



## **Introduction**

1. By application filed on 19 April 2018, the Applicant, a Senior Trade Promotion Officer at the International Trade Centre, challenges the disciplinary sanction of separation from service with compensation in lieu of notice and without termination indemnity.
2. In his application, the Applicant requests the Tribunal, as an interim measure, to suspend the enforcement of the decision to separate him pending consideration of his application.
3. The application was served on the Respondent on 19 April 2018.

## **Consideration**

4. Having reviewed the Applicant's motion for interim measure, the Tribunal finds that it raises a preliminary issue of jurisdiction which may be addressed *proprio motu* and without hearing the Respondent (see *Gehr* 2013-UNAT-313, *Christensen* 2013-UNAT-335).
5. An application for interim measure pending the determination of a case is provided for under art. 10.2 of the Tribunal's Statute, which provides that (emphasis added):

At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, *except in cases of appointment, promotion or termination*.

6. Article 14.1 of the Tribunal's Rules of Procedure contains a similar provision.
7. It follows from the wording of art. 10.2 of the Tribunal's Statute and art. 14.1 of its Rules of Procedure that the Tribunal does not have jurisdiction to

suspend the proceedings pending determination of a case when they relate to appointment, promotion or termination.

8. The term “termination” is defined in staff rule 9.6 as follows:

**Termination**

**Definitions**

(a) A termination within the meaning of the Staff Regulations and Staff Rules is a separation from service initiated by the Secretary-General.

...

**Reasons for termination**

(c) The Secretary-General may, giving the reasons therefore, terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance with the terms of the appointment or on any of the following grounds:

...

(iv) Disciplinary reasons in accordance with staff rule 10.2 (a) (viii) and (ix).

9. Pursuant to the above definitions, the Applicant’s separation from service under staff rule 10.2(a)(ix) constitutes a termination for the purpose of art. 10.2 of the Tribunal’s Statute. The Tribunal is therefore not competent to review the request for interim measure.

10. The Tribunal notes the Applicant’s argument that he may suffer irreparable harm if the Tribunal does not suspend the contested decision because of the Organization’s practice not to reintegrate staff members following their separation, even if the decision is rescinded, and its opting for the payment of the alternative compensation which the Tribunal is mandated to order pursuant to art. 10.5(a) of its Statute. This matter was notably addressed in *Nakhlawi* UNDT/2016/204 (see paras. 102-107). The Tribunal is thus well aware and effectively concerned that the Applicant may not be reintegrated in his position if it were to find that the contested decision was unlawful. However, the possibility

of reintegration exists and is provided for in the rules and the Tribunal cannot go beyond the jurisdiction granted to it in art. 10.2 of its Statute.

11. That being said, the Tribunal is mindful of the practical consequences of the contested decision on the Applicant's professional and personal life and, in accordance with its practice in such circumstances, it will deal with the matter expeditiously.

IT IS ORDERED THAT:

12. The Applicant's motion for interim measure is rejected.

*(Signed)*

Judge Rowan Downing

Dated this 19<sup>th</sup> day of April 2018

Entered in the Register on this 19<sup>th</sup> day of April 2018

*(Signed)*

René M. Vargas M., Registrar, Geneva