



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

AL-BAKER et al.

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:

Lennox S. Hinds
Claire Gilchrist

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat
Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Introduction

1. At 4.56 a.m. on 15 April 2013, six Applicants (Mr. Al-Baker; Mr. Correa; Mr. Czczor; Mr. Hampstead; Mr. Kitcher and Mr. Saffir), all of whom are staff members in the Publishing Section, Department of General Assembly and Conference Management (“DGACM”) of the United Nations Secretariat, filed an application for suspension of action, pending management evaluation, of the decision “to temporarily reassign the Applicants 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”. As part of their submission the Applicants stated that they “have all been told to report to a meeting today, Monday 15 April 2013 at 1.30 pm. regarding their reassignment, which will presumably begin tomorrow 16 April 2013”.

Background

2. On either 10 April 2013 or 12 April 2013, each of the Applicants received a letter from the Acting Head, DGACM stating:

The purpose of this letter is to inform you about your reassignment effective 15 April 2013 through 30 June 2013 from the Publishing Section to the Meetings Servicing Unit in DGACM.

I note that on 9 April 2013 [with one letter stating 10 April 2013], the Director of your Division, Mr. Magnus Olafsson discussed the particulars of the assignment with you.

This notice is further to the meeting I convened on Friday, 5 April 2013 with the Publishing Section when I announced such temporary and lateral reassignments through a structured rotation. This will afford all staff an opportunity to gain experience in the scaled-down digital printing and distribution operations, as well as in other areas, both inside the Department and outside.

3. At 3.15 am on 15 April 2013, the Applicants filed a request for management evaluation of the decision to reassign the six Applicants in the present case. One hour

later, a request for suspension of action of the contested decision pending management evaluation was filed with the Tribunal.

4. At 3 p.m. on 15 April 2013, the Tribunal issued Order No. 98 (NY/2013) whereby it requested that the Respondent inform the Tribunal by 5.00 p.m. as to whether the decision to reassign the Applicants had been implemented and, if so, the date and time at which the decision took effect. The Respondent was also asked to explain the purpose of the 1.30 p.m. 15 April 2013 meeting and its relation with the proposed reassignment of the Applicants.

5. The Respondent dully conformed to the Tribunal's request and stated that the "reassignment of the Applicants pursuant to the letter each Applicant received was effective 15 April 2013" and had therefore already been implemented. The Respondent further expressed that the purpose of the 1.30 p.m. meeting on 15 April 2013 was to greet the newly assigned staff members and to discuss the nature of their new work assignments.

6. At 5.14 p.m. on 15 April 2013, the Applicants filed an Urgent Motion for Permission to Make an Additional Submission Following Order No. 98 whereby they submitted a sworn affidavit stating that at the meeting they "were given details of the work [they] would be doing on [their] new assignments and given a tour of the premises". The Applicants also stated that they "were told to report to the [North Lawn Building] room 1035 the next morning Tuesday 16 April 2013 between 9–9.30am to begin [their] assignment" and that after the meeting they returned to their regular work spaces. In response to this filing the Tribunal asked the Respondent to file a response, if any, by 10.30 a.m. on 16 April 2013.

7. The Respondent dully conformed to the Tribunal's request and stated that the letter each Applicant received clearly stated that their assignment started on 15 April 2013 and that the purpose of the meeting was "in furtherance of the work plan of their new assignments". The Respondent submitted that the fact that the Applicants returned to their former work stations after the meeting does not establish that they

continued to perform work for the Publishing Section. Rather, it merely underscores the fact that the contested reassignment is only temporary in nature and that the Applicants were therefore permitted to keep their workspace so as to “maintain their close relationship with their colleagues in the Publishing Section”. The Respondent also noted that as of the time of their submission, each of the Applicants had reported to duty at MSU.

Consideration

8. 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.... [emphasis added]

9. It follows from art 2.2 that should a contested decision have already been fully implemented, the Tribunal no longer has the authority to order the suspension of the contested decision pending the completion of the management evaluation. However, in cases where the implementation of the decision is of an ongoing nature (see, e.g., *Calvani* UNDT/2009/092; *Hassanin* Order No. 83 (NY/2011); *Adundo et al.* Order No. 8 (NY/2013)), the Tribunal may grant a request for a suspension of action.

10. In the present case, DGACM held an initial meeting with the Applicants’ section on 5 April 2013. Following this initial meeting, the Director of the Applicants’ Division met with each Applicant and informed them of the particulars of their reassignment. Finally, between 10 and 12 April 2013, each Applicant received a letter that clearly stated that the purpose of the letter was “to inform [them] about [their] reassignment *effective* 15 April 2013. [emphasis added]

11. As part of their request for suspension of action, the Applicants submitted that the fact that a meeting was scheduled for 1.30 p.m. on 15 April 2013 suggested that the contested decision was only going to be implemented the following day on 16 April 2013. The Applicants further submitted, as part of their urgent additional submission, that aside from the meeting which included a discussion about the details of their new work assignments and a tour of the premises, they did not perform any work for MSU.

12. However, there is nothing before the Tribunal that would suggest that starting at 9.30 a.m. on 15 April 2013, any of the Applicants either continued to, or were required to, do any work for the Publishing Unit. Rather, the evidence before the Tribunal supports the fact that this initial meeting consisted of an orientation meeting as part of the Applicants' new responsibilities with regard to their temporary one and a half month's reassignment.

13. The participation of each of the Applicants in a meeting held under the hospice of MSU, which included MSU specific discussions and activities, further supports the fact that the Applicants' reassignment was effective starting 15 April 2013 and not potentially at a later date. The fact that MSU chose to hold an "orientation" meeting on the first day of the Applicants' reassignment, during which they were informed of their duties and responsibilities for the duration of their reassignment, including where they would have to report on 16 April 2013, did not in any way postpone or suspend the effective implementation of the contested decision on 15 April 2013.

14. The Tribunal notes that in the present case, the implementation of the contested decision has been fully executed and is not of an ongoing nature which would be susceptible to suspension by the Tribunal. As such, the Tribunal does not need to review whether the Applicants' request for a suspension of action meets the three remaining criteria of art. 2.2 of the Tribunal's Statute which are that the contested decision be *prima facie* unlawful, be of an urgent nature and that its implementation would cause irreparable harm.

IT IS ORDERED THAT:

15. The application for suspension of action is rejected.

(Signed)

Judge Alessandra Greceanu

Dated this 16th day of April 2013