
UNITED NATIONS DISPUTE TRIBUNAL

Case No ND G A
Order No G A
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Introduction

1. By application filed on 7 March 2017, the Applicant, a Human Rights Officer, Office of the High Commissioner for Human Rights (“OHCHR”), challenges (i) the decision to laterally transfer him to the OHCHR Country Office

6. On 10 September 2015, the Applicant was informed that his post in the Sustainable Development Goals (“SDG”) Section in Geneva would potentially be moved to OHCHR New York. The Applicant was informed that, as the incumbent of the post, he would be expected to move with his post. However, if he did not want to move with his post, he could opt into the internal matching exercise whereby he would be matched to another post in line with his selected preferences.

7. By email of 22 September 2015, the Applicant informed OHCHR that he decided to opt into the internal matching exercise, identifying his current post as one of his preferences, and two positions in Guatemala as his fourth preference.

8. By letter of 9 December 2015 from the Chief of Programme Support and Management Services, OHCHR, the Applicant was informed of “the High Commissioner’s decision, pending receipt of the necessary budget approvals from the General Assembly, to laterally transfer [him] to the post [he] expressed as one of [his] preferences, namely that of Human Rights Officer in the OHCHR Country Office in Guatemala”.

9. ~~By email of 10 December 2015, the Applicant informed OHCHR that he decided to opt into the internal matching exercise, identifying his current post as one of his preferences, and two positions in Guatemala as his fourth preference.~~

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we could discuss this next week and I could hear your preferences. In the next few days, we will be trying to talk to all 4 people involved (the 2 SDG staff and the 2 staff who were matched to the posts), and to clarify the situation as soon as possible.

15. On 18 April 2016, the Applicant met with the Director of the Thematic Engagement, Special Procedures and Right to Development Division, and indicated his preference to move with his post.

16. By email of 30 June 2016 from a Human Resources Officer, the Applicant was informed that “[his] move to Guatemala [was] confirmed as [they] ha[d] received green light from OPPBA [Office of Programme Planning, Budget and Accounts] on the NYO positions” and asked to advise them “when [he] ha[d] agreed on [his] release and acCAFym,c(00CFm,m”“c(70a[apose w[

21. By memorandum of 22 July 2016 from the Chief of Programme Support and Management Services, the Applicant was formally informed that the High Commissioner's decision of 9 December 2015 concerning his transfer to Guatemala would be implemented. The Chief of Programme Support and Management Services stated in his memorandum:

As discussed and noted in my email message to you dated 12 July 2016, the Controller has approved the move of posts in the OHCHR Sustainable Development Goals (SDG) Section to New York from 1 September 2016, allowing for the implementation of the High Commissioner's lateral move decisions. You will recall that, having initially declined to move with your post to New York, you were matched through the internal review process last year to a P-3 post in OHCHR Guatemala country office. In this respect, therefore, I hereby confirm your lateral transfer to P-3 post [No.]

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iii. The memorandum of 15 January 2016 and the email of 17 April 2016 clearly state that any further decision to transfer the Applicant would be contingent upon his consent and that of the other staff member involved. It follows that the decision of 22 July 2016 constitutes a new decision and not merely the implementation of a previous one;

d. The decision of 22 July 2016 to laterally transfer the Applicant to Guatemala lacks a legal basis as the High Commissioner ceased to have

i.

- d. **The Applicant was consulted in the process of his reassignment and he**

35. The Tribunal will first examine the receivability of the motion, before addressing the three cumulative conditions for granting the requested interim relief.

38. Therefore, the Tribunal finds that the request for management evaluation of 7 September 2016 was filed within the 60 day time limit set forth in staff rule 11.2(c).

Jurisdiction to grant the interim relief sought

39. Under art. 10.2 of the Tribunal's Statute, suspending the implementation of a decision related to appointment, promotion or termination goes beyond the jurisdiction of the Tribunal (r 2016-UNAT-609, C_n n 2016-UNAT-641). The case at hand, however, does not fall under the exclusionary clause set out in art. aote T-bunali bee

[The term "appointment"] has both a broad and a narrow meaning. On the one hand, it may include any movement to a new position. On the other hand, a narrow interpretation of the term would refer exclusively to the initial conclusion of a contract between the employee and the Organization under the UN Staff Regulations and Rules. Notwithstanding the lack of a legal definition of appointment, it should be noted that Article IV of the Staff Regulations, *Appointments*, and more specifically staff regulation 4.2, makes a clear distinction between "appointment", "transfer" and "promotion", thereby indicating that

triggered his transfer to another post in Guatemala. The Tribunal

48. Having reviewed the submissions and the documents filed by the parties in the present proceedings, the Tribunal finds no reason to depart from its previous finding.

49. The Respondent alleged in his response to the Applicant's motion for interim measures that the ASG, OHRM, had exceptionally granted the High Commissioner authority to implement lateral transfers initiated in 2015 in the context of the Change Initiative, relying upon a communication from the ASG, OHRM, of 16 February 2017.

50. From a plain reading of this communication which is reproduced in para. 28 above, the Tribunal cannot discern any expression of a delegation of authority, as claimed by the Respondent. It rather appears to be no more than an expression of opinion by the ASG, OHRM, as to the High Commissioner's authority to implement previous decisions concerning the transfer of his staff members under the applicable rules. In this respect, it is recalled that the High Commissioner's authority to transfer the Applicant after the entry into force of ST/AI/2016/1 is a matter for this Tribunal to determine and the opinion of the ASG, OHRM, is of no relevance in this respect.

51. Even if the communication of 16 February 2017 were to be considered as a delegation of authority that entailed an authorisation to complete the implementation of the Applicant's lateral transfer, it is doubtful that it would be valid. The authorisation of the ASG, OHRM, if any, would be based on the premise that the decision to laterally transfer the Applicant was taken on 9 December 2015, following representations that were made to her by the Chief of the Programme Support and Management Services, OHCHR, in his memorandum

56. Likewise, the Chief of the Programme Support and Management Services, OHCHR, did not refer to the fact that this Tribunal had expressed the preliminary

selection process, the Respondent seeks to rely on a recommendation memorandum dated 19 January 2017, which he submitted *p r* as Annex 17 to his response to the motion for interim measures. The Respondent “explicitly” requested that all of the information contained in this annex remains *p r* , which means that it would not be disclosed to the Applicant.

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member on the post encumbered by the Applicant will be implemented imminently, as the Respondent clearly stated that this other staff member is currently working in OHCHR in New York on a temporary appointment funded through extra-budgetary funds while waiting for her formal appointment on the Applicant's post.

64. Given that there is evidence at this stage that the Applicant's lateral transfer to Guatemala and the loss of his current position are likely to be effective at any time after 31 March 2017 if not suspended, the urgency to grant an interim relief is apparent. Further, the Tribunal is satisfied that the urgency is not self-created, and that the Applicant promptly contested the decision once he received notification of the MEU's response to his request for management evaluation.

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65. As this Tribunal previously held in its Order No. 189 (GVA/2016), there can be no doubt that the Applicant's transfer to a different post, in a different duty station, entails significant repercussions on his personal and professional life.

66. The Tribunal reiterates that it is particularly concerned with the personal implications stemming from the Applicant's move from Geneva to Guatemala, which cannot be compensated by pecuniary damages alone. It goes without saying that an international move of this nature requires a number of practical arrangements to reorganise one's life and generates emotional reactions. Once such a move has been done, it is difficult to revert back. In this context, the Respondent's argument that the Applicant will suffer no irreparable damage if the decision to transfer him to Guatemala is implemented as he will be eligible for a new rotation in the near future is, again, misplaced.

67. Furthermore, the Tribunal is mindful that should the decision to move another staff member to the Applicant's current position be implemented, it may no longer be possible for him to go back to that post. This entails professional consequences for the Applicant, who has occupied his current post for two years and expressed the desire to continue working on ongoing projects.

