



Before: Judge Thomas Laker

Judge Thm

Introduction

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that he would “be taking up his appointment in the [newly established] Sub-Regional Office [in Abu Dhabi] within a week”.

12. By email dated 29 July 2009, the Chief, HRMS, informed the Applicant “about the administrative procedures and entitlements related to [his]

16. By email dated 14 September 2009, HRMS requested the Applicant to urgently identify a travel date to Abu Dhabi so that they could finalize his travel arrangements.

17. By email dated 16 September 2009, HRMS again requested the Applicant to urgently choose a date to travel to Abu Dhabi, so that all administrative arrangements could be finalized and his relocation take place by the end of September.

18. By email dated 17 September 2009, the Applicant responded that the most suitable travel date would be 19 October 2009. He also requested additional

information from HRMS regarding the HRMS (HRM) - 4374 (4) (pro) - 28781 (15-2456 STW) (13) / 43 (1)

24. By email dated 11 November 2009, copied to several addressees including the Executive Director, the Director, DO, informed the Applicant, who still had not relocated to Abu Dhabi, that he was required to take up his functions effective 23 November 2009 and reminded him that his failure to undertake the functions assigned to him could lead to disciplinary action. He also noted that the Executive Director “was greatly disappointed in what he called [the Applicant’s] inertia” with respect to his reassignment.

25. The Applicant responded by email dated 13 November 2009 that while he would be “more than happy” to travel on 23 November 2009, he still had not received responses from HRMS to some of his queries. He also raised a number of issues which, in his view, were “de facto preventing [his] move to UAE” and should be addressed by senior management.

26. By email dated 18 November 2009, the Director, DO, informed the Applicant, inter alia, that “in view of the very long delays involved in [his] implementing the lateral re-assignment to Abu Dhabi ... and given that the same issues concerning the Abu Dhabi Sub-Regional Office are continuously being raised by the UAE authorities in their various letters to the [Executive Director], it [had] been decided to review the entire scenario related to the Abu Dhabi Sub-Regional Office with the [Executive Director] upon his return to Vienna...”.

27. The Applicant responded on the same day, stating inter alia that he was “pleased to hear that the UNODC [had] decided to ‘review the entire scenario’”.

28. In a meeting held on 1 December 2009 with the Applicant, the Applicant’s supervisor and the Chief of Recruitment, HRMS, the Applicant was informed of the Executive Director’s decision taken on 25 November 2009 to no longer laterally reassign him to the UNODC Sub-Regional Office in Abu Dhabi as Representative to the UAE and Special Representative to all Gulf countries. The Applicant was also informed that he would remain the Regional Programme Coordinator for the GCC countries in Vienna until such time as a new “Head” of the Sub-Regional Office would be appointed and that “he would thereafter be re-assigned to yet-to-be identified other P-3 level functions at UNODC HQs” and revert to his permanent appointment status. The discussions held during the

meeting were reflected in a note for the file, which was reviewed and cleared by the Applicant.

29. By letter dated 2 December 2009, the Executive Director of UNODC

Parties' contentions

35. The Applicant's principal contentions are:

- a. The contested decision is unlawful because:
 - i. "There is no policy basis for no longer reassigning or for the retraction of the reassignment five months after its implementation";
 - ii. "The Applicant has been denied due process in that any and all reasons for the action have been concealed from the Applicant".
- b. The case is of particular urgency because:
 - i. "The best interests of the Organization would be served by having the Applicant continue ... with the development of the Sub-Regional Office...";
 - ii. "The Applicant has been replaced by another officer, more junior, and with no experience.... This was undertaken in the complete absence of any criticisms, any issues, any problems with the Applicant. The action also had a very deleterious impact on the Applicant's professional and career development..."
- c. Irreparable damage will be caused:
 - i. To the Applicant because the Executive Director's decision "has resulted in a high level of destruction of the Applicant's professional and personal life";
 - ii. To the Organization because the "step undertaken by the [Executive Director] enjoys a very significant potential for effectively destroying the prospects for the Sub-Regional Office".

36. The Respondent's principal contentions are:

- a. The contested decision was lawful. In accordance with section 10.4 of ST/AI/2006/3, *Staff selection system*, staff are expected to take

up assignments within two months of notification. Furthermore, in accordance with provisional staff rule 1.2 (a), “staff members shall follow the directions and instructions properly issued by the Secretary-General and by their supervisors”. Finally, the decision to retract the offer of lateral reassignment was within the authority of the Executive Director in accordance with section 3.2 of ST/SGB/2004/6, *Organization of the United Nations Office on Drugs and Crime*, and section 10.4 of ST/AI/2006/3. Despite many reminders over several months and numerous efforts to accommodate the Applicant, he failed to relocate and take up his new functions. Eventually, given pressing operational needs and delays already incurred, it was decided to retract the offer of lateral reassignment made to the Applicant and to laterally reassign another candidate;

- b. The Applicant has not established any particular urgency, nor that the implementation of the decision would cause him irreparable damage;
- c. The application for suspension of action is moot since the Applicant did not, in fact, take up the lateral reassignment within a reasonable period of time. It is not possible to suspend the implementation of the contested decision since another staff member has already been reassigned to the position and is in the process of relocating.

Considerations

37. The Applicant requests the Tribunal to suspend the implementation of the decision to no longer reassign him to the UNODC Sub-Regional Office in Abu Dhabi, UAE.

38. The application was filed shortly after the Applicant wrote to the Management Evaluation Unit of the UN Secretariat to request a management evaluation of the contested decision. At the date of issuance of this order, the time limit for the Secretary-General’s response to the request for management

evaluation was still running and no such response had been made to the Applicant. Thus, the application for suspension of action must be examined in the light of article 2, paragraph 2, of the Tribunal's statute, which provides that:

“The Dispute Tribunal shall be 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...”

39. The Tribunal will examine first whether the decision appears prima facie to be unlawful.

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43. In light of the above-mentioned staff regulation, staff rule and administrative instruction, it appears that it was within the discretionary authority of the Executive Director to decide to laterally reassign the Applicant within UNODC and also, consequently, to decide to no longer reassign him.

44. Of course, the Executive Director's authority in this respect is not without limits and must not be tainted by abuse of discretion.

45. In the present case, the Applicant claims that the contested decision was vitiated by a violation of his due process rights since "any and all reasons for the action have been concealed from [him]".

46. The Tribunal finds, on the contrary, that the Applicant was not denied due process. He was informed on several occasions of what was expected of him and of the urgency of his reassignment to Abu Dhabi to set up the new Sub-Regional Office.

47. For example, on 14 September 2009, he was asked to complete travel arrangements urgently and, on 17 September 2009, "to establish the office in Abu Dhabi, get it operational and the basis for an expanded programme of UNODC in the Gulf States". The Applicant did not do so. At that time, seven weeks (as per the Applicant's statement in his application, but three months as per the Respondent's reply) had already passed since he had finally agreed to be laterally reassigned to Abu Dhabi. In an email dated 17 September 2009, the Applicant, who had previously committed to travel by the end of September, stated that a "most suitable travel date" for him was 19 October 2009. Yet again, he did not travel. It was subsequently agreed that he would travel on 9 November 2009, which also did not happen. According to his email dated 18 November 2009, the Applicant was not only aware of a possible change but was "pleased to hear that UNODC [had] decided to 'review the whole scenario'".

48. Thus, the contested decision could not have been a surprise to the Applicant. It is quite clear from the records of the case that the reasons for the decision to no longer reassign the Applicant to Abu Dhabi were "the long delays in the Sub-Regional Office's opening and operationalization", which in turn were due to the Applicant repeatedly postponing his departure, as indicated in the note

for the file dated 1 December 2009, but also in the emails dated 17 September and 18 November 2009 from the Director, DO, to the Applicant.

49. The Applicant does not offer any explanation for these delays. On the contrary, the presentation of the facts in his application to the Tribunal is incomplete, not to say misleading.

50. These delays are, without any doubt, significant. For selections under the provision of ST/AI/2006/3, section 10.4 of the administrative instruction provides that “if the selected candidate fails to take up the functions within the specified time frames [i.e. two months if the move involves a change of duty station] for personal reasons ... the head of department/office may select another candidate...”. Although this provision is not directly applicable to cases of lateral transfer, it reflects the Organisation’s legitimate expectation that, irrespective of the mode of selection, staff members should take up their functions within a reasonable period of time, i.e. two months when a change of duty station is involved. If they do not do so, the Organisation is entitled, and perhaps even obliged, to fill the vacancy. This may lead to the selection of another staff member, which necessarily includes the withdrawal of the selection of the former candidate. In the case at hand, the Applicant was aware that he was expected to travel to his new duty station and set up the new office as soon as possible at least

conditions is not met (see for example UNDT/2009/003 *Hepworth*, UNDT/2009/033 *Onana*, UNDT/2009/071 *Corcoran*, UNDT/2009/94 *Bernard*).

Conclusion

53. The application to suspend the implementation of the contested decision during the pendency of the management evaluation is rejected.

(Signed)

Judge Thomas Laker

Dated this 6th day of January 2010

Entered in the Register on this 6th day of January 2010

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva