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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2016/050

Order No.: 151 (NY/2017)

Date: 13 June 2017

Original: English

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**Before:**



management standard [apparently the so-called “Projects IN Controlled Environments” standard, which is also commonly referred to as, “PRINCE 2” or “PRINCE II”]. This decision was communicated to the Applicant by email dated 24 May 2017 and made by her supervisor, Mr. B.F., the Chief of Portfolio Management Office (“PMO”), Office of Information Management Technology (“OIMT”), located in the Bureau of Management Services (“BMS”).

4. On 6 June 2017, the Registry transmitted the motion for interim measures to the Respondent, instructing him to file a response to the motion by 5:00 p.m. on 8 June 2017.

5. On 8 June 2017, the Respondent filed his response arguing that the motion is not receivable on the grounds that the decision is not, *inter alia*, the subject of

Management Plan (“PMP”) and PRINCE 2 project management principles. PMP calls it “Change, Release and Testing Specialist” similar to the Applicant’s title, whereas PRINCE 2 calls it “Quality Assurance” similar to the Quality Assurance Specialist title.

11. The Applicant sets forth in this motion, and in her application of 10 October 2016, that the functions of her position and that of the Quality Assurance Specialist are one and the same with the same job descriptions. In the instant motion, she states that “the refusal to address and rectify this anomaly is the subject of the Applicant’s Case No. UNDT/2016/050, filed on 10 October 2016. The Applicant has continued to carry out her quality assurance functions since filing the application”.

12. The Applicant further states in her motion that:

... for the past eight years, the OIMT change management electronic process (i.e. Phire and Change Management Portal) reflected the fact that [she] is responsible for product and process quality assurance for all OIMT project” The OAI and BOA [unknown abbreviations] auditors in regularly reviewing these processes consistently interviewed the Applicant on the quality assurance processes.

13. The Applicant has further explained in her motion that she has been listed on the project resource list under Project Quality Assurance according to Prince 2 methodology on prior similar projects such as “Compensation Package, PMD [unknown abbreviation].300003>379005225.099.384 277.97 T, Psourcliunkn 0 0 1 207.29 467.59

15. During 16 to 22 May 2017, while the project manager, Ms. A.F., was preparing to circulate the PID to the Project Board, the Applicant's supervisor, Mr. B.F., put approval for the PID on hold.

16. On 22 May 2017, the Applicant emailed Mr. B.F., asking for the reason for

see below his decision based on my filed case at the tribunal, as he mentioned in his email of 22 May 2017 “I told you I was taking the time to review the PID internally because you have filed a case at the tribunal.”

I do not agree at all with his decision for the following reasons.

1. I didn't request Ms. A.F., Environmental Reporting Tool Project Manager (copied) my name to appear as Project Quality Assurance on the (PID). During Quality Assurance initiation process (when Anne and I reviewed the document), I have identified the project resource list without designated Project Quality Assurance. As a result, my name was added because of my responsibilities for the project according to PRINCE II methodology. This is the usual practice and you may see the activities for the last four months: Compensation Package, PMD [unknown abbreviation], Pension Interface, LMS [unknown abbreviation] projects. They all reflected my name with the Project Quality Assurance role.
2. UNDP's formal project management methodology is PRINCE [2]. RACI [apparently a term for a responsibility assignment matrix] is not the PRINCE II standard.
3. Mr. B.F. defended his action as “avoiding potential duplication that would be created”. I have been listed as “project quality assurance” and played its role for several years. So, where does his “would avoid duplication ...” come from now?

Taking into account the Environmental Reporting Tool Project expected launch date and the organization commitment, I would like your agreement and endorsement to continue the quality assurance tasks for this project as before (as was) on your reply to this email.

I am also waiting your response for my email request yesterday (attached).

21. On 25 May 2017, Mr. N.Y. replied to the Applicant acknowledging her email, and stating that he would get back to the issue that she raised in due course. He requested the Applicant to start testing with the parameters laid out in the revised PID for the “Environment Reporting Tool”.



responsibility for this activity is assigned to duplicate Quality Assurance Specialist position incumbent and it is a duplication since the Applicant is confirming the project requirement fulfilment step thru Post Project Implementation Review (PIR). All Change, Release, and Testing deliverables are also a reference to this action. Also, the Applicant executes the “Final Change Review” in Phire and Change Management Portal. As you are aware, the Change, Release and Testing guidelines and online workflow (Phire and Change Management Portal) were approved by the UN Governance Auditors in 2009 and are also being reviewed every year by OIA and BOA [unknown abbreviations]. Assigning this responsibility to the duplicate Quality Assurance Specialist position incumbent while the Applicant owns the actual tasks and deliverables is not appropriate. The Applicant is responsible for this activity.

Activity #19 (add): “Provide Audit Response on Change, Release and Testing process (Project Quality Assurance)” is one activity that is not listed in the RACI table. It should be reflected in the RAC table, and it should reflect that the Applicant is responsible for this activity.

25. On 31 May 2017, a new proposed PID document was circulated to the OIMT managers, reflecting that the assigned Project Quality Assurance role was assigned to the Quality Assurance Specialist and omitting the name of the Applicant.

26. The Applicant’s principal contentions may be summarized as follows:

*Receivability and prima facie unlawfulness*

a. The decision to exclude her name as the official responsible for project quality assurance from the PID and subsequent PID’s, and removing attribution for her contribution, is directly tied to her pending application and prejudices the outcome. In other words, the current proposal although a recent



development, is not a new administrative decision which is independently reviewable;

b. The proposed exclusion of the Applicant's name as the official responsible for Project Quality Assurance in the PID is an act of retaliation. The Applicant's supervisor clearly identified ~~the~~

It appears that there is no other avenue open to the Applicant to seek redress for acts of retaliation prompted by her filing a case with the Tribunal. She has attempted informal resolution including the UNDP Ethics Office which said they have no jurisdiction over such claims. There appears to be no established mechanism for bringing a claim as pursuit of formal recourse has precipitated prejudicial actions that are retaliatory in nature;

*Irreparable harm*

f. If the present practice is adopted for all project documents, the Applicant will effectively be replaced in the official records. This may affect her performance evaluations and career development once the project documents are approved and issued. The damage to the Applicant's professional standing will be irreversible and will become a precedent for her further marginalization, effectively rendering her without a remedy for the substantive application that she has filed;

g. The Applicant raised her concern to Mr. N.Y. that the RACI parameters unfairly prejudices the Applicant in relation to the duplicate Quality Assurance Specialist position incumbent although the Applicant performs the real Project Quality Assurance tasks and is responsible for the process and the incumbent of the duplicate position is performing Project Support tasks according to the PRINCE II standard. This unfortunate situation affects the Applicant's morale;

h. For the past eight years, the OIMT change management electronic process (i.e., Phire and Change Management Portal) reflected the fact that the Applicant is responsible for product and process quality assurance for all OIMT projects. The OAI and BOA auditors in regularly reviewing these processes consistently interviewed the Applicant on the quality assurance processes. The proposed exclusion of the Applicant's name from the present

and future PIDs may trigger the need for adjustments to the OIMT change management electronic process which would create adverse effects on the Applicant's position and jeopardize her job security;

i. Following extended discussions and mediation, Mr. J.W., the Assistant Administrator and Director of the BMS, assured the Applicant last year that there would be a clear separation of functions of the two posts (without revision of the duplicate Quality Assurance Specialist position's job description and title). The latest action, however, contributes to the unfair duplication of functions and retaliates against the Applicant by further marginalizing her and denying her a role, which creates a hostile working environment in which her job security is threatened;

j. Furthermore, if the Respondent is permitted to retaliate against an applicant for challenging a decision using the Administration of Justice, it will have a chilling effect on staff wishing to contest a breach of their rights.

## **Respondent**

27. The Respondent's principal contentions may be summarized as follows:

### *Receivability*

k. The Tribunal lacks jurisdiction over Mr. B.F.'s decision because it is not a decision already subject to proceedings before the Tribunal as required by art. 10.2 of the Dispute Tribunal's Statute and art. 14.1 of its Rules of Procedure. The decision currently subject to proceedings is "the refusal [by Mr. B.M.] Director of Office of Operations, Legal and Technology Services, BMS, to address and rectify the inconsistencies and duplication in the job description of her post [...] and that of [her colleague]". Thus, the decision currently under judicial review is that of Mr. B.M.'s communicated by letter, dated 28 July 2016;

l. The Applicant now seeks suspension of a new decision made nearly ten months later on 24 May 2017 by Mr. B.F. concerning the use of the “[RACI] standards” and his refusal to have the Applicant listed as “Project Quality Assurance”. The Applicant has not previously requested a management evaluation of Mr. B.F.’s decision as required by staff rule 11.2;

m. The Applicant’s assertion, that Mr. B.F.’s decision is “tied to her pending application and prejudices the outcome”, is an alleged causal link between two decisions (Mr. B.M.’s of 28 July 2016 and Mr. B.F.’s of 24 May 2017). This does not create a right for the Applicant to automatically and directly seek judicial review of a new decision. By doing so, the Applicant



*Urgency*

r. There is no urgency. The Applicant's claim that removal of her "name and role from the present and future PID created a *fait accompli* and prevents any effective remedy for her claims" is incorrect and is a misrepresentation of the situation. The Applicant's name and role have not been removed from the PID. The decision rather prevents her from being listed as QAS in addition to her own role. There is no urgency as the decision reiterates the same decision taken on 31 May 2016. The Applicant did not contest the decision in 2016 and "the Respondent does not see how she can now consider the same sort of decision unlawful, much less one that requires urgent interim relief";

*Irreparable harm*

s. The implementation of Mr. B.F.'s email of 24 May 2017 would not cause irreparable damage. The Applicant is recognized in the project as Change, Release and Testing Specialist. The failure to list the Applicant twice in the PID is not irreparable harm. Indeed, if the absence of a staff member from 004B0i4(pa)4(r)-6(a)4(-11(eACng)10e)4(e m-Ø 1 27( );m[(Th)-5nJ5710i4(pi4(pi4--101(t1 0

## Consideration

### *Legal framework for granting interim measures*

28. Article 10.2 of the Statute of the Dispute Tribunal provides:

... At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

29. In line therewith, art. 14.1 of the Dispute Tribunal's Rules of Procedure states:

... At any time during the proceedings, the Dispute Tribunal may order interim measures to provide temporary relief where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

30. In terms of art. 10.2 of the Dispute Tribunal's Statute, the Tribunal may, at any V36HG8AC00@1(pr)3(ovide)-400044[(the)] TJETBT1 0 425 06.384 312.05 Ttemporarn





case. The Applicant now seeks a suspension of her supervisor's recent decision to preclude her

stemming from a decision which has an ongoing legal effect, and which she contests in her substantive application. The Tribunal therefore has jurisdiction to issue interim relief pursuant to art. 10.2 of the Dispute Tribunal's Statute and art. 14.1 of its Rules of Procedure and the motion is receivable.

*Prima facie unlawfulness*

38. For the *prima facie* unlawfulness test to be satisfied, it is enough for the Applicant to present a fairly arguable case that the contested decision was influenced by some improper considerations, was procedurally or substantively defective, or was contrary to the Administration's obligation to ensure that its decisions are proper and made in good faith (see *Jaen* Order No. 29 (NY/2011) and *Villamorán* UNDT/2011/126).

39. The Applicant argues, in essence, that Mr. B.F.'s decision is unlawful because (a) it deprives her of attribution for work she is performing and (b) that it constitutes retaliation for her pending case before the Tribunal.

40. The Respondent submits that Mr. B.F.'s decision was to avoid confusion of duties and duplication of functions. The Respondent argues that the Applicant has failed to prove that she was instructed to do the work of the QAS for which she is losing attribution, and that the quality assurance process had already been

commensurate with the duties and responsibilities expected of the staff member is an essential element of fair treatment. The “classification of posts of staff members is part of the conditions of service, and classification of a post is to be done according to H 423.3 0 38.61(o)-9(f nt 2 ons] TJ4(1)d f)39(9nst)-2(y)s Hwith Th







