



**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Hafida Lahiouel

GANDOLFO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON APPLICATION FOR  
SUSPENSION OF ACTION**

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**Counsel for Applicant:**

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**Counsel for Respondent:**

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## **Introduction**

1. On 11 April 2013, the Applicant, a staff member in the Publishing Section (“PS”), Department of General Assembly and Conference Management (“DGACM”), filed an application for suspension of action, pending management evaluation, of the decision “to temporarily reassign the [Applicant] from the Publishing Section to the Meetings Services Unit [(“MSU”)] from 15 April to 30 June 2013 to assist in the growing PaperSmart operation and pursuant to an alleged work shortage in the Publishing Section due to super storm Sandy”.

## **Background**

2. On 5 April 2013, the Acting Head, DGACM, convened a meeting with the staff members of PS during which he announced the implementation of a structured rotation policy that would include the temporary reassignment of staff members “in order to afford all staff an opportunity to gain experience in the scaled-down digital printing and distribution operations”.

3. On 9 April 2013, the Director, Meetings and Publishing Division, DGACM, met with the Applicant to discuss and offer him the contested reassignment. The following day, the Applicant received a letter from the Acting Head, DGACM, providing him with the official notice of his reassignment from 15 April 2013 to 30 June 2013:

The purpose of this letter is to inform you about your reassignment effective 15 April 2013 through 30 June 2013 from the Publishing Section to the Meetings Servicing Unit in DGACM.

I note that on 9 April 2013, the Director of your Division [...] discussed the particulars of the assignment with you.

This notice is further to the meeting I convened on Friday, 5 April 2013 with the Publishing Section when I announced such temporary and lateral reassignments through a structured rotation. This will afford all staff an opportunity to gain experience in the scaled-

down digital printing and distribution operations, as well as in other areas, both inside the Department and outside.

4. On 11 April 2013, the Applicant declined to be reassigned to MSU and submitted a request for management evaluation of the contested decision as well as the present request for suspension of action of the impugned decision pending management evaluation.

5. The application was served on the Respondent on Friday, 12 April 2013. That same day the Tribunal issued Order No. 97 (NY/2013) directing the Respondent to file his response by 16 April 2013 and to “not undertake, as from the time and date of service the present Order, any further steps regarding the Applicant’s reassignment from [PS] to [MSU] until the determination of the request for suspension of action of the contested decision”.

6. On 16 April 2013, the Respondent filed his reply to the Applicant’s request for a suspension of action and the Applicant, as authorized by the Tribunal, filed his comments on 17 April 2013.

### **Consideration**

7. Pursuant to art. 2.2 of the Statute of the Dispute Tribunal, the Tribunal is

competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

8. It follows from this provision of the Statute that an application for suspension of action can only be granted if the contested decision has not yet been fully implemented (see *Quesada-Rafaraso* Order No. 20 (GVA/2013), *Al-Baker et al.* Order No. 99 (NY/2013), *Tiwathia* UNDT/2012/109, *Nwuke* UNDT/2012/116 and *Murnane* UNDT/2012/128).

9. Upon determining that a decision under management evaluation has not yet been fully implemented, the Tribunal needs to establish that the contested decision also meets the following criteria: (1) is *prima facie* unlawful; (2) of particular urgency; and (3) cause irreparable damage. In the event that any of these criteria is not met, the Tribunal may not grant a request for a suspension of action.

10. As a result of Order No. 97, the implementation of the contested decision which was due on 15 April 2013 (see *Al-Baker* Order No. 99 (NY/2013), was suspended pending the Tribunal's determination of the Applicant's request for suspension of action of the contested decision.

*Prima facie unlawfulness*

11. For the *prima facie* unlawfulness test to be satisfied, it is enough for the 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 (*Jaen* Order No. 29 (NY/2011) and *Villamoran* UNDT/2011/126).

12. Staff Regulation 1.2(c) provides that staff members are subject to the authority of the Secretary-General and to assignment by him to any of the activities or offices of the United Nations. Pursuant to annex IV of ST/AI/234/Rev.1 (Administration of the Staff Regulations and Staff Rules) and sec. 2.5 of ST/AI/2010/3 (Staff selection system), and as affirmed by the Appeals Tribunal in *Gehr* 2012-UNAT-236, "[h]eads of departments/offices retain the authority to transfer staff members within their departments or offices, including to another unit of the same department in a different location, to job openings at the same level".

13. In the present case, the Applicant is being reassigned, on a temporary basis, from PS to MSU, two groups that are within the Publishing Division. Pursuant to

the applicable rules, and based on the structure of the Publishing Division, the Acting Head, DGACM, therefore had the authority to implement the impugned decision.

14. Consequently, what the Tribunal is required to still consider with regard to the lawfulness of the decision, is whether it was properly motivated and if it is in the interest of the Organization (see *Fernandez De Cordoba Briz* Order No. 186 (NY/2010) and *Kamunyi* 2012-UNAT-194).

15. Following the impact of Hurricane Sandy, certain functions within DGACM, including those fulfilled by PS were negatively impacted. It is therefore reasonable to expect, as well as in its interest, the Organization to attempt to provide each and all of the impacted staff members with meaningful work assignments.

16. The Applicant submits that as a result of General Assembly resolution 66/257, the Acting Head, DGACM, was required to submit any measure concerning “1) departmental restructuring, 2) the promotion of PaperSmart meetings, 3) the reduction in number and distribution of hardcopy publications, and 4) mobility within the General Service, including ad hoc options such as temporary staff exchanges between offices” for approval by the General Assembly.

17. However, there is nothing before the Tribunal that would suggest that this temporary reassignment is related to any potential restructuring plan being considered within DGACM, that this decision was not properly motivated or that the proper consultation process was not followed. While there appears to indeed be a plan to reduce certain staffing levels within DGACM to promote PaperSmart meetings, there is nothing to suggest that this temporary reassignment is related to this plan or serves the goal of identifying which posts are going to be made redundant at a future date. Similarly, this temporary transfer does not appear to serve the goal of reducing the type of publication issued by DGACM, nor is this an exchange between offices. Rather, as previously stated, this temporary reassignment enables the Organization to ensure that the Applicant is provided with relevant work in conjunction with its own interest as an Organization.

18. The lawfulness of the contested decision is further supported by the fact that the Applicant, in addition to only being temporarily reassigned, will still be encumbering his current post and will also maintain his current work station, all the while being given the opportunity to gain additional skills within a competitive division.

19. None of the Applicant's terms of appointment are being affected by the temporary reassignment to MSU, including the type, length and salary of his contract. The only element which is being affected by this reassignment is the unit/section of the Applicant's assignment which remains within the Publishing Division. The contested decision is temporary in nature and the Applicant will return to the post which he will continue to encumber during this temporary reassignment period. Furthermore, these measures are not being applied exclusively to the Applicant but rather on a rotation basis to all the staff members throughout PS.

20. The decision to temporarily reassign the Applicant does not appear to be *prima facie* unlawful. This element of the statutory test is therefore not satisfied.

21. Seeing that one of the conditions required for temporary relief under art. 2.2 of the Tribunal's Statute has not been met, the Tribunal does need to consider whether the remaining conditions iterated under art. 2.2 have been met.

### **Conclusion**

22. The present application has not met at least one the applicable conditions for suspension of action. The request for a suspension of action is denied.

(Signed)

Judge Alessandra Greceanu

Dated this 18<sup>th</sup> day of April 2013