



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

ENAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat
Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. On 21 April 2014, the Applicant, a staff member of the Department of General Assembly and Conference Management (“DGACM”), whose office is located in the Albano building (305 East 46th Street, New York), submitted an application for suspension of action, pending management evaluation, of two decisions:

- a. the decision to start façade work on the Albano building, which was communicated to the Applicant and other staff members in the Albano building on 26 March 2014;
- b. the decision to install storm windows in the Albano building, which was communicated to the Applicant and other staff members in the Albano building on 15 April 2014.

2. With respect to the *prima facie* unlawfulness of the contested decisions, the Applicant states, *inter alia*, that the contested decisions are in violation of the Organization’s duty to provide him with a suitable, safe, and favorable working environment. The Applicant further states that he and other staff members in the Albano building are treated in a discriminatory manner as compared to other staff members stationed in New York. With regard to the requirement of *particular urgency*, the Applicant submits that he was informed of façade works on 26 March 2014 and of storm windows installation on 15 April 2014 and acted in a timeous manner in filing the present application. With regard to the requirement of *irreparable harm*, the Applicant states that the Albano building does not meet the highest standards for the safety, security, health and well-being of staff. It is expected that the repair and construction works would continue for three months, with the resultant noise, vibration, and dust. This would cause irreparable harm to the Applicant’s rights, in the form of risks to safety, security, health and life, which cannot be compensated by money.

3. The Registry transmitted the present application to the Respondent on Tuesday, 22 April 2014. Accordingly, the Tribunal has until 5 p.m. on Tuesday, 29 April 2014, to consider this application.

4. The Respondent duly filed his reply by 5 p.m. on Wednesday, 23 April 2014. The Respondent submits that, on 23 April 2014, the Chief of the Management Evaluation Unit (“MEU”) replied to the Applicant’s request for management evaluation. Since the management evaluation has been completed, there is no longer any basis for the Applicant’s request for suspension of action under art. 2.2 of the Tribunal’s Statute. Accordingly, the Respondent requests the Tribunal to dismiss the application.

Background

5. The following background information is based on the parties’ written submissions and the record. The history of relocation of staff to the Albano building and its working conditions were the subject of at least two suspension of action proceedings in 2013—see *Gatti et al.* Order No. 126 (NY/2013) and *Enan* Order No. 130 (NY/2013). In both cases, the Tribunal issued detailed orders dismissing the applications for suspension of action and providing reasons for its decisions.

6. On 26 March 2014, Staff Assistant/Building Focal Point, Office of the Director of the Documentation Division, DGACM, sent an email to the staff members working in the Albano building, stating:

Dear Colleagues,

You may be hearing some construction noise around the building. This is the start of the scheduled Façade work, which we brought to your attention in an earlier letter. This repair work may take up to three months to complete. We will appreciate your cooperation in tolerating the noise during this period.

7. The following day, on 27 March 2014, Staff Assistant/Building Focal Point sent a further email to the staff members working in the Albano building, stating:

Dear Colleagues,

Following the disturbing chipping noise from the on-going Façade work, the building Super has made it clear to say that chipping racket would only last three days but extended Façade work, which would not produce such worrying noise, will last for about three months. Your understanding in this regard will be appreciated.

8. In the period of 27 March to 1 April 2014, several staff members working in the Albano building sent emails to the Staff Assistant/Building Focal Point, expressing their concerns with the noise caused by the façade work.

9. On 15 April 2014, Staff Assistant/Building Focal Point sent an email to the staff members working in the Albano building, informing them of the installation of storm windows starting 23 April 2014. His email stated:

Dear Colleagues,

This is to inform you that Storm Windows installation has been scheduled to start on 23 April 2014.

Delivery of windows will be floor by floor (2nd Floor through to 11th Floor).

10. The email further indicated that it would take approximately one week to install storm windows on each floor.

11. The Applicant requested management evaluation of the two contested decisions on 17 April 2014.

12. On 23 April 2014, the Chief of the MEU replied to the Applicant's request for management evaluation, stating that the decision to implement the façade construction and repair work was taken not by the Organization but by the building owner's management company in accordance with local laws. The MEU letter stated that the decision to install storm windows was not an administrative decision but a building management measure, which, moreover, was scheduled to be performed during out-of-office hours, from 5 p.m. until midnight. Accordingly, the MEU concluded that both decisions contested by the Applicant were not administrative

decisions that could be appealed before the Tribunal. The MEU concluded that the request for management evaluation was not receivable.

Consideration

13. Article 2.2 of the Tribunal's Statute states:

2. The Dispute Tribunal shall be 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.

14. Thus, in accordance with art. 2.2, 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 cases of particular urgency, and where its implementation would cause irreparable damage. The Tribunal can suspend the contested decision only if all three requirements of art. 2.2 of its Statute have been met.

15. It also follows that the suspension of action of a challenged decision may only be ordered when management evaluation for that decision has been duly requested and is still ongoing (*Igbinedion* 2011-UNAT-159, *Benchebbak* 2012-UNAT-256).

16. In this case, the MEU completed its review of the request for management evaluation on 23 April 2014 and concluded that it was not receivable. Since an application under art. 2.2 of the Statute is predicated upon an ongoing and pending management evaluation, and as the management evaluation in this case is no longer pending and has been completed, there is no longer any basis for the Applicant's request for suspension of action, and the application is dismissed.

17. Consequently, it is not necessary for the Tribunal to examine if the three statutory requirements specified in art. 2.2 of its Statute—namely, *prima facie* unlawfulness, particular urgency and irreparable damage—are met in the case at hand.

Conclusion

18. The present application for suspension of action is dismissed.

(Signed)

Judge Ebrahim-Carstens

Dated this 24th day of April 2014