



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2023/049

Order No.: 108 (NBI/2023)

Date: 21 June 2023

Original: English

Before: Judge Francesco Buffa

Registry: Nairobi

Registrar: Abena Kwakye-Berko

CASTELLI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Yehuda Goor, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a Policy and Best Practices Officer at the P-4 level with the United Nations Interim Force in Lebanon (“UNIFIL”). On 14 June July 2023, he filed an application seeking, pending management evaluation, the suspension of the change of his reporting lines, effective 22 May 2023 (“contested decision”).
2. On 14 June 2023, the application was served on the Respondent with a deadline to file his reply by 5.00 p.m. on Friday, 16 June 2023.
3. In the reply filed on 16 June 2023, the Respondent submits, *inter alia*, that the application is not receivable *ratione materiae*.
4. On 19 June 2022, the Applicant submitted a response to the reply.

Facts

5. Following the creation of the post of Principal Coordinator, the UNIFIL Chief of Human Resources Section (“CHRS”) wrote to the Applicant on 16 December 2019 informing him about the changes to this reporting lines. The CHRS indicated to the Applicant that the Principal Coordination Officer would be his First Reporting Officer (“FRO”) followed by the Head of Mission (“HoM”) Force-Commander as Second Reporting Officer (“SRO”).¹ That decision was taken by the HoM to reinforce the Unit but was not implemented at that time.²
6. On 23 September 2022, the Applicant filed a complaint against the Principal Coordination Officer pursuant to ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment and abuse of authority).³
7. By email dated 19 December 2022, the CHRS informed the Applicant that in the approved budget for 2022/2023, a position of Senior Coordination Officer had been

¹Application, annex Att 3.3 *Change in Reporting Lines 1 Jan 2020*.

²*Ibid.*, annex ATT.2 *MEU Change in Reporting Lines*.

³*Ibid.*, annex 3.14 *Fact-finding Panel*.

established at the P-5 level, under the Office of the Principal Coordinator. The email contained an attachment of the Organizational Chart for the Office of the Principal Coordinator reflecting “the reporting line of the Policy and Best Practices Unit [“PBPU”] to the Principal Coordination Officer (D-1), through the Senior Coordination Officer (P-5).”⁴

8. On 12 April 2023, the Applicant “made a prior request to change reporting lines but was told that reporting lines would continue to be set by the organizational chart and budget.”⁵

9. On 8 May 2023, the Applicant wrote to the HoM requesting for “a temporary change in reporting lines in that the PBPU directly reports to the DFC for the time necessary to have this case settled”.⁶

10. By email dated 14 May 2023, the HoM replied to the Applicant refusing the Applicant’s request.⁷

11. In a separate case (UNDT/NBI/2023/042), on 15 May 2023, the Applicant asked for a change in the reporting lines as an interim measure.⁸

12. By Memorandum dated 16 May 2023, the HoM wrote to the Applicant to inform him that, in consultation with the Regional Conduct and Discipline Section (“RCDS”), he had decided to convene a panel to look specifically into the allegations reported by the Applicant. The HoM further informed the Applicant that the panel would start its work by 15 June 2023 requesting his full cooperation during the investigation.⁹

13. On 31 May 2023, the CHRS wrote to the Applicant to inform him of the change of his reporting line effective 22 May 2023.¹⁰

⁴Reply, annex R/5.

⁵*Ibid.*

⁶*Ibid.*, annex R/1.

⁷*Ibid.*,

⁸*Ibid.*, annex R/2, para. 4.

⁹Application, annex 3.14 *Fact finding Panel*.

¹⁰*Ibid.*, annex Att.3.1 *IOM Reporting lines 2023*.

14. When the Applicant sought clarification on the matter, on 7 June 2023, the CHRS informed the Applicant that the legal basis for that decision was a budget document referenced A/76/700 “As clearly indicated by the HoM, the reporting lines to be followed are per the authorized budget.”¹¹

15. On 12 June 2023, the Applicant requested management evaluation of the contested decision.

Applicant’s submissions

16. The Applicant argues that the decision to change reporting lines is unlawful and that he was reassured that no such change would occur. That decision was made unilaterally by the Administration and should involve prior consultations and compliance with administrative procedures.

17. Against the principle of due process and the United Nations rules, the Applicant was not consulted nor informed in advance of the contested decision contradicting earlier commitments. This misleading information raised concerns on the motivation and transparency of the contested decision.

18. The Applicant claims that the contested decision has no legal basis and is made by referring to a budget document. He contends that deliberations by legislative bodies of the United Nations, such as Advisory Committee on Administrative and Budgetary Questions (“ACABQ”) and “5 Committee” did not agree with the proposed changes.

19. The contested decision was made in contradiction with departmental policies and norms in others United Nations Peace Operations. The Applicant claims that “[T]he location of the Policy and Best Practices Unit (PBPO) within the Office of the Chief of Staff is a clear guidance in the Department of Peace Operations Policy on Knowledge Management and Organizational Learning. UNIFIL’s decision to assign

¹¹*Ibid.*, annex Att. 2MEU Change in Reporting Lines.

the PBPO to a Senior Coordination Officer goes against this normative viewpoint and constitutes an unjustified exception.¹²”

Respondent’s submissions

20. The Respondent submits that, following the grievances he had against his FRO, the Applicant requested several times to change reporting lines. Since 19 December 2022, he was aware that his reporting lines would change with the onboard of a Senior Coordination Officer at the P-5 level.

21. In accordance with the authorized budget and the terms of their positions, the Administration has lawfully exercised its discretion to modify its staff members’ reporting lines.

22. The Administration followed the required budget procedure. Before being endorsed in UNIFIL’s approved legislative budget, the post of Senior Coordination Officer at the P-5 level had clearance through the ACABQ and by the Fifth Committee. Prior to the Approval of the Coordination Officer position, the Applicant reported directly to the HoM as FRO. With the approval of the new P-5 level position on the organizational structures on the approved budget, the Applicant’s reporting lines changed.

23. The Respondent claims that the Applicant relies on general allegations and does not refer to any legal framework violated by UNIFIL. He further claims that the Applicant’s allegations related to the motives and bias against him fail because the change in reporting lines also applies to four other UNIFIL staff members. The contested decision was not an administrative decision related to the Applicant’s relationship with the Organization.

24. The Applicant was informed that the reporting lines to be followed were as per the authorized budget and that as such his post reports to the P-5 Senior Coordination

¹²*Ibid.*, section VIII, page 5, para 5.

Officer as FRO, and the Principal Coordination Officer as SRO. The Administration has the discretion to change its staff members' reporting lines, in accordance with budgetary and operational needs.

25. The change in reporting lines creates a distance between the Applicant and his former FRO, the subject of the Applicant's complaint under investigation.

Considerations

Legal framework

26. Under art. 2.2 of the Dispute Tribunal's Statute and art. 13.1 of the Rules of Procedure, the Tribunal may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. The Dispute Tribunal can only suspend any contested administrative decision if all three requirements have been met. All three prongs of the test must be demonstrated for an application for the suspension of action to succeed.

Receivability

27. The Administration's decision to change the Applicant's reporting constitutes a reviewable administrative decision, given that this change in the reporting lines, although it does not change the Applicant's terms of appointment or contract of employment, it has a potential disruptive impact on workflow, the immediate work environment, and the staff member's performance management; indeed, it has an impact on the Applicant's responsibilities' system, and in particular on the persons of the Organization empowered to organize the work of the staff member concerned and evaluate his performance.

28. The Tribunal therefore finds the application is receivable *ratione materiae*.

Prima facie unlawfulness

29. The Tribunal is aware that, in accordance with budgetary and its approved operational needs, as well as the terms and level of its staff members' positions, the Administration has broad discretion to change its staff members' reporting lines.

30. This Tribunal already affirmed that the United Nations Secretary-General has "broad discretion in assigning supervisors and reporting officers"¹³ and that a staff member has no right to select his or her own supervisor".¹⁴

31. It is for the Administration to determine whether a measure of such a nature is in its interest or not.

32. The Administration's discretion in setting the reporting lines was emphasized by the Appeals Tribunal finding¹⁵ that

... changing reporting lines to accommodate disgruntled staff members would provoke "anarchy" and would be disruptive for the workflow and the quality output of OIOS. These are valid and relevant considerations. The Director's decision to refuse a proposed restructuring of the line of supervision to accommodate the Appellant therefore rests on rational and legitimate concerns about the managerial prerogative, structural coherence, and institutional integrity.

... the employee's duty to abide managerial instructions lies at the heart of the employment relationship. The power to prescribe the institutional hierarchy and performance standards is an integral part of the managerial prerogative and the Administration's broader right to manage ...

33. This means that tribunals are expected to observe a measure of deference to managerial authority in setting organizational practices, work standards, and reporting lines¹⁶.

34. In general, the applicable legal framework does not recognize a right by a staff

¹³*Teklie* UNDT/2020/031, paras. 46-47 (relying on staff regulation 1.2(c)).

¹⁴*Shah* UNDT/2022/044, paras. 18-19.

¹⁵*Applicant 2020-UNAT-1030*, paras. 33 and 34.

¹⁶*Ibid.*, para.34.

member to choose his or her own reporting lines, being the reporting line a matter within the boundaries of the Administration.

35. As UNAT acknowledged in *Rees*¹⁷,

No staff member has the right to select his or her own supervisor. An organization is not compelled to retain a staff member who insists to stay on his or her post while refusing to report to a supervisor who he or she claimed had discriminated against him or her or created a hostile work environment... [A staff member] cannot insist on restructuring of the Organisation to suit her wishes.

36. Having so said in general, it could be supposed in theory that if the change in the reporting line of a certain staff member is taken in violation of the legal framework or with the aim to discriminate or harm the staff member; in such a case, it can be envisaged a specific legal interest of the staff member concerned to challenge the administrative decision, which is unlawful or tainted by improper motives, and ask for damages.

37. Applying these principles to the case at hand, with reference to the Applicant's reporting lines, the Tribunal notes that the application does not cite any instrument in the legal framework that UNIFIL has violated.

38. Even the Applicant's "concerns about the motives" and personal bias against him have not been substantiated, considered also that change was not specific to the Applicant and applies in addition to four other UNIFIL staff members, who together with the Applicant constitute all the staff members in the relevant units.

39. It follows from the above that in the case the Applicant has no right to interfere with the Administration's exercise of its discretionary power to organize the structure and the function of the Organization.

40. Therefore, the application has not satisfied the requirement of *prima facie*

¹⁷2012-UNAT-266, para. 76.

unlawfulness.

41. As the application has not fulfilled the said requirement, it is not necessary for the Tribunal to examine the two other conditions, namely particular urgency and irreparable harm.

Anonymity

42. The Applicant asks the Tribunal to adopt “the practice of the International Labour Organization Administrative Tribunal (“ILOAT”) that does not name staff members in its judgments.

43. The motion is rejected. Indeed, UNAT always reiterated its consistent jurisprudence which stresses transparency in the administration of justice and stated that, without “exceptional circumstances that could warrant departing from the general principles and from the well-established jurisprudence,”¹⁸ motions by applicants for anonymity or confidentiality are generally not entertained.

44. The Applicant, who submitted several applications to the Tribunal, does not demonstrate why his anonymity is justified.

45. In view of the above, his name must appear in the case files, including in all the Tribunal’s orders and judgments.

ORDER

46. In light of the foregoing, the application is dismissed.

(Signed)

Judge Francesco Buffa

Dated this 21st day of June 2023

¹⁸*Buff*, 2016-UNAT-639, paras. 21-24. See also *Kazazi*, 2015-UNAT-557, para. 21; *Fedorchenko*, 2015-UNAT-499, para. 29; *Lee*, 2014-UNAT-481, paras. 34-35; *Pirnea*, 2014-UNAT-456, paras. 18-20; *Charot*, 2017-UNAT-715, paras. 27-38.

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Entered in the Register on this 21st day of June 2023

(Signed)

Eric Muli, Legal Officer, for
Abena Kwakye-Berko, Registrar, Nairobi