



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2014/087

Order No.: 003 (NY/2015)

Date: 8 January 2015

Original: English

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Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

FAYE

v.

## Introduction

1. On 30 December 2014, the Applicant, a Staff Representative at the United Nations Joint Staff Pension Fund (“UNJ

management evaluation of the implementation of the JO. This case was registered as *Faye* UNDT/NY/2014/074.

6. On 18 December 2014, the MEU informed the Applicant that, in their view, this matter did not constitute a reviewable administrative decision. The MEU concluded that the Applicant's request for management evaluation was not receivable as it did not have any direct legal effect on his terms of appointment.

7. Order No. 349 (NY/2014), dated 24 December 2014, stated that the Respondent, in his 19 December 2014 reply to the Applicant's application for suspension of action, submitted that the management evaluation having been completed on 18 December 2014, there was no longer any basis for the Dispute Tribunal to consider the Applicant's request for suspension of action pending management evaluation.

8. On 24 December 2014, in view of the fact that the MEU had completed its review of the Applicant's request for management evaluation, the Dispute Tribunal,

10. The Registry acknowledged receipt of the Applicant's application and request for interim measures and served them on the Respondent on 31 December 2014. In accordance with art. 14.2 of the Dispute Tribunal's Rules of Procedure, the Respondent was directed to file a reply to the request for interim measures by 1:00 p.m. on Monday 5 January 2015, which he duly completed.

11. The facts presented in the Applicant's motion for interim measures requesting the suspension pending proceedings mirror the facts presented by the Applicant in support of his request for suspension pending management evaluation (see paras. 4–13 of Order No. 349 (NY/2014)).

12. On 7 January 2015, the Tribunal, Order No. 1 (NY/2015), instructed the parties to inform it by 5:00 p.m. that same day whether they were aware if the selection decision for the JO had been implemented. The parties filed their responses by 5:00 p.m. on the same day.

13. In response to Order No. 1, the Applicant submitted that at 3:40 p.m. on 7 January 2015, the UNJSPF Executive Office informed him orally that the UNJSPF had not issued a Personnel Action Plan or a letter of appointment regarding the JO. The Respondent submitted that:

2. In accordance with section 10.2 of ST/AI/2010/3 (Staff selection system), "the decision to select a candidate shall be implemented upon its official communication to the individual concerned. When the selection is a promotion to a higher level, the earliest possible date on which such promotion may become effective shall be the first day of the month following the decision, subject to the availability of the position and the assumption of higher-level functions."

3. By email dated 4 November 2014, the Executive Office of the Pension Fund informed the selected candidate that she had been selected for the position of Chief Section and requested to confirm her continued interest in and availability for the position. On the same day, the selected candidate responded by email, confirming her continued interest in, and availability for, the position.

4. The issuance of a letter of appointment or a Personnel Action is not required to implement the selection decision under

ST/AI/2010/3. Rather, it is an administrative process. The selected candidate holds a permanent appointment with the Organization. A separate letter of appointment will



b. The Applicant's motion is not receivable *in nomine personae* as the only instance in which a staff representative may file a case before the Dispute Tribunal is on behalf of an incapacitated or deceased staff member. In the present case, the Applicant does not challenge the contested decision in a personal capacity but instead in his capacity as an elected representative of staff members of the UNJSPF's Unit 39;

c. The Dispute Tribunal does not have jurisdiction to grant interim measures under art. 10.2 of Statute in cases such as the present, namely cases of appointment, promotion or termination.

Consideration





pursuant art. 10.2 from the Dispute Tribunal Statute and art. 14 from its Rules of Procedure, as these issues are expressly excluded from being suspended by the Dispute Tribunal's Statute and Rules of Procedure.

22. The Applicant's request for interim measures relates to the suspension of: (1) the implementation of the first promotion procedure to a P-5 level post within UNJSPF of a candidate that does not meet mobility criteria per ST/AI/2010/3, and (2) the implementation of a new policy waiving the lateral move mobility requirement with respect to the filing of P-5 level posts within the UNJSPF.

23. By its own terminology and purpose, the issues raised by the Applicant concern issues of promotion and appointment and the requested relief concerns the suspension of the implementation of a promotion and/or policy relating to promotions. Consequently, the second condition identified above is not fulfilled as the issues raised by the Applicant are excluded from being suspended by the Dispute Tribunal.

24. Seeing that at least one of the above mentioned cumulative conditions is not fulfilled, the Tribunal therefore need not consider whether the remaining requirements, namely temporary relief, *prima facie* unlawfulness, urgency and irreparable damage, are met.

In the light of the foregoing,

IT IS ORDERED THAT:

25. The motion for the suspension of activity during the proceedings rejected.

*(Signed)*

Judge Alessandra Greceanu

Dated this 8<sup>th</sup> day of January 2015