



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2020/050

Order No.: 1 (NY/2021)

Date: 4 January 2021

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

DETTORI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON MOTION FOR INTERIM
MEASURES**

Counsel for Applicant:

Omar Yousef Shehabi, OSLA

Counsel for Respondent:

Alister Cumming, UNICEF

Matthias Schuster, UNICEF

Introduction

1. On 31 December 2020, the Applicant, a staff member of the United Nations Children’s Fund (“UNICEF”), filed an application contesting the decisions to “reassign Applicant through UNICEF’s staff mobility and rotation policy while Applicant was constructively unassigned, was on medical leave, and had a pending request for deferment of rotation on medical grounds” and “to separate the Applicant for abandonment of post for declining the assignment”.

2. Later on the same date, 31 December 2020, the Applicant filed a motion for interim measures seeking suspension of the decision to separate her from the Organization for abandonment of post.

3. Given that the motion for interim relief was filed at 4.30 p.m. on 31 December 2020 and that the decision to separate the Applicant was to be implemented on that same day, by email from the New York Registry, the Duty Judge ordered the suspension of the separation decision until the Tribunal would have time to review the matter.

4. On 4 January 2021, the Respondent opposed the motion for interim measures stating, among other arguments, that the Tribunal lacks jurisdiction to grant the motion because the separation decision is an appointment decision and, therefore, outside of the scope of art. 10.2 of the Statute of the Dispute Tribunal.

Consideration

5. In essence, the Applicant argues that she declined the decision to reassign her, following which the Administration initiated the process to separate her for abandonment of post. The Applicant claims that the decision to separate the Applicant for abandonment of post is unlawful because the decision to reassign her is unlawful.

6. The Applicant further states that the motion for interim measures is urgent because the separation decision was to be implemented on 31 December 2020. She further claims that her imminent separation would cause irreparable harm.

7. The Respondent responds that the decision to separate a staff member for abandonment of post constitutes a decision on appointment for which the Tribunal may not order temporary relief under art. 10.2 of its Statute.

8. The Respondent recalls that in *Igbinedion* 2011-UNAT-159 (para. 18), the Appeals Tribunal defined administrative decisions concerning appointment as those encompassed in art. 10.5(a) of the Dispute Tribunal's Statute for which alternative compensation must be ordered when the contested decision is rescinded.

9. The Respondent states further that in *El Shaer* 2019-UNAT-942, the Appeals Tribunal rescinded a decision separating the applicant for abandonment of post and set an amount of compensation as alternative to the rescission. The Respondent concludes that the Appeals Tribunal considers that decisions of separation for abandonment of post constitute appointment decisions and are therefore excluded from the scope of art. 10.2 of the Dispute Tribunal's Statute.

10. The Tribunal is persuaded by the Respondent's argument. Based on the cited Appeals Tribunal jurisprudence, it is clear that the Appeals Tribunal counts separation for abandonment of post among the appointment decisions which are excluded from interim relief under art. 10.2 of the Tribunal's Statute.

11. Accordingly, the Applicant's motion for suspension of the decision to separate her for abandonment of post under art. 10.2 of the Statute of the Dispute Tribunal is not receivable.

12. In light thereof,

IT IS ORDERED THAT:

13. The motion is rejected.

(Signed)

Judge Joelle Adda

Dated this 4th day of January 2021