



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2013/027

Order No.: 101 (NY/2013)

Date: 18 April 2013

Original: English

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**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Hafida Lahiouel

## **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

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 irrepara

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.

