
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/114

Order No.: 279 (NY/2017)

Date: 21 December 2017

Original: English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

Introduction

1. On 19 December 2017, the Applicant, a Team Leader in the Learning Technology team at the P-4 level on a permanent appointment with the United Nations, filed an application for suspension of action during management evaluation pursuant to art. 13 of the Dispute Rules of Procedure. The Applicant requested the Tribunal to order the suspension, pending management evaluation, of the implementation of the decision by the Administration to not make good efforts to absorb him on to a new post after it decided to abolish his post resulting in his separation from the Organization following the expiry of his current temporary assignment on 31 December 2017.

2. On 19 December 2017, the case was assigned to the undersigned Judge.

3. On 19 December 2017, the Registry acknowledged receipt of the application and transmitted it to the Respondent. The Tribunal instructed the Respondent to submit his reply by 5:00 p.m. on 20 December 2017.

4. On 20 December 2017, the Respondent filed his reply contending that the application is moot because the Applicant has been provided with the relief he is seeking. Without prejudice to any argument that may be presented by the Respondent in its response to request, on 20 December 2017, the Respondent appointed the Applicant to a temporary appointment until 18 January 2018, the date by which the Applicant may expect to receive a response to his request [for management evaluation].

Background

5. In his application for suspension of action, the Applicant presents the facts as follows (emphasizes and references to annexes omitted):

On 19 December 2017,

positions. I encourage you to look for UNDP vacancies posted on the UNDP intranet website, <http://jobs-intra.undp.org/> and at the websites of our sister agencies.

h. Thirdly, instead of the Administration assisting the Applicant to find suitable alternative posts, it actually took steps to discourage and impede upon the Applicant to find a suitable alternative post. For instance, in August and December 2016, the Applicant was informed of other posts that would be created when his post in Copenhagen was going to be abolished and he was told not to apply for them. The Applicant would likely have the necessary qualifications and experience required by the new post(s). The Dispute Tribunal has found that a staff member need not be fully competent for an alternative post and relative competence is sufficient;

i. The Applicant would likely have relative competence for the new post(s) and yet was not considered. Moreover, there was a directive issued by UNDP management which stated that vacant P-3 and higher positions should not be published. This clearly impeded upon the Applicant's efforts to find and apply for other positions. His search effort was further impacted by the UNDP People Realignment Policy and Processes which stated that, the time in post for staff members being relocated will be a minimum of two (2) years. The Applicant understood that, in order to comply with this policy, he was required to stay in the Copenhagen post for a period of at least two years and could not apply for other posts until he was formally notified of the abolition of his post;

j. Fourthly, the Administration failed to perform any of the steps outlined by the Dispute Tribunal in *Timothy* UNDT/2017/080 which are required in order to comply with its obligation under staff rule 9.6(e). In particular, the Administration did not: (a) provide a list of: i. all posts at the Applicant's level or at a lower level, and (b) provide a formal offer, together with the list or as soon as possible after the notification of the list in order for the Applicant to be able to evaluate all the options and

to timely express his interest accordingly after consultations between the parties and the staff union if necessary;

k. Fifthly, there were no other UNDP staff members holding permanent appointments at the P-4 level which were affected by the restructuring process who were to be considered for available posts before or simultaneously with him. Also, the fact that he was the only staff member affected by the restructuring process and onIP

matching his abilities and grade, and if this was impossible, then to at least offer his duties at a lower grade and/or other posts they could have discovered if the Administration would have widened its search accordingly;

o. In light of the above, there are serious and reasonable doubts about the lawfulness of the decision and that such a decision is *prima facie* unlawful;

The matter is urgent

p. The ma temporary assignment will expire on 31 December 2017 and he will thereafter be separated from service;

q. The Applicant has tried to find a suitable available post and has discussed the issue with Human Resources. However, once the Applicant realized that no genuine efforts were being made to assist him in finding a suitable available post, he immediately took steps to file a request for management evaluation and the present application. The Applicant would contend that this is not a case of self-created urgency in that legitimate steps were taken by him to try to resolve the matter informally;

Implementation of the impugned decision will cause irreparable harm

r. It is trite law that loss which can be adequately compensated through a monetary award will not constitute irreparable damage justifying a suspension of action. Nonetheless, the Dispute Tribunal has found that harm to professional reputation and career prospects, or harm, or sudden loss of employment may constitute irreparable damage;

s. In the instant case, if the impugned decision is implemented, the Applicant will suffer harm due to the loss of employment and in relation to his career prospects. Specifically, he will lose the opportunity to advance his

career as a Team Leader in the Learning Technology team. Such harm cannot be compensated for by a monetary award.

7.

which the Applicant may expect to receive a response to his request [for management

because the Applicant has been provided with the relief he is seeking and that there is no matter for the Dispute Tribunal to adjudicate.

Consideration

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Whether the Applicant requested management evaluation of the contested decision and whether the evaluation is ongoing

13. The Tribunal notes that it is uncontested that the Applicant filed a management evaluation request of the contested decision on 19 December 2017, within 60 days from the day of notification and that the management evaluation is ongoing. The Tribunal concludes that the second mandatory condition is also fulfilled.

Urgency

14. The Tribunal notes that the Respondent has informed the Tribunal that the Administration has extended appointment until 18 January 2018, the date by which the Respondent states the Applicant may expect to receive a response to his request for management evaluation and considers that it results contract no longer expires on 31 December 2017. The Tribunal considers that the invoked urgency no longer exists and the third condition is not fulfilled.

15. Since one of the mandatory and cumulative conditions is not fulfilled, there is, therefore, no need for the Tribunal to consider the remaining mandatory and cumulative conditions.

Relief

16. The Tribunal takes note that the Respondent until 18 January 2018 during the pendency of the management evaluation which is expected to be finalized within 30 days from the date of filing of the December 2017 request for management evaluation.

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suspended during the pendency of management evaluation, has already been granted by the Administration.

18. The Tribunal commends the Administration for its swift and appropriate response.

Conclusion

19. Taking act th and appropriate