



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2011/078

Judgment No.: UNDT/2011/176

Date: 13 October 2011

Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar:

subject of an ongoing management evaluation, where the *decision appears prima facie to be unlawful*, in cases of *particular urgency* and where its implementation would cause *irreparable damage* [emphasis added].

2. The Registrar shall transmit the application to the respondent.
3. The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.
4. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.
5. It is clear from the text of the Rules of Procedure that the Tribunal is under a duty to transmit a copy of the suspension of action application to the respondent and to issue a decision within five days.
6. There is no requirement, either under art. 2.2 of the Statute or art. 13 of the Rules of Procedure, for there to be a respondent's response before the applicant's request is decided.
7. Article 2.2 of the Statute is intended to provide an uncomplicated and cost-effective procedure for temporarily suspending, in appropriate cases, an

a. A P-3 level position at the Office of Human Resource Management (“OHRM”) from 6 October 2009 to 30 June 2010. The employment ended with her receipt of all appropriate terminal benefits with no continuing employment relationship with the United Nations.

b. The second period of employment was at the P-4 level at the Department of Field Service (“DFS”) with effect from 15 July 2010.

14. ST/AI/2010/4 of 27 April 2010 is the administrative instruction governing temporary appointments. Section 15.2 provides:

Under no circumstances shall the continuous period on a temporary appointment exceed 729 days.

15. It appears to the Tribunal that, on the facts, as pleaded in the application for suspension of action and the analysis of the legal principles advanced by her representative, Mr. Danquah, she has satisfied the test that the decision *appears* prima facie to be unlawful. Whether that would be the conclusion after the substantive issues are fully examined and argued remains for determination if the suspension of action application is followed by a substantive claim.

16. The issues which require full argument at a substantive hearing include the following:

- a. What is the proper construction of Section 15.2 of ST/AI/2010/4 as to a continuous period of employment not exceeding 729 days?
- b. Did the break in service from 30 June 2010, when the first period of employment ended and 15 July 2010 when the second period began, constitute a break in continuity within the meaning of ST/AI/2010/4?
- c. Is there an apparent confusion between section 2.5(b), which refers to “cumulative length of service” and section 15.2 which refers to a continuous period of employment not exceeding 729 days?

21. The Respondent is ordered to suspend the implementation of the contested decision pending management evaluation.

(Signed)

Judge Goolam Meeran

Dated this 13th day of October 2011

Entered in the Register on this 13th day of October 2011

(Signed)

Hafida Lahiouel, Registrar, New York