge Vinod Boolell

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

ACHIA CHRISTENSEN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON INTERPRETATION**

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**Counsel for the Applicant:**

Self-represented

**Counsel for the Respondent:**

Tamara A. Shockley, UNICEF

## **Introduction**

1. On 23 June 2014, the Applicant, a former staff member of the United Nations Children's Fund (UNICEF), filed the current Application seeking interpretation of Order No. 068 (NBI/2014) dated 2 April 2014. This Order was issued by the Tribunal in relation to an application for suspension of action the Applicant had filed on 26 March 2014.

2. The Application was served on the Respondent on 3 July 2014 and in accordance with article 30 of the UNDT Rules of Procedure, he was granted 30 days to submit his comments.

3. The Respondent submitted his Reply to the Application for Interpretation on 25 July 2014.

## **Facts**

4. The facts have been taken from Order No. 068 (NBI/2014).

5. The Applicant joined the UNICEF Office in Bangui, Central African Republic (UNICEF CAR) as an Information and Communications Technology (ICT) Officer at the P-2 level in April 2009 on a fixed-term appointment. She was separated from service on 31 March 2014 upon the abolishment of her post.

6. On 8 January 2014, the Applicant was informed by UNICEF CAR that her post would be abolished as of 31 March due to "necessities of service" and that if she was not selected for another post beforehand, she would be separated from service on 31 March 2014.

7. On 19 February 2014, she was interviewed for the newly established post of P-3 ICT Specialist with UNICEF CAR. She was not selected for this post. On 26 February 2014 and 22 April 2014, she interviewed for similar posts in Angola and Mozambique. She was not selected for the posts in CAR or Angola.

8. On 26 March 2014, she filed an application for suspension of the decision to separate her from service on 31 March 2014. This application was dismissed by the Tribunal in its Order No. 068 (NBI/2014).

9. On 23 April 2014, the Applicant, through Counsel, wrote to UNICEF to request an update on the status of her recruitment and to remind the Organization of the Tribunal's observations at paragraphs 51 and 52 of Order No. 068 (NBI/2014). UNICEF acknowledged receipt of Counsel's email. The Applicant wrote to UNICEF on 3 June to follow up on the 23 April email and to remind UNICEF of posts she had applied for. She has not as yet received a reply to her email.

#### **Applicant's submissions**

10. The Applicant submits that nearly three months have passed since her separation but she has not received any communication from UNICEF regarding posts she could be placed in. Consequently, in light of paragraphs 51 and 52 of Order No. 068 (NBI/2014), she is seeking clarification from the Tribunal on the following:

- a) That further to Order No. 068, UNICEF is obliged to urgently place her in a suitable vacant post; and
- b) The time frame within which UNICEF must offer her a suitable post.

#### **Respondent's submissions**

11. The Respondent avers that the current Application is not receivable because the Applicant failed to file a timely Application pursuant to article 2.1 of the UNDT Statute. The Respondent submits that the Applicant should have filed an application before the Tribunal on or by 3 July 2014 and cannot be allowed to substitute an application for interpretation of a judgment for an application on the merits.

12. The Respondent further contends that pursuant to article 12.3 of the UNDT Statute, the Tribunal is not competent to interpret the meaning or scope of

an “Order” on an application for suspension of action. The Respondent submits that the Tribunal can consider an application filed by a party for interpretation of the meaning of a “final judgment” but not an “order”. Noting that the Order on the application for suspension of action was not a “judgment”, for the Applicant to have received a final judgment, she was required to file a timely application on the merits of her case but she did not do so. Since there is no “final judgment” as required under article 12.3 of the UNDT Statute, the Tribunal has no jurisdiction over the current Application for Interpretation.

13. On the merits of this Application, the Respondent submits that he has made good faith efforts to search for available posts for which the Applicant is suitable and has the required core and functional competencies.

### **Considerations**

14. This is an Application for the interpretation of Order No. 068 (NBI/2014) issued by the Tribunal on 2 April 2014. Article 12.3 of the UNDT Statute reads:

Either party may apply to the Dispute Tribunal for an interpretation of the meaning or the scope of the final judgement, provided that it is not under consideration by the Appeals Tribunal.

15. Article 30 of the UNDT Rules of Procedure sets out the procedural requirements for such an application and it reads:

Either party may apply to the Dispute Tribunal for an interpretation of the meaning or scope of a judgement, provided that it is not under consideration by the Appeals Tribunal. The application for interpretation shall be sent to the other party, who shall have 30 days to submit comments on the application. The Dispute Tribunal will decide whether to admit the application for interpretation and, if it does so, shall issue its interpretation.

16. In the present matter the Applicant is requesting interpretation of an order as opposed to a final judgment.

17. The submission of Respondent that the Application is not receivable on the ground that the Applicant has not filed an Application on the merits ignores the purport of an interlocutory order. In most national jurisdictions, the conversion of an interim order into an interlocutory one is predicated on the filing of a substantive case. This is not the situation obtaining under the UNDT Rules of Procedure. The Tribunal therefore holds that an application for the interpretation of an order relative to an application for suspension of action is receivable notwithstanding the non-filing of a substantive application.

18. For practical purposes the Dispute Tribunal has classified decisions on suspension of actions as orders. But whether such decisions are labeled orders or judgments the fact remains that they determine substantial issues that emerge in relation to suspensions of action. It is commonplace that orders that determine suspension of actions may run into many pages and are elaborate both factually and on matters of law. Though they are labeled orders they are akin to judgments.

19. There is nothing in the Statute or the Rules of Procedure of the Tribunal that governs interpretation of orders. Nor is there any provision in the UNDT Statute or Rules of Procedure that expressly prohibits interpretation of a decision that is labeled “Order”. Should a party who requests an interpretation of an order on suspension of action be therefore denied the opportunity of filing for an interpretation of such an order and have an interpretation if the circumstances so warrant?

20. The jurisdiction of the Tribunal is not limited to issuing final judgments that may be appealed or not but equally to the issuing of interlocutory orders. As a rule interlocutory orders are not subject to appeal but the United Nations Appeals Tribunal (UNAT) has opened the door wide open for appeals against interlocutory orders.

21. In the case of *Warren* 2010-UNAT-059, UNAT ruled as follows on its mandate where the law is silent on a substantive point:

The Appeals Tribunal acknowledges that General Assembly resolution 63/253 affirmed that the tribunals “shall not have any

powers beyond those conferred under their respective statutes”. The same resolution, however, also emphasized that the new system of administration of justice is “independent, transparent, professionalized, adequately resourced and decentralized” and is “consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members”. For the Appeals Tribunal to hold that no interest can be awarded would not be reconcilable with the tribunals’ mandates. Moreover, the award of interest by the tribunals is necessary to ensure that payments to staff are made by the Organization.

22. The Tribunal holds that, since an order is subject to an appeal as decided by UNAT in the absence of a specific right of appeal; since the silence of the law should not deprive a party of his/her due process right of having an issue that that party brought before the court clarified; since the judges of the UNDT are enjoined by the Code of Conduct<sup>1</sup> governing them to keep abreast of international human rights norms, the Tribunal will in the exercise of the powers vested in it by articles 19 and 36 of the Rules of Procedure, hold that a party requesting an interpretation of an order for suspension of action should not be denied that right.

23. In *Fiala* UNDT/2014/067, this Tribunal held that “[T]here are two stages in the procedure for the interpretation of a judgment. First, it must be determined whether it is receivable and secondly if it is receivable whether it should be interpreted”. It was also held in the same case that once an application is receivable “[The] next step is to determine whether there is any justification or cogent reason to proceed to an interpretation on the issues raised by the Applicant”.

### **Conclusion**

24. The Tribunal holds that this Application for Interpretation is receivable. However the Application in the present matter is more akin to a request for legal advice than a request for interpretation and cannot be granted.

25. The Application is rejected.

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<sup>1</sup> General Assembly Resolution 66/106, 13 January 2012.

*(Signed)*

Judge Vinod Boolell

Dated this 30<sup>th</sup> day of October 2014

Entered in the Register on this 30<sup>th</sup> day of October 2014

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi