



Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

A-ALI and 45 others

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Lennox S. Hinds

Claire Gilchrist

Counsel for Respondent:

Stephen Margetts, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. On 20 September 2013, 46 staff members in the Meetings and Publishing Division, Department for General Assembly and Conference Management (“DGACM”), filed a consolidated application contesting the decision to submit a proposed programme budget to the General Assembly for the 2014–2015 biennium, which includes the abolition of 59 posts in the Publishing Section, DGACM. The decision was not jointly negotiated and agreed with staff members. The Respondent’s reply was filed on 23 October 2013.

Relevant background

2. On 28 April 2011, the Secretary-General launched a plan to reform the Secretariat, which included a goal for the Organization and DGACM in particular, to move to a less paper-reliant environment.

3. On 6 June 2011, the Secretary-General submitted to the General Assembly his budget proposal for 2012–2013, which included a proposal to abolish 41 posts within the Publishing Section as a result of the decision to reduce the volume of publications printed in-house and to move towards digital printing. The Secretary-General’s budget proposal was approved on 24 December 2011.

4. In December 2011, the Change Management Team submitted 61 recommendations to the Secretary-General for the realization of his organizational reforms. These recommendations included the promotion of the use of PaperSmart meetings; a reduction in the number of hardcopy publications being distributed; that heads of departments assess functions that could be consolidated and restructured; and that the Office of Human Resources Management encourage mobility for General Service staff.

5. On 19 October 2012, a staff meeting was held for the purpose of discussing the budgetary proposals for 2014–2015 and how it would affect the Publishing

Section. During the remainder of 2012, staff representatives and management continued to hold discussions regarding the future of the Section.

6. On 19 December 2012, as a result of discussions following the effects in October of super-storm Sandy which damaged the Publishing Section's printing capabilities, a draft "Concept of Operations" document was circulated. This paper discussed the restructuring of the digital printing operation of the Publishing Section and was to be reflected in the proposed programme budget for 2014–2015. Two days later, a meeting of the DGACM Staff-Management Committee was held during which the Secretary-General's instruction that DGACM cut its budget, including the proposal to abolish posts in the Publishing Section, was discussed.

7. On 7 January 2013, DGACM submitted its budget proposal for 2014–2015 for review by the Office of Programme Planning, Budget and Accounts in the Department of Management.

8. On 4 February 2013, the staff of the Publishing Section adopted a resolution in which they rejected, among other things, the proposed elimination of 59 posts in the Publishing Section. The staff further expressed their concern that management had failed to retrain staff for new functions developed since 2009.

9. On 27 March 2013, DGACM and the Controller's office held a meeting for the purpose of discussing their 2014–2015 budget proposal. The Controller's office had no objections to the proposal.

10. On 28 March 2013, the Publishing Section declined to participate in a proposed emergency meeting which was to include a discussion of the need to identify a course of action for the remainder of 2013, pending decision of the General Assembly on the DGACM proposal for the biennium 2014–2015. During the meeting it was decided that "[b]ased on the proposed staffing for 2014–2015, first notice (on possible abolishment of posts) would be sent by DGACM [template to be provided by the Office of Human Resources Management] to all printing and distribution staff in

October with actual termination notices being sent only following General Assembly decision in December”.

11. On 5 April 2013, the Acting Head of DGACM held a town hall meeting whereby he announced that the decision to initiate recruitment of nineteen candidates for the future operation of the Publishing Section had been rescinded. During the meeting he stated that

the plan was to maintain the full-scope of publishing operations (including offset printing) through 31 December 2013. In doing so, DGACM was to continue actively pursuing *inter alia* training opportunities, temporary assignments, and attrition in order ... to minimize the effects of the proposed budget reduction that-if so decided by the 68th General Assembly- would take effect on 1 January 2014.

12. The Acting Head concluded the town hall meeting by stating that

these nine posts as well as the additional ten which were in the pipeline will now be advertised later this year, should the General Assembly, during the main part of its 68th session, approve the budget for 2014–2015 as proposed by the Secretary-General.

13. On 24 April 2013, the Chef de Cabinet, Executive Office of the Secretary General, held a confidential meeting with staff representatives, Messrs. Smith, Wright and Hassanin. The staff representatives indicated that they had proposals regarding the operations of DGACM and, in particular, other opportunities to identify efficiencies. The Chef de Cabinet expressed a willingness to review such suggestions. However, given the advanced stage in the budgetary process, it was not foreseen that any such proposals would have an impact on the Secretary-General’s proposed budget for 2014–2015.

14. On 9 May 2013, the proposed programme budget for biennium 2014–2015 was published and distributed as an official document of the General Assembly (A/68/6 (Sect. 2)). Section 2 included, but was not limited to, the budget proposal regarding the Publishing Section, DGACM.

15. On or about 21 May 2013, the staff of the Publishing Section drafted a document titled “Statement by the Staff of the Publishing Section to the Emergency Meeting of the Joint Negotiation Committee On Tuesday 21 May 2013”, which stated (emphasis added):

The staff representatives of the Publishing Section, DGACM, with the approval and full support of the Section, have called for this emergency meeting of the joint Negotiation Committee to consult and negotiate the proposed abolition of posts in the Section. **On Thursday, 9 May 2013, the Office of Programme Planning and Budget Affairs, Department of Management, submitted Section 2 of the proposed programme budget for the biennium 2014–2015** on General Assembly and Economic and Social Council affairs and conference management in *eDoc* to the Document Control Unit for processing. **Section 2 contains the proposal made by the Department for General Assembly and Conference Management (DGACM) to further abolish fifty-nine posts in the Publishing Section**, in addition to the XX posts which the Secretary-General offered for abolition to the General Assembly last year.

The submission terminates the ongoing consultation with the Chief de Cabinet, in which the staff representatives of the Publishing Section have engaged ...

The submission has been made against this backdrop of bad faith, extending to the joint presentation to the Executive Officers’ Meeting, on 12 February 2013 ...

...

... **Section 2 of the proposed programme budget for the biennium 2014–2015** is flawed in many areas beyond the Publishing Section as well.

Taking into consideration all the above facts, in good faith, and for the purpose of making the Organization a better, more efficient working place and fulfilling its mandates, the staff of the Publishing Section present the following proposal as a counterproposal for the proposal of the DGACM management:

16. On 29 May 2013, Mr. Smith, Staff Representative, Publishing Section, wrote to the Secretary-General stating that he was enclosing their

proposal regarding the additional 59 posts that DGACM is proposing to abolish ...

... Our request to have the matter discussed by the Joint Negotiation Committee has been stymied by the President of the New York United Nations Staff Union.

We then learned that on 9 May 2013, the Office of Programme Planning and Budget Affairs, Department of Management, submitted Section 2 of the proposed programmed budget for the biennium 2014–2015 ... [which] contains the proposal made by [DGACM] to further abolish fifty-nine posts in the Publishing Section. (Emphasis added)

17. On 19 June 2013, the Director of Office, Office of the Chef de Cabinet, Executive Office of the Secretary General, acknowledged the letter dated 29 May 2013 and stated:

[T]he Secretary-General's budget proposal for the biennium 2014–2015 for Section 2 (General Assembly and Economic and Social Council affairs and conference management) has been finalised and is currently being reviewed by the Advisory Committee on Administrative and Budgetary Questions. As such, the budgetary process with respect to the biennium budget has reached an advanced state and any reversal is not possible.

... it is recommended that such proposals be discussed with the management of the Department.

18. On 29 July 2013, the Applicants filed a request for management evaluation. On 30 August 2013, the Management Evaluation Unit informed the Applicants that their request for a review of the Secretary-General's budget proposal to the General Assembly for the 2014–2015 biennium “without a negotiation and an agreement of the staff members from the Publishing Section, DGACM [was] not receivable” as it did not constitute an administrative decision within the meaning of staff rule 11.2.

19. On 19 September 2013, the Applicants filed their appeal with the Tribunal stating that the decision being contested was the “[d]ecision by the Secretary-General to submit a proposed programme budget to the General Assembly for the 2014–2015 biennium, which includes the abolition of 59 encumbered posts in the Publishing Section, [DGACM], that was not jointly negotiated with staff members or agreed upon by the same”. The Applicants stated that they were notified of the decision upon

receipt of the email of 19 June 2013 from the Chef de Cabinet. On 23 October 2013, the Respondent filed his reply.

Consideration

Applicable law

20. ST/SGB/2013/3 (Staff Rules and Staff Regulations of the United Nations) states:

Rule 11.2

Management evaluation

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

...

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

21. Article 8.1 of the Statute of the Dispute Tribunal states:

1. An application shall be receivable if:

...

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required.

Receivability

22. Under art. 8.1 of the Statute of the Dispute Tribunal, read together with staff rule 11.2(a), an applicant must, as a mandatory first step in cases that do not fall

under staff rule 11.2(b), request management evaluation of the contested decision within 60 days of the date of notification of the contested decision.

23. It is settled law that the Dispute Tribunal has no jurisdiction to waive the time limits for requests for management evaluation. The extremely limited and exceptional circumstances, discussed in *Simmons* UNDT/2013/15, are not applicable in these cases.

Contested decision

24. In both their requests for management evaluation and their applications before this Tribunal, the Applicants clearly state that the decision being contested is the decision to submit a proposed programme budget to the General Assembly for the 2014–2015 biennium.

25. The Applicants further stated that they were notified of the contested decision on 19 June 2013 upon receipt of an email by the Director, Office of the Chef de Cabinet, Executive Office of the Secretary-General.

26. The initial question before this Tribunal is therefore whether the 19 June 2013 communication is properly to be regarded as the earliest notification of the submission of the proposed programme budget to the General Assembly for the 2014–2015 biennium. If it is, the request for management evaluation would have been presented in time. If it is not, is there persuasive evidence that notification of the decision was effected at an earlier date?

June 2013

27. While the Applicants submit that they were notified of the decision on 19 June 2013, the Tribunal notes and clarifies that the email from the Director, Chef de Cabinet, constituted a notification that in light of the fact that the budgetary process with respect to the biennium budget had reached an advanced state they were not in a position to review the additional proposal put forth by the Applicants on

29 May 2013. Thus, the email of 19 June 2013 was the Organization's notification of its refusal to consider the Applicants latest proposal and not the notification that a budget for the biennium 2014–2015 had been submitted.

Notification

28. The letter sent to the Secretary-General on 29 May 2013 states that the Staff Representative, Publishing Section, "... learned that on 9 May 2013, the Office of Programme Planning and Budget Affairs, Department of Management, submitted Section 2 of the proposed programmed budget for the biennium 2014–2015", which is why they felt the need to submit a counter proposal for the Secretary-General's consideration.

29. However, a further review of this letter indicates that it attached a copy of a statement by the Staff of the Publishing Section dated 21 May 2013. The purpose of this letter was to memorialize the calling of an emergency meeting to discuss the 9 May 2013 submission of Section 2 of the proposed programme budget for the biennium 2014–2015.

30. The Appeals Tribunal has asserted (see *Manco* 2013-UNAT-342) that when contesting the receivability of a filing based on the non-compliance with the applicable time limits, the Tribunal is required to identify with certainty when the applicable time limits started to run. In *Manco* the Appeals Tribunal stated:

18. Rule 11.2(c) of the Staff Rules reads, in part: "A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested".

19. This Tribunal reaffirms that unless the decision is notified in writing to the staff member, the limit of sixty calendar days for requesting management evaluation of that decision does not start.

20. Without receiving a notification of a decision in writing, it is not possible to determine when the period of sixty calendar days for appealing the decision under Staff Rule 11.2(c) starts. Therefore,

a written decision is necessary if the time limits are to be correctly, and strictly, calculated. Where the Administration chooses not to provide a written decision, it cannot lightly argue receivability, *ratione temporis*.

31. The Tribunal finds that, at the very latest, the Applicants received notice of the 9 May 2013 publication of the proposed programme budget for the biennium 2014–2015 on 21 May 2013 (see paragraph 15 above: their “Statement by the Staff of the Publishing Section to the Emergency Meeting of the Joint Negotiation Committee on Tuesday 21 May 2013”).

32. Thus, in line with the Appeals Tribunal’s case law, 21 May 2013 is the date by which the applicable time limits would have started to run, resulting in any request for management evaluation being due by 20 July 2013.

33. In *Romman* 2013-UNAT-308, the Appeals Tribunal stated that it “has repeatedly held that it “has been strictly enforcing, and will continue to strictly enforce, the various time limits (see *Mezoui* 2010-UNAT-043, at para. 21; see also *Ibrahim* 2010-UNAT-069; *Harding* Order No. 44 (UNAT/2011); *Meron* Order No. 42 (UNAT/2011); and *Islam* Order No. 7 (UNAT/2010)”.

34. The requests for management evaluation that led to this consolidated application were filed on 29 July 2013. Accordingly, the Applicants’ requests for management evaluation were not filed within the requisite period of 60 days and, as previously stated, it is settled law that the Tribunal does not have power to extend or waive the deadlines for management evaluation.

35. In the circumstances it is not necessary for the Tribunal to deal with the merits of the contentions raised by either party.

36. The consolidated application filed by *A-Ali and 45 others* is not receivable.

Conclusion

37. The claims of all 46 Applicants are not receivable and are hereby dismissed.

(Signed)

Judge Goolam Meeran

Dated this 11th day of December 2013

Entered in the Register on this 11th day of December 2013

(Signed)

Hafida Lahiouel, Registrar, New York