



Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

SAFFIR

v.

Introduction

1. On 25 March 2013, the Applicant, a staff member in the Meetings Support Section, Department of General Assembly and Conference Management (“DGACM”), filed an application with the Dispute Tribunal contesting the decision of Mr. Franz Baumann, Assistant Secretary-General, DGACM (“ASG/DGACM”) to initiate the recruitment of 19 candidates for the future operation of the Publishing Section apparently without the approval and authorization of the General Assembly (see *Saffir* Suspension of Action Order No. 49 (NY/2013) dated 22 February 2013).

Relevant Background

Contested decision

2. On 10 February 2013, the ASG/DGACM sent an email titled “Update on developments in the Publishing Section”, whereby he stated:

...The plan to phase out offset printing and related services by the end of the 2013, as envisaged in the Secretary-General’s budget proposal for 2012-2013, was accelerated by the impact on the space and equipment in the NL 3B of super-storm Sandy.

...

In the coming days, ten posts (1 GS-7, 3 GS-6, 3 GS-5, and 3 GS-4) will be posted on [the United Nations online recruitment system (“Inspira”)]. The incumbents of these posts will provide in-house printing services using digital equipment. Soon thereafter, as soon as the presently ongoing review by OHRM is completed, nine more posts (1 GS-7, 3 GS-6, 3 GS-5, and 2 GS-4) will also be posted. The incumbents of these posts will provide distribution services. Together with the existing PS Front Desk and Front Office, the printing and distribution operations will be integrated, with the Desktop Publishing Unit, the Meetings Servicing Unit (formerly in CPCS) and the PaperSmart operation, in the new Meetings Support Section.

...

* All New York Secretariat Departments have been contacted by the ASG/OHRM with the request to identify opportunities to place PS

staff. In this connection, but also for purposes of applying to the above-mentioned PS posts which will be advertised, it is important for all PS staff to complete and update their PHPs.

* Training sessions to assist staff with this transition will be organized by OHRM and by the Department.

* The OHRM/DGACM working group continues to identify

the deletion of 59 posts and the creation of 19 new ones ... that it would appear that the contested measures have only recently been submitted to the General Assembly as part of its consideration of the 2014–2015 biennium budget...[and] the Applicant is facing the prospect of ... an unquantifiable impact on his prospects for continued employment and career development within the [Publishing] Section”.

Application on merits

6. On 25 March 2013, the Applicant filed the present application regarding the same issues as those previously addressed by the Tribunal in Case No. UNDT/NY/2013/011 in which he had requested a suspension of action of the decision which appeared to the Tribunal as having been made without lawful authority.

Motion for interim relief

7. On 27 March 2013, the Applicant filed a motion for interim measures seeking the suspension of the implementation of the contested decision pending a resolution of the present matter on its merits. By Order No. 77 (NY/2013), dated 27 March 2013, the Tribunal granted interim relief suspending the implementation of the decision to conduct a recruitment exercise via Inspira for 19 new posts in the Publishing Section, for a period of 60 days or until a final determination of the substantive merits of the application, whichever came first, or until such further Order as was deemed appropriate by the Tribunal.

Rescission of contested decision

8. On 5 April 2013, the acting head of DGACM notified the Applicant and other DGACM staff members at a town hall meeting that the decision to initiate a recruitment exercise for the 19 positions had been rescinded. The staff members were further notified that these posts would be re-advertised at a later date should the General Assembly approve the 2014-2015 biennium budget proposed by the Secretary-General.

9. On 9 April 2013, the MEU informed the Applicant that the rescission of the decision to conduct a recruitment exercise rendered the Applicant's request for management evaluation moot.

10. On 10 April 2013, the Respondent filed a motion for leave to have receivability considered as a preliminary issue on the grounds that, as a result of the decision to rescind the recruitment of the 19 posts, the application was now moot and not receivable. Furthermore, the Respondent also stated that the positions would be advertised later in 2013 if the General Assembly, during the main part of its 68th session, approved the budget for 2014–2015 as proposed by the Secretary-General. The following day, the Tribunal (Judge Ebrahim-Carstens) issued Order No. 95 (NY/2013) directing the Respondent to file a reply limited to the issue of receivability to which the Applicant was to file a response within a week.

11. In his response dated 26 April 2013, the Respondent repeated the substance of his 10 April 2014 motion that the rescission of the contested decision resulted in the application before the Tribunal being moot. The Respondent added that the Applicant was not contesting an administrative decision from which any harm or compensation flowed. The Applicant responded to the Respondent's submission on 3 May 2013 stating that the application was not moot since the unlawfulness continued thus causing the Applicant continuous harm. The Applicant also submitted that the decision before the Tribunal remained a contestable administrative decision.

12. On 23 May 2013, taking into consideration the fact that the decision to recruit 19 candidates had been rescinded, by Order No. 131 (NY/2013), the Tribunal (Judge Ebrahim-Carstens) deferred consideration of the merits of this case.

13. A case management discussion was held on 3 October 2013. By Order No. 239 (NY/2013), dated 4 October 2013, the Tribunal ordered the parties to file a submission on whether this case should be combined with other pending cases on the same subject matter (see *A-Ali and 45 others* UNDT/2013/155 and *A-Ali and 45*

others UNDT/2013/169) and whether there remained a contestable administrative decision.

14. On 11 October 2013, the parties filed a joint submission whereby they stated that the present case and the two *A-Ali et al.* cases contained overlapping facts and legal issues. The Respondent did not object to these cases being joined whereas the Applicant noted that they had some concerns that the joinder of case UNDT/2013/169 might result in procedural delays. The parties did not agree as to whether there remained a contestable administrative decision.

15. On 17 October 2013, the Applicant filed an *ex parte* request for measures to protect the confidentiality of his medical file. The Applicant stated that he had medical evidence in support of his claim that the contested decision resulted in him suffering stress and anxiety the details of which he wished to remain confidential. That same day, by Order No. 258 (NY/2013), the Tribunal ordered that the Applicant was not required to file the medical evidence referred to. The Tribunal further ordered that the Applicant was to bring the original of the said medical information to any future hearing so that the Tribunal may, if necessary, determine the means and terms of disclosure.

16. On 18 October 2013, the Applicant filed a submission in response to Order No. 239 on the question whether there remained a contestable administrative decision and whether the Applicant had suffered harm as a result of the said decision. The Respondent filed his response to the Applicant's submission on 25 October 2013.

17. By email dated 26 March 2014, the Tribunal instructed the Registry to inform the parties to attend a hearing on the merits and, if appropriate, compensation on 8 April 2014. Due to the unavailability of counsel, the hearing was rescheduled for 10 April 2014.

18. On 10 April 2014, the Tribunal held a hearing for the purpose of clarifying the Respondent's contention that there was no contestable administrative decision identified by the Applicant and to receive evidence from the Applicant regarding his

claim for compensation. At the conclusion of the hearing the Tribunal raised certain questions regarding the continuation of the proceedings. Taking into consideration the observations made by the Tribunal, the parties agreed to engage in discussions in an attempt to resolve their differences. By Order No. 66 (NY/2014), dated 11 April 2014, the Tribunal suspended the proceedings to enable the parties to explore the possibilities of resolving their differences. On 9 May 2014, the parties informed the Tribunal that they were not able to reach a resolution.

Consideration

Administrative decision

19. The competence of the Dispute Tribunal is determined by the provisions of art. 2.1(a) of its Statute which states that the Dispute Tribunal shall be competent to hear and pass judgment on an application contesting an administrative decision that is *alleged* to be in non-compliance with the terms of appointment or the contract of employment of a staff member.

20. The Respondent states that, due to the preparatory nature of the 10 February 2013 announcement, the implementation of the decision to hire 19 new staff members had yet to be carried out and that it had no impact on the Applicant's own terms of appointment.

21. The announcement of the creation of these new posts was presented as the result of a "plan to phase out offset printing and related services by the end of the 2013", namely the Applicant's section. Further, the day after the transmittal of this announcement, DGACM posted some of the announced vacancies on Inspira. Therefore, the Tribunal consider

Accordingly, until the decision was rescinded the Applicant was entitled to compensation for any harm that he could prove that he suffered as a result of the impugned decision.

22. The Tribunal finds that the decision to hire new staff members is an administrative decision and that, in the present case, the outcome of that selection process could adversely affect the Applicant. Such a finding is consistent with

enable it to make a factual finding that an applicant did, in fact, suffer from stress and anxiety. In the abse

34. In *Ali and 45 others*, 46 staff members, including the Applicant, filed a consolidated application contesting the decision to submit a proposed programme budget to the General Assembly for the 2014–2015 biennium, which included the abolition of 59 posts in the Publishing Section, DGACM. The issues raised by the Applicant regarding the long standing plan

Award

38. The Applicant seeks compensation for emotional and psychological harm.

39. The Tribunal endorses the finding in the judgment of the Dispute Tribunal in *Nguyen-Kropp and Postica* UNDT/2013/004, para. 152, and by the Dispute Tribunal for the United Nations Relief and Works Agency (“UNRWA”), *Abdel Khaleq* UNRWA/DT/2013/022, at para. 84, regarding the steps that the Tribunal should take

within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

(Signed