



Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

SAFFIR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICATION FOR
INTERIM RELIEF**

Counsel for Applicant:

Lennox S. Hinds

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Chenayi Mutuma, ALS/OHRM, UN Secretariat

Introduction

1. On 25 March 2013, the Applicant, a staff member in the Meetings Support Section (“MMS”), Department for General Assembly and Conference Management (“DGACM”), filed an application contesting the decision to initiate the recruitment of 19 staff members “for the future operation of the Publishing Section (“Section”)”. The Applicant contends that this decision is part of an unapproved effort to reorganize the Section which includes the abolishment of 59 of its posts.

2. On 25 March 2013, the Applicant also filed an application for interim relief seeking the suspension of the implementation of the contested decision pending a resolution of the proceedings on the merits.

Background

3. On 28 April 2011, the Secretary-General launched a plan to reform the Secretariat which included a goal for the Organization, and DGACM particularly, to move to a less paper reliant environment.

4. On 6 June 2011, the Secretary-General submitted his budget for 2012-2013 to the General Assembly in which he proposed to abolish 41 posts within the Section as a result of the decision to reduce the volume of publications printed in-house and to also favour digital printing. The Secretary-General’s budget was approved on 24 December 2011.

5. In December 2011, the Change Management Team (“CMT”) submitted 61 recommendations to the Secretary-General for the realization of his organizational reforms. These recommendations included the promotion of the use of PaperSmart meetings; a reduction of the number of hardcopy publications being distributed; that heads of departments assess functions that could be consolidated and restructured; and that the Office of Human Resources Management encourage mobility for General Service staff.

6. On 12 April 2012, by Section II of resolution 66/257, the General Assembly requested that the Secretary-General submit for its consideration and prior approval any proposals or measures related to the implementation of the above recommendations

7. During the course of 2012, staff representatives and management of DGACM held discussions regarding the future of the Section in view of its goal to reduce its staffing and budgetary levels as part of its move to a digital operation. Following the effects in October of super-storm Sandy which damaged the Section's printing capabilities, these exchanges culminated in the circulation on 19 December 2012 of a draft "Concept of Operations" paper. This paper indicated that the organizational evolution to a digital printing operation would be accelerated, and that the Section would be incorporated into MMS.

8. On 4 February 2013, the staff of the Section adopted a resolution rejecting the abolition of 59 posts within the Section, and "expressed their concern that management had failed to retrain staff for new functions developed since 2009. They requested that DGACM discontinue the post of the "Newly Created Desk-top Publishing Unit" and instead add those functions to the staff already on board in long service to the Organization.

9. On 10 February 2013, DGACM announced that, due to the disruption and equipment damaged suffered by the Section following super-storm Sandy, "[i]n the coming days, ten posts ... will be posted on Inspira [the United Nations online recruitment system]. The incumbents of these posts will provide in-house printing services using digital equipment. Soon thereafter, as soon as the presently ongoing review by [the Office of Human Resources Management] is completed, nine more posts ... will also be posted. The incumbents of these posts will provide distribution services". The first set of vacancy announcements for three of these posts was listed on Inspira the following day.

10. On 20 February 2013, the Applicant filed a request for management evaluation of the contested decision. On 21 February, he filed an application for suspension of action under art. 2.2 of the Statute of the Tribunal and art. 13.1 of the Rules of Procedure of the Tribunal. The following day, the Tribunal ordered the suspension, during the pendency of the management evaluation, of the implementation of the decision to undertake a recruitment process via Inspira for 19 new posts in the Publishing Section, DGACM. The 30 day deadline for the MEU to provide the Applicant with a response to his request for management evaluation ended on Friday, 22 March 2013.

11. On the next working day, Monday, 25 March 2013, a substantive application and a related application for interim relief were filed with the Tribunal.

12. **Consideration**

13. The motion for interim relief was filed in accordance with art. 10.2 of the Statute of the Dispute Tribunal and art. 14 of its Rules of Procedure.

14. In accordance with art. 10.2 of its Statute, the Tribunal has to consider whether the impugned decision appears to be *prima facie* unlawful, whether the matter is of particular urgency, and whether its implementation will cause the Applicant irreparable harm. The Tribunal must find that all three of these requirements have been met in order to suspend the action, meaning the implementation of the decision, in question. This is an extraordinary relief which is not subject to appeal.

15. Applications for suspension of action as a measure of interim relief are necessarily urgent. Under art. 14 of its Rules of Procedure, the Tribunal is required to consider such an application within five working days of the service of the application on the respondent. Although art. 14 of the Rules of Procedure requires that such an application be transmitted to the Respondent, there is no obligation to require a response from the Respondent before deciding the application (*Kananura* 2012-UNAT-258).

Prima facie unlawfulness

16. It is important for all concerned to understand that, in essence, the Tribunal is expressing an opinion as to whether on the facts presented by the Applicant it appears that the decision is *prima facie* unlawful.

17. The Tribunal is not required to make a finding that the impugned decision is actually unlawful. For the *prima facie* unlawfulness test to be satisfied, it is enough for an applicant to present a fairly arguable case that the contested decision was influenced by some improper considerations, was procedurally or substantively defective, or was contrary to the Administration's obligation to ensure that its decisions are proper and made in good faith (*Villamorán* UNDT/2011/126).

18. It would appear from the documents before the Tribunal that DGACM did not have the authority to undertake a restructuring exercise on a scale that would involve the deletion of 59 posts and the creation of 19 new ones as part of the budgetary approval originally provided by the General Assembly. Rather, the approval provided by the General Assembly was only for the abolition of 41 Trades and Crafts posts within the Section.

19. It would appear that the contested measures have only recently been submitted to the General Assembly as part of its consideration of the 2014–2015 biennium budget. This would suggest that the contested restructuring proposal may well be *ultra vires* and *prima facie* unlawful.

20. The Tribunal notes that the process currently being undertaken gives the impression that DGACM is attempting to take advantage of non-administrative related events, namely the equipment damage suffered by the Section following super-storm Sandy, to push forward with a restructuring process which, as of 19 December 2012, was still being discussed as part of a draft Concept of Operations paper.

21. This element of the statutory test is satisfied.

Urgency

22. The Applicant was informed of the contested decision on 10 February 2013. He submitted his request for management evaluation on 20 February and filed his application and the present request for interim relief with the Tribunal on the first working day following the expiry of the 30 day deadline for the MEU to provide the Applicant with a response to his request for management evaluation.

23. In the present case, unless the implementation of the decision is suspended, the Applicant will be forced to start submitting applications for some of the newly created posts not knowing if the restructuring process being undertaken by DGACM may include the abolishment of his own post and the real possibility of loss of employment with the United Nations.

24. This is not a case of self-created urgency given that prior to the 10 February 2013 restructuring announcement by DGACM, there was no contestable administrative decision that affected the Applicant's contract of employment.

25. The Tribunal finds that the requirement of particular urgency is satisfied.

Irreparable damage

26. The Applicant is facing the prospect of being subject to an unlawful decision that would have an unquantifiable impact on his prospects for continued employment and career development within the Section.

27. Loss of employment is to be seen not merely in terms of financial loss, for which compensation may be awarded, but also in terms of loss of career opportunities. This is particularly the case in employment within the United Nations which is highly valued. Once out of the system the prospect of returning to a comparable post within the United Nations is significantly reduced. The damage to

career opportunities and the consequential effect on one's life chances cannot adequately be compensated by money.

28. As stated by the Tribunal, in *Adundo et al.* UNDT/2012/077, "allowing the proposed exercise to proceed in its current form when its lawfulness is highly questionable would have such a detrimental effect on the Applicants' contractual situations as to warrant a finding of irreparable harm".

29. The Tribunal finds that the requirement of irreparable damage is satisfied.

Conclusion

30. The present application has met the conditions for a suspension of action.

Order

31. The Tribunal orders the Respondent to suspend the implementation of the decision to conduct a recruitment exercise via Inspira, or by any other means whatsoever, for 19 new posts in the Publishing Section, DGACM for a period of 60 days from the date of this Order or pending a final determination of the substantive merits of the application, if sooner, or until such further Order as may be deemed appropriate by the Tribunal.

(Signed)

Judge Goolam Meeran

Dated this 27th day of March 2013