



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

BALI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Jérôme Blanchard, HRLU/UNOG

Introduction

1. On Friday, 26 July 2013 the Applicant filed a request for suspension of action of a decision of the Chief of the Human Resources Policy Service (“HRPS”). The Applicant describes the decision as “management’s denial to refer the proposed revisions of the Administrative Instruction on Official travel for consultation in the framework of the [Staff Management Committee] SMC in accordance with the provisions of ST/SGB/2011/6.”

Facts

2. In the Report of the Secretary-General to the General Assembly, A/66/676 dated 31 January 2012 for the programme budget for the biennium 2012-2013, the Secretary-General made proposals for a more effective and efficient utilization of resources for air travel. The report proposed considerable changes to the Organization’s travel policy, which currently is being governed by ST/AI/2006/4 (Official travel) of 27 November 2006 as amended.¹

3. Following the above proposal, the vice-president of the Staff Management Committee (“SMC”), on behalf of the Staff Unions of the United Nations System, wrote a letter to the Secretary-General of the United Nations on 16 February 2012. In the letter, the vice-president expressed disappointment at the action of the Secretary-General to “take proposals modifying our conditions of work to the General Assembly without consulting staff representatives first as legally required by ST/SGB/2011/6 on Staff Management Committee ...”

4. By General Assembly Resolution A/RES/67/254 (Special subjects relating to the programme budget for the biennium 2012-2013) adopted on 12 April 2013, the General Assembly *inter alia* requested the Secretary-General in part VI of the resolution, paragraph 14 to:

¹ ST/AI/2006/4/Amend.1 of 31 December 2007 and ST/AI/2006/4/Amend.2 of 14 April 2010

[...] modify his administrative instructions on standards of accommodation for air travel so that the duration of a journey shall be determined based on the most economical route available, provided that the total additional time of the whole journey does not exceed the most direct route by four hours;

5. The General Assembly at paragraph 71 of Resolution A/RES/67/255 (Human resources management) adopted on 12 April 2013, requested the Secretary-General to revise ST/SGB/2011/6 on Staff-Management Committee of 8 September 2011 to make it in line with the existing staff regulations.

6. On 27 April 2013, the Chief, HRPS sent an email to the various staff representatives noting the request of the General Assembly to the Secretary-General in A/RES/67/254 and also circulated the proposed changes to be made to the staff rules. At the same time he requested comments from the staff representatives by 3 May 2013.

7. Subsequently on 1 May 2013, the Chief, HRPS circulated to the various staff representatives a draft of the revised Administrative Instruction (ST/AI/2006/4) on Official travel for their comments and suggestions which were due by 27 May 2013.

8. There was an SMC session held in Mexico in June 2013 and among the items on the agenda to be discussed was the staff management relations on the subject of revision of ST/SGB/2011/6. However, the SMC session was unsuccessful with respect to reaching agreements hence the session ended prematurely.

9. On 20 June 2013, the Vice-President, SMC on behalf of Staff Unions of the United Nations System wrote a letter to the Secretary-General expressing his disappointment at the early termination of the SMC session in Mexico and various other matters he believed were aimed at incapacitating the SMC especially in relation to the proposed changes to be made to ST/SGB/2011/6 (Staff-Management Committee).

10. On 21 June 2013, the Assistant Secretary-General for Human Resources Management (“ASG/OHRM”) circulated among the various staff representatives,

a draft revised document of ST/SGB/2011/6 and calling for comments and suggestions to the draft by 4 July 2013.

11. In a letter dated 24 June 2013 the Secretary-General replied to the Vice-President SMC letter reaffirming his commitment to engage staff so as to ensure meaningful participation within the legislative framework of the organization.

12. On 3 July 2013, the Vice-president SMC sent an email to ASG/OHRM as follows:

Thank you for your email requesting comments to Management's proposed changes to ST/SGB/2011/6.

My understanding is that as this was an agenda item for consultation at SMC but that as agreement as not reached on it, this item should only go forward within the framework established by ST/SGB/2011/6 (either be discussed further at SMC or be referred for mediation).

Grateful if you could clarify whether Management has the same understanding or whether it intends to promulgate without using the SMC processes outlined above.

Given the deadline of 4 July, grateful if you could get back to us by then, it being understood that if we don't hear from you by then, the understanding is that Management intends to promulgate without going through the above-mentioned SMC processes.

13. Pursuant to General Assembly Resolution A/RES/67/255, the Secretary-General issued ST/SGB/2011/6/Rev.1 (Staff-Management Committee) on 11 July 2013. The revised ST/SGB/2011/6/Rev.1 contains several amendments and some of the powers and authority of the SMC have been substantially decreased or removed altogether.

14. On 22 July 2013, the Applicant received an air ticket to go on mission to Nairobi, Kenya in September 2013.

Parties' contentions

15. The Applicant's primary contentions may be summarized as follows:

Prima facie unlawfulness

- a. Any change to the Administrative Instruction on Official travel is subject to the procedural requirements set forth in ST/SGB/2011/6. It is therefore essential to ascertain whether the relevant procedural requirements were respected regarding the revision process of the Administrative Instruction on Official travel;
- b. The legal requirements for consultations in compliance with ST/SGB/2011/6 in force at the time were not fulfilled during the revisions of the ST/SGB/2011/6, which in effect vitiates the process for the revised ST/SGB/2011/6/Rev.1;
- c. Since the SMC meeting in Mexico the Administration has not signalled its intention to refer the matter to SMC or to discuss it inter-sessionally with staff unions;
- d. That provisions for resolving differences and the requirement for good faith negotiation agreement by consensus and mediation embodied in ST/SGB/2011/6 cannot be replaced with pro forma consultation by email;
- e. Unwillingness of the Administration to conduct consultations is inconsistent with the Organizations rules and also in contravention with the general aims of an organization and human rights; and
- f. The elimination of the requirement for staff management consultations in the revised ST/SGB/2011/6/Rev.1 reduces the SMC from a negotiating body to an advisory body.

Urgency

- g. The Applicant submitted that the promulgation of the Administrative Instruction on Official travel was imminent based on grounds that on 16 July 2013 the Travel Unit at UNOG held a briefing session and informed the participants that the Administrative Instruction was expected to be issued at the beginning of August.

Irreparable damage

h. The issuance of the new Administrative Instruction on Official travel in circumvention of the procedural requirements will be a further step towards the systematic erosion of the rights of United Nations staff members; and

i. The issuance would set a precedent for the Administration to take unilateral actions that are in contravention to the rule of law under the pretext of the implementation of General Assembly requests.

16. The Respondent's primary contentions may be summarized as follows:

Prima facie unlawfulness

a. The decision is not *prima facie* illegal and the Applicant has failed to demonstrate how the circulation of the draft Official travel by email constituted an irregularity or a flaw warranting a suspension of action;

b. There is no legal requirement that discussion within the SMC is the sole means of satisfying the requirement to consult on human resources policies having a Secretariat-wide impact;

c. Asking various staff representatives to provide comments in writing amounts to consultation and is consistent with Staff Rule 8.1(h); moreover the Office of Human Resources Management received comments for the Field Staff Union; and

d. The proposal included in A/66/676 was shared with staff representative bodies in October 2011 and no comments were received from the staff representatives.

Urgency

e. The Administrative Instruction is of general application and the Applicant is not deprived of his right to contest an individual administrative decision at a later stage which would be based on the new

Administrative Instruction and which may affect his terms of appointment or contract on employment;

f. There is no urgency because the decision to issue and or implement the Administrative Instruction is yet to be taken; and

g. The Applicant's trip is in September 2013 and by then he would certainly receive a reply to his management evaluation request.

Irreparable damage

h. The Applicant's claim of irreparable harm is unsubstantiated and it does not constitute irreparable harm since it is not a violation of the Applicant's individual rights.

Consideration

17. Article 2.2 of the Statute of the Dispute Tribunal provides that:

The Dispute Tribunal shall be competent to hear and pass judgment 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.

18. As the Appeals Tribunal has emphasized more than once, it follows from the statutory provision above that an application for suspension of action can only be apposite before the Tribunal when it is subject to ongoing management evaluation, because such a request can only be granted, pending the outcome of a management evaluation request (see *Igbinedion* 2011-UNAT-159).

19. The Tribunal notes that the Applicant requested for management evaluation on 26 July 2013. The application for suspension of action was filed on the same day and it was served on the Respondent on Monday, 29 July 2013 who submitted his reply on Tuesday, 30 July 2013.

20. Thursday, 1 August 2013 was an official holiday in Geneva and on 2 August 2013, the Respondent filed an additional submission to the suspension of action which was the response to the Applicant's management evaluation request dated 31 July 2013.

21. By virtue of the fact that the Management Evaluation Unit responded to the Applicant's request before the determination of the Application for suspension of action by the Tribunal, the Applicant's request before the Tribunal becomes moot. Once the management evaluation is completed, there is no room left for interim measures based on art. 2.2 of the Statute of the Dispute Tribunal.

22. Certainly the Tribunal's decision on the application for suspension of action does not entail any assessment with respect to the lawfulness of the contested decision.

Conclusion

23. In view of the foregoing, the application for suspension of action is rejected.

(Signed)

Judge Thomas Laker

Dated this 6th day of August 2013

Entered in the Register on this 6th day of August 2013

(Signed)

René M. Vargas M., Registrar, Geneva