



**Before:** Judge Vinod Boolell

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko, Acting Registrar

LAURENTI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON  
RECEIVABILITY**

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**Counsel for the Applicant:**

George Irving, Attorney at Law

**Counsel for the Respondent:**

Steven Dietrich, ALS/OHRM, UN Secretariat

Nicole Wynn, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant is the Director of the Programme Planning and Technical Cooperation Division (PTTCD) at the Economic and Social Commission for Western Asia (ESCWA) holding a permanent appointment.

2. On 20 December 2013, he filed an Application seeking the suspension of the implementation of a decision by the Executive Secretary (ES) of ESCWA, Ms. Rima Khalaf, to reassign another staff member, Ms. Atsuko Okuda, from the position of Chief, Strategic Planning and Monitoring Section (SPMS) to the position of Chief of Governance in the Instability and Development Section of the Emerging and Conflict-Related Issues Division (ECRI). The Applicant also seeks the suspension of a decision taken by Ms. Khalaf to assign Mr. Tarcisio Alvarez-Rivero to the position of Chief, SPMS from which position Ms. Okuda has been reassigned.

3. The contested decisions were communicated to the Applicant on 16 and 17 December 2013 respectively.

4. The Respondent filed a Reply to the Application on 23 December 2013 in which it was argued that the Application is not receivable as the Applicant lacks standing to institute the two claims and because the decisions have already been implemented.

## **Facts**

5. Ms. Okuda has been working as the Chief, SPMS in the Applicant's PPTCD division. The contested decision to reassign Ms. Okuda is an implementation of an earlier decision taken on 26 August 2013 by Ms. Khalaf to reassign her from PPTCD to ECRI and to assign Mr. Alvarez-Rivero to take her place. Ms. Okuda filed a request for management evaluation challenging her reassignment on 28 August 2013.

6. On 5 September 2013, in Case No. UNDT/NBI/2013/060 filed by Ms. Okuda, the Dispute Tribunal issued Order No. 202 (NBI/2013) for suspension of action against the decision to reassign her pending management evaluation.

7. The Applicant avers that Ms. Okuda received a decision from the Management Evaluation Unit (MEU) on 13 December 2013 in which the MEU upheld the contested decision.

8. Based on the MEU response to Ms. Okuda's request for management evaluation, ESCWA then proceeded to implement the decision to reassign her on 16 December 2013.

9. On 16 December 2013, the Applicant received an email from the Division of Administrative Services (DAS) informing him that Ms. Khalaf had decided to reassign Ms. Atsuko to ECRI. In this email, the Applicant was informed that the ESWA ES had taken note of the Secretary-General's decision to uphold the MEU finding that the decision to reassign Ms. Okuda was lawful.

10. The email to Ms. Okuda which was also copied to the Applicant stated: "the Executive Secretary is *hereby* implementing her original decision and requests that in the interests of the Organization that you move with *immediate effect* to your new position and office at ECRI".

11. On the next day, 17 December 2013, the Applicant received another email from DAS informing him that Ms. Khalaf had decided to assign Mr. Alvarez-Rivero to the position of Chief of SPMS which was previously encumbered by Ms. Okuda.

### **Applicant's submissions**

12. The Applicant contends that the contested decisions are part of a pattern designed to systemically disempower him of authority within PPTCD and that the actions of the ESWA ES entail prohibited conduct. He argues that these decisions are unjustified given the lack of consultation with those affected including the Applicant himself.

13. Ms. Okuda's reassignment deprived him of a staff member with outstanding performance in his division for no legitimate reason, deprives him of any authority or role in managing Mr. Alvaro-Rivero's work who he alleges has been usurping his authority and that despite this, the Applicant is still held responsible for the performance and deliverables of PPTCD.

14. The appointment of Mr. Alvaro-Rivero is a major step towards accelerated efforts to further marginalize and disempower him as the PPTCD director.

15. The decisions are unlawful because the Organization failed to take prompt and concrete actions on the complaints he submitted to OHRM on allegations of prohibited conduct which has led to the aggravation of his working conditions, function and career development.

16. The matters raised in this Application are urgent since the decisions were announced on 16 and 17 December without any prior consultation, the concerned staff members are on leave and the implementation of the decisions is to be finalized on 3 January 2014.

17. The Applicant submits that he will suffer irreparable harm as it is not hard to imagine that the factors raised in the Application will have a devastatingly negative impact of his performance appraisal and career prospects as Division Director.

18. Based on the foregoing, the Applicant seeks the suspension of the decisions to reassign Ms. Okuda and to assign Mt. Alvaro-Rivero to take her place.

### **Respondent's submissions**

19. The Application is not receivable because the Applicant lacks the standing to institute the claims it raises.

20. The contested decisions do not affect the Applicant's legal rights under art. 2.1(a) of the Statute of the Dispute Tribunal.

21. The contested decisions do not concern any administrative decisions that are in non-compliance with the Applicant's own contract of employment. The Applicant lacks the standing to intercede in contractual relationships that exist between other staff members and the Organization which is what he is trying to achieve by seeking the suspension of decisions regarding the assignments of two other staff members.

22. The contested decisions have already been implemented. The two decisions were to take effect "with immediate effect" after Ms. Okuda and Mr. Alvaro-Rivero received the notifications thus making the Application not receivable.

23. The Respondent therefore requests that the Dispute Tribunal should find that the Application is not receivable.

### **Consideration**

24. Article 2.1(a) of the Statute of the Dispute Tribunal grants the Tribunal jurisdiction to hear and pass judgment on an application filed by an individual to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment.

25. Although this is couched as an Application for suspension of action and the Tribunal needs to be satisfied that all the conditions for such an application are met, like in all other applications, one of the key issues that the Tribunal must consider on a preliminary basis is whether the application is receivable.

26. What the Applicant is seeking here is an injunctive relief in regard to a decision of the ESCWA Administration to reassign Ms. Okuda from her position of Chief, Strategic Planning and Monitoring Section and replacing her with Mr. Alvaro-Rivero to perform the same duties.

27. From this fact alone, the Tribunal is not satisfied that the Applicant has any *locus standi* to contest a decision affecting another staff member.

28. The two contested decisions in this case have no direct link to the Applicant's own contract of employment. All the substantive issues impacted upon by the decisions relate to the terms of employment of Ms. Okuda and Mr. Alvaro-Rivero who are the two individuals with the requisite standing to challenge their reassignments. The Applicant's assertion that the reassignment of Ms. Okuda and the assignment of Alvaro-Rivero to take her place would negatively affect his own performance is at best speculative.

29. The Applicant therefore lacks the *locus standi* to litigate and to contest the two decisions as they directly affect the employment contracts of Ms. Okuda and Mr. Alvaro-Rivero, both of whom have the capacity to litigate on their own behalf.

30. Having determined that the Applicant lacks the *locus standi* to institute the present Application, the Tribunal finds and holds that the Application is not receivable. As such, the claims will not be addressed on the questions of whether the three statutory prerequisites contained in art. 2.2 of the Statute of the Dispute Tribunal for the grant of an Application for Suspension of Action, that is, *prima facie* unlawfulness, urgency and irreparable damage, have been satisfied.

### **Conclusion**

31. This Application is therefore dismissed.

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Judge Vinod Boollel

Dated this 26<sup>th</sup> day of December 2013

Entered in the Register on this 26<sup>th</sup> day of December 2013

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Eric Muli, Officer-in-Charge, UNDT Nairobi