UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NY/2012/012 UNDT/NY/2013/015 UNDT/NY/2013/096
Order No.:	94 (NY/2014)
Date:	24 April 2014
Original:	English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

WISHART

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON 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.

Procedural background

Order No. 181 (NY/2013) on interim measures

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. At para. 64 of the Order, the Tribunal entreated the parties to "explore informal resolution of this matter and the two related cases in the interim".

Initial mediation efforts

3. By Orders No. 223 (NY/2013), No. 224 (NY/2013), and No. 225 (NY/2013), the Tribunal referred the three matters to mediation. By Order No. 223 (NY/2013), the interim relief granted by Order No. 181 (NY/2013) was extended further by

consent, pending mediation efforts. By letter dated 4 November 2013, the Office of the Ombudsman for the United Nations Funds and Programmes informed the Tribunal that the mediation efforts were not successful.

4. On 5 November 2013, the Respondent filed a submission stating, *inter alia*, that "he feels necessary to state for the record that UNDP no longer agrees to an extension of [interim] measures". The Respondent also requested, in the event the interim measure were to continue, an expedited hearing on the merits in all three cases, adding that "the Respondent will take no action to separate the Applicant pending such clarification [by] the Tribunal".

5. On 6 November 2013, the Applicant filed a submission requesting the Tribunal "to refer the [three] cases to the Mediation Division of the United Nations Office of the Ombudsman and Mediation Services to pursue all available mediation resources". She further requested the Tribunal to further extend the interim relief previously ordered. The Applicant objected to what she described as the Respondent's "implied request to merge the cases into one, as the cases concern[ed] three discrete contested administrative decisions, which [were] supported by separate facts, issues, and legal arguments".

Order No. 292 (NY/2013)

6. By Order No. 292 (NY/2013), the Tribunal extended the interim relief granted by Order No. 181 (NY/2013) "until such further Order as may be deemed appropriate by the Tribunal". The Tribunal further directed the parties to attend a case management discussion on 13 November 2013.

Case management discussion of 13 November 2013

7. On 13 November 2013, the Tribunal held a case management discussion, which was attended by Counsel for both parties in person. Following the case

management discussion, on 15 November 2013, the Tribunal issued Orders No. 315–317 (NY/2013), directing the parties to file further submissions on the following issues:

> a. Whether the three cases should be heard together in a joint hearing;
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> b. Whether the present case should be given expedited consideration;
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> c. Showing cause as to whether the interim measure ordered by Order No. 181 (NY/2013), and extended by Orders No. 223 (NY/2013) and 292 (NY/2013), should be discharged, particularly in view of the requirements of art. 10.2 of the Statute.

8. The parties' submissions were duly filed on 25 November 2013.

Order No. 332 (NY/2013)

9. In his submissions filed on 25 November 2013, the Respondent requested the discharge of the interim measures pending the expedited disposal of the matters on the grounds, *inter alia*, that the Applicant was being paid whilst not discharging any functions, and it was unlikely Respondent would recover these costs should he prevail on the merits.

10. On 5 December 2013, the Tribunal issued Order No. 332 (NY/2013), rejecting the Respondent's request to discharge interim relief ordered by Order No. 181 (NY/2013) and extended by Orders No. 223 (NY/2013) and 292 (NY/2013), on the basis that the *status quo* prevailed, but stating also:

> However, the interim measure prescribed under art. 10.2 is to provide "temporary" relief to a party. The nature and duration of such temporary relief will depend on the facts and circumstances of each particular case. In this case, the Tribunal is mindful of, *inter alia*, the apparent dispute of facts in the matters, the deteriorating employment relationship, the continuing cost to the Respondent and

> the continuing losses that may be sustained by the Applicant. The Applicant has been in the Respondent's employment for 34 years and is apparently four years away from retirement, and the patties appear to be in an irreconcilable relationship. Although the expediting of cases above and beyond the chronological listing of pending matters before the Tribunal is not desirable as a general rule, in all the particular circumstances of this case, the Tribunal finds it appropriate to order that the present three cases be subject to an order for combined proceedings and that the three cases be heard on an expedited basis on dated in the first half of February 2014 as agreed by the parties.

11. Therefore, the Tribunal further directed that Cases No. UNDT/NY/2012/012, UNDT/NY/2013/015, and UNDT/NY/2013/096 be heard jointly and on an expedited basis. The parties were ordered to file, by 19 December 2013, an agreed list of witnesses they intended to call; a joint proposal as to the dates of hearing in the first half of February 2014; and an agreed bundle of documents (indexed and paginated).

Parties' proposed list of 29 witnesses

12. On 19 December 2013, the parties filed a joint submission, submitting, *inter alia*, a list of 29 witnesses. No information has been provided as to the nature of their evidence or their relevance to any particular issue to any one of the three cases.

Order No. 2 (NY/2014)

13. On 8 January 2014, the Tribunal issued Order No. 2 (NY/2014), stating that, in view of the extraordinary number of witnesses proposed by the parties in this case, it was apparent that the hearing on the merits could not proceed in the first half of February 2014, as originally anticipated. The Tribunal stated that, in all likelihood, based on its prior experience with hearings and given its existing caseload, the hearing in the form envisaged by the parties, with 29 proposed witnesses, would require many weeks if not months, depending on the availability of witnesses. The Tribunal further stated that the need to call each of the 29 proposed witnesses

was not explained to the Tribunal. The Tribunal found it necessary to defer the proposed hearing that was originally anticipated to take place in the first half of February 2014. Instead, the Tribunal directed that the parties attend a case management hearing on Tuesday, 21 January 2014, at which both Counsel and the Applicant would be required to appear in order to assist the Tribunal with determining how to proceed with these cases.

Case management discussion rescheduled

14. On Monday, 20 January 2014, the New York Registry notified the parties that the case management discussion set for 21 January 2014 would be postponed, on account of unavailability of the Presiding Judge due to ill health.

Order No. 15 (NY/2014)

15. On 21 January 2014, the Tribunal issued Order No. 15 (NY/2014), directing the parties to attend a case management discussion on Tuesday, 28 January 2014. However, the same day Counsel for the Respondent filed a motion requesting that the case management discussion be re-scheduled as Counsel was not available between 27 January and 5 February 2014. Counsel for the Applicant also communicated to the New York Registry that she was not available prior to 3 February 2014.

Order No. 17 (NY/2014)

16. On 22 January 2014, the Tribunal issued Order No. 17 (NY/2014), stating that, in view of the difficulties with the scheduling of the case management discussion, it found appropriate to adjourn the case management discussion set for 28 January 2014. In order to expedite preparation for a hearing on the merits, the parties were directed to file a joint submission with, *inter alia*, a revised agreed list of witnesses and proposing not more than five days for a hearing on the merits,

preferably during the period of 3 to 14 March 2014 or, alternatively, the period of 8 to 18 April 2014.

17. The Tribunal further reiterated its view that it would be in the interests of both parties to attempt informal resolution of these matters, including, if at all possible, through the Office of the United Nations Ombudsman and Mediation Services. The parties were directed to report on any prospect of informal resolution by 19 February 2014.

Joint submission of 19 February 2014

18. On 19 February 2014, the parties filed a joint submission with revised lists of their witnesses. The Respondent requested that the cases be heard "at the first available opportunity on or after 3 March 2014". The Applicant stated that, "based on the availability of the Applicant and Applicant's Counsel", she was available for a hearing on the merits on 8–18 April 2014.

Case management discussions of 12 and 18 March 2014

19. On 12 and 18 March 2014, the Tribunal held case management discussions with a view to preparing the cases for a hearing on the merits and exploring the possibility of amicable resolution. Mr. Levine appeared for the Respondent. Ms. Lewis appeared as Counsel for the Applicant, who is also her mother, and they both also attended the case management. The parties agreed to attempt informal resolution of the three cases, on the understanding that the undersigned Judge would be available to assist the parties, not on the terms being negotiated, but on the form in which the final settlement agreement may be placed before the Tribunal (i.e., under seal, etc.).

20. In the late afternoon of 18 March 2014, following *inter partes* discussions, the parties notified the Tribunal that the terms of settlement had been agreed in

principle, and the Tribunal directed, with the agreement of the parties, that settlement should be finalized and executed by 3 p.m. on 28 March 2014.

Applicant's motion dated 23 March 2014

21. Having been previously advised that settlement had been reached, the Tribunal was therefore taken by surprise when, on 23 March 2014, the Applicant filed a motion entitled "Applicant's motion for judicial intervention regarding the parties proposed settlement agreement". In her motion, the Applicant went into considerable detail regarding some aspects of the draft proposed settlement agreement, stating that parts of the Respondent's proposals contradicted UNDP's Human Resources Policy. She requested the Tribunal to "intervene in this matter to provide assistance to the parties as it pertains to said terms of the proposed settlement agreement".

Case management discussions of 25 March 201

22. On 25 March 2014, the Tribunal held further case management. Both Counsel and the Applicant participated by telephone. During the case management discussion, the undersigned Judge indicated to the Applicant, *inter alia*, that it was inappropriate to place before the Tribunal some of the terms of the draft confidential settlement which was in the process of negotiations between the parties, ostensibly to seek legal clarifications by the Tribunal, when the Applicant was legally represented by Counsel who is in a position to advise her client accordingly. The undersigned Judge also placed Counsel for the Applicant on notice that her and her client's disrespectful and disruptive conduct during the case management discussion—which included, on the part of the Applicant, emotional outbursts, interruptions, screaming and accusations of injustice—was inappropriate, and may warrant a citation for contempt. On Applicant's Counsel's plea that settlement was still under consideration, in the interests of finality, at the conclusion of the case management

hearing the undersigned Judge directed that the Applicant's Counsel was to revert to the Respondent's Counsel to finalize the previously-agreed settlement by 10 a.m. the following day (Wednesday, 26 March 2014), as the legal clarifications, if any were indeed warranted, had been made.

Respondent's motions of 26 March 2014 and 1 April 2014

23. On 26 March 2014, the Respondent filed a motion for emergency directions, stating that despite the Tribunal's order made at the case management discussion of 25 March 2014, he received no further communications from the Applicant's Counsel by the deadline of 10 a.m., but was informed by the UNDP Career Transition Unit of an email from the Applicant herself dated 25 March 2014 (sent at 7:36 p.m.), stating that the Applicant "ha[d] been placed on Certified Sick Leave by [her] physician". At 11:17 a.m. on 26 March 2014, Counsel for the Applicant sent an email to Counsel for the Respondent, stating: "My client is very ill and is currently on medical leave. Resultantly, I am unable to provide Applicant's terms of the proposed settlement agreement at this time". The Respondent contends that this notification by Counsel clearly belies the Applicant's own email of 25 March 2014.

24. In his motion of 26 March 2014, the Respondent sets out the difficulties encountered in the attempts at informal resolution and/or setting the matters down for consideration, expressing the view that the Applicant is abusing the court process, and requesting, *inter alia*, "the immediate discharge of the interim measures imposed by Order No. 181, or such directions as the Tribunal deems appropriate". The Respondent further stated that "should the Learned Judge feel unable to hear this case on the merits, the Respondent respectfully submits that she remains seized of the interim measures imposed by Order No. 181 and therefore competent to rule on their continuation or discharge, even in the event the case is to be transferred to another Judge of the Tribunal for any hearing on the merits".

25. On 1 April 2014, the Respondent filed a motion for urgent directions, stating that the scarce documents provided by the Applicant to UNDP regarding her sick leave were open-ended and provided no information as to the duration of sick leave, and did not satisfy UNDP's criteria for the certification of sick leave. The Respondent further submitted that the Applicant and her Counsel were acting in wilful defiance of the Tribunal's order made on 25 March 2014 to revert to the Respondent's Counsel by 10 a.m. the following day to finalize the settlement that had been agreed upon previously. The Respondent stated that the certificate attested solely to the Applicant having fainted, with no other diagnosis or prognosis. The Respondent stated that the Applicant must be deemed to have unilaterally withdrawn from the settlement process and should not be permitted to enjoy the benefits of the interim measures any longer.

Tribunal's directions of 2 April 2014

26. On Wednesday, 2 April 2014, the Tribunal instructed the Applicant to respond to the Respondent's motions of 26 March and 1 April 2014. The parties were also instructed to attend a case management discussion on Monday, 7 April 2014, at 2:30 p.m.

Applicant submission dated 4 April 2014

27. On 4 April 2014, the Applicant's Counsel replied to the Respondent's motions of 26 March and 1 April 2014, stating, *inter alia*, that her client is not in a position to make decisions regarding her three pending cases "as she is undergoing medical treatment for major depression disorder that is a direct result of the situation arising from these three cases". Counsel stated that, during the 25 March 2014 telephone case management discussion, the Applicant "suffered a severe anxiety attack and then fainted". Counsel stated that the Applicant is still open to the settlement process, and will resume her participation in it "when [she] is cleared

by her physician and United Nations Medical Services". She submitted that the interim relief in her case should be maintained and she "continues to demonstrate that she will suffer more harm than the Respondent if the interim relief is discharged". Counsel for the Applicant further states that "no urgency would be created by the Applicant as the Applicant believes that there is no need for your Honour's recusal, and thus, would oppose any such motion if they were to be made by the Respondent".

28. The Tribunal notes that nowhere in her submission of 4 April 2014 did the Applicant's Counsel indicate that she was unable to take instructions from, or to advise, her client who is also her mother. She contends that the Applicant is not in a position to make decisions regarding the settlement, yet can and has decided she is still open to the settlement process, but will resume her participation at some indefinite unspecified time. This is despite the fact that both the Applicant and her Counsel had clearly confirmed to the Tribunal that the terms of the settlement had been agreed in principle on 18 March 2014.

29. On 4 April 2014, Counsel for the Applicant also sent an email to the New York Registry, confirming her attendance at the case management discussion scheduled for Monday, 7 April 2014, at 2:30 p.m.

Applicant's email of 7 April 2014

30. At 10:08 a.m. on Monday, 7 April 2014, less than five hours before the scheduled case management discussion, Counsel for the Applicant sent an email stating:

> Dear Registry,
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> Regrettably, I will not be able to attend the Case Management Discussion scheduled for today, Monday 7 April 2014 at 2:30pm due to a family emergency. My apologies to the Tribunal for any inconvenience.

31. No further information was provided by Counsel for the Applicant explaining the untimeliness of her email or regarding the nature or duration of the family emergency. Furthermore, Counsel did not request leave of the Tribunal for her absence, nor offer any alternative to attend by telephone or other means including the attendance of substitute Counsel, nor suggest her first available date to appear before the Tribunal.

Case management discussion of 7 April 2014

32. At the case management discussion held on 7 April 2014, Counsel for the Respondent appeared in person, there being no appearance by the Applicant, her Counsel, or any substitute Counsel. The Tribunal noted that, in the absence of the Applicant and her Counsel and in view of the Respondent's motion, including the urgent request for discharge of interim relief, the Tribunal would only ascertain of the Respondent the *status quo* of the matter, discussion of all pending matters having being rendered impossible by the absence of the Applicant's Counsel.

Order No. 72 (NY/2014)

33. Having heard nothing further from the Applicant or her Counsel, on 16 April 2014, the Tribunal issued Order No. 72 (NY/2014), directing the parties to appear at a case management hearing on 22 April 2014. The Tribunal stated that, as both parties have indicated their desire for the undersigned Judge to remain seized of this matter, the purpose of the case management was to provide the parties with a final opportunity to resolve the matter amicable, failing which the Tribunal would consider the issues of whether, *inter alia*, the undersigned Judge should remain seized of the matter, the motion for the discharge of the interim measures, and other outstanding matters, including those arising from the telephonic case management discussion of 25 March 2014. Counsel for both parties were also ordered to confer

prior to the case management discussion in order to attempt to bring all outstanding matters to conclusion.

Applicant's submission of 21 April 2014

34. On 21 April 2014, the Applicant's Counsel filed a submission stating that she had provided the United Nations Medical Division with documents stating that the Applicant was ill and therefore should be placed on sick leave effective 25 March 2014 until 26 May 2014, at which point she would be re-evaluated. The Applicant asked leave to file a motion to stay the proceedings due to her illness. No supporting documentation was attached to this submission.

Case management hearing of 22 April 2014

35. Pursuant to Order No. 72 (NY/2014), on 22 April 2014, the Tribunal held a case management discussion, which was attended by both Counsel in person. It was only upon prompting by the Tribunal that Counsel for the Applicant apologized for not attending the case management discussion of 7 April 2014, without giving sufficient notice or reasons for her non-attendance, and for what transpired at the telephonic case management discussion of 25 March 2014. Counsel for the Applicant stated that the Applicant was ill and had submitted the relevant documents to the United Nations Medical Services Division. She explained that she was seeking suspension of the proceedings, initially until 27 May 2014, and until further date thereafter, if needed. Counsel for the Applicant was unable to provide the Tribunal with any date after May 2014 when these cases could possibly be listed for a hearing on the merits.

36. The Applicant in essence requested suspension of the proceedings, until at least 26 May 2014 or indefinitely, and stated that she could not commit to any hearing dates for expedited proceedings. The Respondent argued that as long as

the interim measures remained in place there was no incentive for the Applicant to finalize this matter. He requested the discharge of the interim measures particularly as the Applicant was in defiance of the order of 25 March 2014 and her undertaking to finalize and return the settlement agreement to the Respondent. The Applicant's Counsel on the other hand said that her client would suffer irreparable harm if the interim measures were to be discharged. The Respondent's Counsel reiterated that Applicant's Counsel found herself in the invidious position as witness for her mother, as well as her Counsel, there being no medical evidence before the Tribunal to support her submissions. Counsel for the Respondent stated that the Applicant continued to benefit from the ongoing interim relief imposed by the Tribunal, without making any good faith efforts to finalize the settlement discussions. Counsel for the Respondent stated that, although the Tribunal was accommodating in trying to assist the parties with bringing this matters to closure, because of the Applicant's conduct in these proceedings there was no prospect in sight of these cases coming to any sort of resolution in the foreseeable future. According to the Respondent, the Applicant is showing no urgency in the prosecution of her applications, whilst continuing to benefit from the interim relief imposed by the Tribunal as a temporary measure. In all other respects, both Counsel relied on the submissions in their previous filings.

37. Both Counsel having reiterated during their submissions that the sitting Tribunal remain seized of these matters, including the motion for discharge of the interim measure, the Tribunal informed the parties that it would consider, as urgently as possible, the parties' submissions regarding the discharge of the interim relief.

Consideration

38. The Tribunal now turns to the request to discharge the interim relief previously ordered by the Tribunal, taking into account the parties' submissions.

39. Orders on interim measures pending proceedings are governed by art. 10.2 of the Tribunal's Statute, which provides that the Tribunal may order an interim measure to provide temporary relief to either party, only if it is satisfied that all three requirements of that article have been met—i.e., that the case is of particular urgency, that the implementation of the contested decision would cause irreparable damage, and that the decision appears *prima facie* to be unlawful.

40. An interdict or interim measure is an equitable discretionary relief which is granted by the Tribunal with a great degree of measured caution taking into account the balance of interests and convenience. It is temporary in nature and is usually in place as long as a situation prevails until the final outcome can be ascertained. The nature and duration of such temporary relief will depend on the facts and circumstances of each particular case. It places a great responsibility on the Tribunal to determine the matter with a view to finality and to expedite the proceedings, thus placing the duration of the measures within the direct control of the Tribunal.

41. Interim interdicts can, in appropriate cases, be granted for lengthy periods of time or may be extended to protect a *prima facie* right until, for example, an action has been finalized. But they can also be discharged when there is a change in circumstances, on the lack of *bona fides* or good faith, when the interim measure is no longer practical, or when the balance of convenience has shifted, thus affecting, *inter alia*, the criteria for the grant of interim relief.

42. There are cases where it may be inappropriate to continue interim measures and their particular urgency is that the Tribunal must give final judgment with a minimum of delay, depending on the circumstances. Where the continuation of an interim measure is based solely on the fact of a difficulty or encumbrance on the part of either party, the proceedings are taken beyond the ambit and control of the Tribunal which bears the responsibility to ensure measures are not in place permanently or for an unreasonable period of time, depending on the circumstances.

43. In this instance, the Tribunal previously rejected the motion for discharge of interim measures made by the Respondent by Order No. 332 (NY/2013), which Order was clearly premised on the basis that the proceedings be expedited to a final outcome, as interim measures are only temporary in nature, and in light of the particularities of these cases. The parties thereafter engaged in settlement discussions, and agreed the terms of settlement, but no agreement has been executed and there is no certainty as to when this matter could be possibly heard on the merits. In the interim, the Respondent continues to pay the Applicant's monthly salary although she is not discharging any functions.

44. Having considered the matter carefully, the Tribunal finds that the facts and circumstances in these cases have changed such as to require that the interim relief be discharged. This finding is based on a number of considerations, namely:

a. Counsel for the Applicant has confirmed that her client is not available indefinitely for a continuation of the proceedings. The Applicant's continued absence, whether fortuitous or not, is frustrating the resolution of the case, and the interim measures cannot remain in place due to the changed circumstances and the practicalities involved. The proceedings cannot be stayed for an indeterminate length of time while the suspension of action is in place. The Applicant's apparent ill-health or inability to engage in settlement discussions or the proceedings indefinitely frustrates any finalization of the matter. This means that it is possible that all settlement discussions and any expedited proceedings, which were at the Applicant's insistence, are placed in abeyance indefinitely. This puts the duration of the interim measure solely in the control of one party and not the Tribunal. This means the interim measure is no longer temporary but must continue until such time as the Applicant is available to join the proceeding, whenever that may be.

b. If indeed the Applicant's Counsel's assessment of her mother's medical condition is correct, then it is patently clear that the Applicant is unable to return to work indefinitely even if she were to be suitably placed by UNDP. Further, the Applicant's indefinite inability to report for duty means that she may be unfit for duty, which in itself constitutes a ground for termination.

c. The Applicant has apparently applied for many positions within UNDP, without success, and cannot remain on a search period indefinitely. More than a reasonable time has expired for the search period or for efforts to place the Applicant in any position, particularly in a climate of downsizing. If the Respondent has not complied with procedures relating to the search period and placement of the Applicant, her relief will be in the form of damages.

d. The Applicant's Counsel maintained that there were several indicators previously from medical documentation that the Applicant should have been removed from her working environment. It does not appear from the current state of affairs that a return to the working environment is plausible, and is in fact rendered impractical by this admission.

e. The Tribunal finds that the balance of convenience has shifted, also in the context of the statutory requirements for interim measures. The imposed interim relief is having a disproportionate impact on the Respondent, who has paid salary for nine months to an individual who is not discharging any functions, and for whom no suitable placement could be found after several months.

f. It is an established general principle of employment law that courts generally would not order reinstatement or placement where a relationship

has broken down irretrievably. It is clear that any employment relationship, if it subsists at all, has irretrievably broken down as the allegations of harassment and abuse extend across the entire UNDP. Furthermore, the Respondent's has already submitted that he would elect the payment of monetary compensation as an alternative to specific performance or rescission. The Applicant thus has an available alternative remedy in damages, as reinstatement or reengagement is highly unlikely.

g. Further, with respect to the requirements of particular urgency and irreparable harm, the Tribunal finds that, the matter having been pending before the Tribunal for almost one year, the Applicant should have made sufficient appropriate arrangements to mitigate any possible urgency or irreparable harm. The duty to mitigate one's losses is a fundamental doctrine within both international and domestic legal systems (*Tolstopiatov* UNDT/2011/012). In particular, considering that interim measures imposed have continued well beyond a reasonable time in these particular circumstances, the Applicant has had sufficient time to make appropriate adjustments and to take mitigating steps to avoid or diminish the negative effects of the contested decision, such as, *inter alia*, searching for jobs elsewhere outside of UNDP (*A-Ali et al.* Order No. 220 (NY/2011)). The Tribunal also notes that it was submitted by the Respondent and not contested by the Applicant that she is already entitled to after-service health insurance. Further, should the Applicant prevail on the merits, appropriate compensation orders will be made by the Tribunal.

45. Accordingly, in all the above circumstances, the Tribunal finds it appropriate to discharge the order on interim measures, first made by Order No. 181 (NY/2013) and subsequently extended by Orders No. 223 (NY/2013) and 292 (NY/2013). Whether the parties continue to attempt to resolve the matter informally is not

currently a matter for the Tribunal, nor is the need for any expeditious consideration of these matters.

46. The Respondent has shown good faith with regard to his compliance with the Tribunal's orders throughout the period of interim relief and shall ensure that all appropriate benefits and entitlements lawfully due to the Applicant be duly processed.

47. The present discharge of interim measures does not affect any future findings as to the lawfulness or otherwise of the contested decision.

IT IS ORDERED THAT:

48. 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.

49. The Applicant's motion dated 21 April 2014 seeking leave to submit a motion to stay the proceedings is rejected.

(*Signed*)

Judge Ebrahim-Carstens

Dated this 24th day of April 2014