

Introduction

1. By application filed on 8 September 2016, the Applicant, a Human Rights Officer, Office of the High Commissioner for Human Rights (“OHCHR”), requests suspension of action pending management evaluation of (i) the decision to laterally transfer him to the OHCHR Country Office in Guatemala and (ii) the decision to laterally transfer another staff member from Guatemala to the post currently occupied by the Applicant, which will be moved from Geneva to New York.
2. The application was served to the Respondent on 13 September 2016, being the first working day after the filing of the application, and he submitted his reply on 14 September 2016. In his reply, the Respondent requested that the matter be decided on receivability first.
3. On 14 September 2016, the Applicant submitted additional evidence.
4. On 15 September 2016, the Respondent filed a motion for leave to file additional evidence, together with a document submitted ex parte as it contains confidential information.

Respondent’s motion to submit additional evidence

5. The Respondent seeks leave to submit evidence concerning the possibility of harm to the other staff member scheduled to be laterally transferred from Guatemala to New York if the decisions are suspended.
6. The Tribunal is mindful that suspending the decisions is likely to impact on this other staff member who may be expecting to move to New York to the Applicant’s current position. However, when examining an application for suspension of action, the Tribunal must examine whether the matters set forth in art. 2.2 of the UNDT Statute are satisfied, as more amply discussed below, and potential harm to another staff member is not one of them. Therefore, the Tribunal finds that the proposed evidence is not relevant for the current proceedings and it rejects the Respondent’s motion.

Facts

7. In 2015, the High Commissioner for Human Rights (“High Commissioner”) launched a plan to restructure OCHCR called Change Initiative, which entailed redeployment of resources from Geneva to the field and New York, to be closer to its partners and stakeholders. Through this initiative, various post and staff movements were envisioned.

8. As a first step in the restructuring, affected staff members were informed that their posts would be moved and that they would be consulted as to whether they wished to move with their post or to opt into a post-matching exercise, consisting of a compendium of available posts. As part of this process, staff members were requested to indicate their preferred locations and were then matched with certain posts globally.

9. On 10 September 2015, the Applicant was informed that his post in the Sustainable Development Goals (“SDG”) Section in Geneva would potentially be moved to OHCHR New York. The Applicant was informed that, as the incumbent of the post, he would be expected to move with his post. However, if he did not want to move with his post, he could opt into the internal matching exercise whereby he would be matched to another post in line with his selected preferences.

10. By email of 22 September 2015, the Applicant informed OHCHR that he decided to opt into the internal matching exercise, identifying his current post as one of his preferences, and two positions in Guatemala as his fourth preference.

11. By letter of 9 December 2015 from the Chief of Programme Support and Management Services, OHCHR, the Applicant was informed of “the High Commissioner’s decision, pending receipt of the necessary budget approvals from the General Assembly, to laterally transfer [him] to the

we could discuss this next week and I could hear your preferences. In the next few days, we will be trying to talk to all 4 people involved (the 2 SDG staff and the 2 staff who were matched to the posts), and to clarify the situation as soon as possible.

15. On 18 April 2016, the Applicant met with the Director of the Thematic Engagement, Special Procedures and Right to Development Division and indicated his preference to move with his post.

16. By memorandum of 23 May 2016 from the Chief of Programme Support and Management Services to the Programme Planning and Budget Division, Office of Programme Planning, Budget and Accounts ("OPPBA"), OHCHR requested approval of the move of four regular budget posts from Geneva to New York from 1 September 2016, three of which being in the SDG Section.

17. By email of 30 June 2016 from a Human Resources Officer, the Applicant was informed that "[his] move to Guatemala [was] confirmed as [they] ha[d] received green light from OPPBA on the NYO positions" and asked to advise them "when [he] ha[d] agreed CrF2oN28tc8(K20cCSF,r the"atyAppdCyFtmKmbby8bt,0mKc"CAftma2m2K

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decision of the High Commissioner that had been communicated to him at the time. The Applicant was further informed that since he had originally declined to move with his post to New York, another staff member had in turn accepted this placement and would be moving to New York on the post.

22. By memorandum of 22 July 2016 from the Chief of Programme Support and Management Services, the Applicant was informed that the High Commissioner's decision of 9 December 2015 concerning his transfer to

Case No ND, G A

Order No G A

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31. As a preliminary matter, the Tribunal shall examine whethe

controller's approval for the move of the Applicant's post to New York, which was a pre-requisite for the Applicant's lateral transfer to Guatemala.

37. A reading of the memorandum of 22 July 2016 from the Chief of

Judgment No. 1157 (2003); Andati-Anwayi 2010-UNT-058; Nwuke 2010-UNAT-099), and that the Applicant has standing to challenge this decision. As the Respondent himself recognises, “all staff movements in the present case are interconnected”.

Implementation of the contested decision

42. It is established that a suspension of action is only possible regarding decisions that have not yet been implemented (see Abdalla Order No. 4 (GVA/2010), Neault Order No. 6 (GVA/2011) and Quesada-Rafaraso Order No. 20 (GVA/2013)).

43. There is no doubt that the Applicant still occupies his position, and that the decision to transfer him to Guatemala has not been implemented yet. The Respondent argues, however, that the decision to transfer another staff member on the Applicant’s post has been implemented as “administrative arrangements have already been made for the other staff member and her family to move to New York”.

44. In view of the fact that a position can only be filled by one staff member and that the Applicant still occupies the disputed post, it follows that the decision to move another staff member on the Applicant’s post cannot be considered as having been implemented. The assignment of the other staff member to the Applicant’s post is contingent upon the post being available, which it is not currently the case. Furthermore, the fact that administrative arrangements have been made to move another staff member to New York is insufficient to conclude that the decision has actually been implemented.

45. Therefore, the Tribunal finds that the application for suspension of action is receivable.

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Case No ND, G A

Order No G A

UNDT/2009/003; Corcoran UNDT/2009/071; Corna Order No. 90 (GVA/2010);
Berger UNDT/2011/134; Chattopadhyay UNDT/2011/198; Wang
UNDT/2012/080; Wu Order No. 188 (GVA/2013)).

47. In this respect, the Tribunal held in

51. Sec. 24 of ST/AI/2016/1 clearly states that as a transitional measure until 31 December 2017, the heads of departments and offices retain their authority to laterally transfer staff members within their respective department or office “without advertisement of a job-opening or review by a senior or central review body” only “during periods of surge, start-up or humanitarian emergency, in instances of the abolition of posts and the reduction of staff or to implement a restructuring approved by the General Assembly”. The Respondent does not argue that the impugned decision falls under the ambit of sec. 24 of ST/AI/2016/1.

52. The parties agree that the High Commissioner had authority to laterally transfer his staff members on 9 December 2015 pursuant to Staff Regulation 1.2(c), but that he lost such authority with the entry into force of ST/AI/2016/1 on 1 January 2016. As per the parties’ submissions, the prima facie lawfulness of the contested decision essentially depends on whether the decision of 22 July 2016

his previous decision of 9 December 2015, had the practical effect of circumventing the new managed mobility system provided for in ST/AI/2016/1.

55. In view of the above, it is dubious that the decision of 22 July 2016 could be considered as an implementation of the decision of 9 December 2015. It rather

Case No ND, G A

Order No G A

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