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Case No.: UNDT/NY/2011/072  
Order No.: 220 (NY/2011)  
Date: 16 September 2011



## **Introduction**

1. On 12 September 2011, the Applicants, a group of staff members in the General Service category, filed an application under art. 2.1 of the Dispute Tribunal's Statute, contesting the decision by the Department of Management to discontinue the payment of monthly salary to General Service staff in two separate disbursements, approximately two weeks apart from each other. In their application filed under art. 2.1 of the Statute, the Applicants request that the decision to eliminate the mid-month salary payments be overturned or, in the alternative, that this decision be applied only to newly-hired staff.

2. On 12 September 2011, the Applicants also filed a motion for interim measures, seeking suspension of the implementation of the contested decision. This motion is considered in the present Order.

3. The Applicants submit that, although the Department of Management's decision took effect on 1 September 2011, the first implementation of the decision will occur on 16 September 2011, the date on which General Service staff would otherwise have received their mid-month payment.

## **Note on procedure**

4. On 12 September 2011, the Dispute Tribunal received 65 emails with applications and motions for interim measures in relation to a number of staff members. By email of 12 September 2011, the Registry requested Counsel for the Applicants to re-file these submissions as one consolidated application under art. 2.1 of the Tribunal's Statute in relation to all Applicants and one consolidated motion for interim measures under art. 10.2 of the Statute. Counsel for the Applicants was informed as follows: "If, and to the extent that the individual situations of each of the [A]pplicants vary, any such relevant differences should be clearly identified in the application on the merits and motion for interim measures". The Registry further

stated that the Tribunal would consider 12 September 2011 as the original filing date of the consolidated application and consolidated motion.

5. The application and the motion were filed



11. Initially, this decision was scheduled to be implemented effective May 2011, as was announced by the Department of Management through a notice posted on iSeek (the Organization's intranet website) on 25 February 2011. The iSeek notice

15. On 21 June 2011, the Management Evaluation Unit confirmed that it had received 39 management evaluation requests. The Management Evaluation Unit stated that, after its preliminary review of the requests, it had determined that the requests of five staff members were time-barred as they were submitted after the deadline provided for in staff rule 11.2(c).

16. By letter dated 23 June 2011, signed by the Deputy Secretary-General, the 34 Applicants whose requests were deemed receivable by the Management Evaluation Unit were informed of the Secretary-General's decision to uphold the contested decision. The letter referred to 1 September 2011 as the date of the implementation of the contested decision.

### **Applicant's submissions**

17. The Applicant's principal contentions may be summarised as follows:

#### *Urgency*

a. The contested decision will go into effect on 16 September 2011, and will continue to be implemented on the sixteenth day of each month thereafter. While the Administration has provided the Applicant with the exceptional possibility of applying for salary advances until the end of 2011, these requests will have to be renewed every month and there is no guarantee that they will be granted. Furthermore, when requesting exceptional salary advances, the Applicants will be required to comply with the improper requirement of disclosing details of their personal finances to the Administration;

#### *Irreparable damage*

b. The elimination of mid-month payments will have a profound effect on the Applicants' fundamental right to just and fair conditions of work. The Applicants will be required to strictly budget their expenditures over a one-

month period with little savings to buffer their financial obligations. The continued stress of less frequent salary payments will result in damage and

## **Respondent's submissions**

18. The Respondent's principal contentions may be summarised as follows:

### *Urgency*

a. This matter is not urgent. The Applicants were first placed on notice of the decision on 25 February 2010, when an announcement was posted on iSeek. Even by their own admissions, the Applicants have been aware of the contested decision since May 2011. The Tribunal has consistently held that, for the requirement of particular urgency to be satisfied, it cannot be self-created. However, the Applicants waited for almost four months—from 23 May to 12 September 2011—to file the present motion;

b. Furthermore, each Applicant has the option of requesting salary advances until the end of the year, and, therefore, the matter cannot be considered urgent. Staff rule 3.15(b) requires that requests for salary advances be supported by “a detailed justification in writing”. Any information the Applicants would be required to provide to the Administration when requesting salary advances would be used solely for the purposes of making a decision on their requests;

### *Irreparable damage*

c. The Applicants have not demonstrated how the implementation of the decision would cause them irreparable harm. Any financial loss would be



**Prima facie *unlawfulness***

e. The Applicants have failed to demonstrate that the contested decision is *prima facie* unlawful. The decision to remove mid-month payments was made for proper reasons. The monthly payment of salary is used in relation to the overwhelming majority of sta

disrupt the normal day-to-day business of the Tribunal. Therefore, parties approaching the Tribunal with motions for interim relief must do so on real urgency basis, with full disclosure of the facts relied on for relief and sufficient information for the Tribunal to decide the matter preferably on the papers before it. The proceedings are not meant to turn into a full hearing. The motion must not be frivolous or an abuse of process, or else the requesting party may well be mulcted in costs.

20. Pursuant to art. 10.2 of its Statute, the Tribunal may order interim relief only if it is satisfied that all three requirements of that article have been met—i.e., that the case is of particular urgency, that the implementation of the contested decision would cause irreparable damage, and that the decision appears *prima facie* to be unlawful.

#### *Urgency*

21. The Dispute Tribunal has stated in a number of rulings that the requirement of particular urgency will not be satisfied if the urgency is self-created or caused by the party seeking interim relief (see, e.g., *Villamorán* UNDT/2011/126 and *Dougherty* UNDT/2011/133).

22. The Applicants submit that the announcements posted on iSeek did not amount to a proper notice of the contested decisions. The Respondent appears to disagree. However, at this stage, the Tribunal does not need to determine the precise date on which each Applicant was notified of the contested decision. It is common cause that all requests for management evaluation were filed between 23 May and 1 June 2011. Taking the Applicants' case at its best, it necessarily follows that each of the Applicants was aware of the contested decision prior to the date of her or his request for management evaluation of the decision. The requests for management evaluation indicate that the Applicants were aware that the contested decision would go into effect on 1 September 2011, with the first mid-month payment not being processed on 16 September 2011. Furthermore, the Applicants received the reply to their requests for management evaluation on 23 June 2011, which also referred to

1 September 2011 as the date when the decision would go into effect. Nevertheless, the Applicants waited until 12 September 2011—four days prior to 16 September 2011, the date on which the Applicants would otherwise have received the mid-month payment—to submit their motion for interim relief. The Tribunal is not persuaded that there are any good reasons for the Applicants filing the present motion after 1 September 2011 and only four days prior to 16 September 2011, when they knew of the change months in advance.

23. In the circumstances, the Tribunal finds that the urgency in this matter was created by the Applicants. Consequently, the Applicants have failed to meet the test of particular urgency with regard to his motion.

24. As one of the three conditions required for temporary relief under art. 10.2 of the Statute has not been met, the Tribunal need not determine whether the remaining two conditions—irreparable damage and *prima facie* unlawfulness—have been satisfied. However, considering that, in the circumstances of this case, the issues of urgency and irreparable damage are somewhat related (as explained below), the Tribunal finds it appropriate to include its observations regarding the Applicants' claims that the implementation of the contested decision would cause irreparable damage.

#### *Irreparable damage*

25. The Tribunal is not persuaded by the submissions regarding the irreparable nature of the harm that would be caused by the implementation of the contested decision.

26. The Tribunal finds that, considering that the Applicants were aware of the changes in the timing of their salary payments well before September 2011, as explained above in the section regarding the alleged urgency of the present case, they had sufficient time to make appropriate adjustments to avoid at least some of the alleged negative effects of the contested decision.

27. Furthermore, the Tribunal notes the undertaking by the Administration to consider, on individual basis, any requests for salary advances, “subject to the provision of appropriate justification”. The Applicants have provided no reason to conclude that the Administration’s undertaking to consider any such requests was made in bad faith. The Tribunal is also not persuaded by the Applicants’ submission that, because they would have to provide the Administration with “appropriate justification”, their fundamental rights would be breached. There is no indication that the required justification would be beyond what one might reasonably expect under staff rule 3.15 (on salary advances).

28. In any event, the Tribunal finds that the Applicants have failed to persuade the Tribunal on the papers filed that the implementation of the contested decision would cause harm that could not be compensated by an appropriate award of damages.

29. As the Applicants failed to satisfy the conditions of particular urgency and irreparable harm, no determination will be made as to the *prima facie* unlawfulness of the contested decision.

30. The Tribunal notes and appreciates the diligent and professional efforts of both Counsel in complying with its directions and orders in this matter.

### **Conclusion**

31. The Applicants’ motion for interim relief is denied.

(Signed)

Judge Ebrahim-Carstens

Dated this 16<sup>th</sup> day of September 2011