
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/051
Order No.: 220 (NY/2018)
Date: 2 November 2018
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Introduction

1. On 26 October 2018, at 5:27 p.m., the Applicant, a Publishing Assistant at the G-4 level on a fixed-term appointment with the Department for General Assembly and Conference Management (“DGACM”) in New York, filed an application for suspension of action during management evaluation pursuant to art. 13 of the Dispute Tribunal’s Rules of Procedure, requesting that the decision not to renew his fixed-term appointment beyond 31 October 2018, which was notified to him on 8 October 2018 and scheduled to be implemented on 31 October 2018, be suspended pending management evaluation.

2. On 26 October 2018, the case was assigned to the undersigned Judge.

3. On 26 October 2017, at 6.33 p.m., the Registry acknowledged receipt of the application and transmitted it to the Respondent. The Tribunal instructed the Respondent to submit his reply by 4:00 p.m. on Tuesday, 30 October 2018.

4. The Tribunal further informed the parties that, due to the urgency of the matter (the deadline for the implementation of the contested decision being 31 October 2018) and pursuant to arts. 19 and 36 of the Dispute Tribunal’s Rules of Procedure, the suspension of the implementation of the contested decision pending the consideration of the application for suspension of action under art. 2.2 of the Dispute Tribunal’s Statute was granted and that a reasoned written order was to follow, which is the present Order.

5. By Order No. 213 (NY/2018) dated 29 October 2018, the Tribunal granted, without prejudice to the Tribunal’s determination of the application for suspension of action under art. 2.2 of the Dispute Tribunal’s Statute, the suspension of the implementation of the decision not to renew the Applicant’s fixed-term appointment beyond 31 October 2018 until the Tribunal rendered its decision on the application for suspension of action, or until further order.

On or about the same day, Mr. A Ali discovered two documents pertaining to the 2nd phase of the project for digitalisation with DGACM ...

In particular, the “Project Initiation Document” specified as follows:

... As with the 1st phase, DGACM once again have obtained the funding from Qatar to digitize United Nations documents in pursuit of the objective set by the General Assembly. For 2nd phase, DCAGM will utilize five general service staff members and five general service WAE (when as employed) staff members with language and technical skills. The project is a cooperative one between DGACM and DPI. The remaining staff will be provided with a contract for one-year from July 2018 which would mark the beginning of the 2nd phase of the project” ...

In light of the above, the Applicant amended his Management Evaluation Request specifying that the non-renewal of his contract was not based on a genuine reason but rather a strategy designed to remove him from post, prohibited by ST/AI/2013/4.

The Applicant also reiterates his request for Suspension of Action pending management evaluation. ...

Parties submissions

8. The Applicant’s principal contentions are as follows:

Urgency

a. The matter is urgent as the decision on non-renewal could be implemented by the time the management evaluation is issued (3 November 2018). This is not a case of self-created urgency since he only learnt about the strategy and underlying facts on 23 October 2018.

Irreparable harm

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The mandatory and cumulative conditions for suspending an administrative decision

10. Article 2.2 of the Dispute Tribunal's Statute states:

... 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. The decision of the Dispute Tribunal on such an

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... The main goal of this proposal is to create a technical and administrative framework for the digitization and migration of official documents, and to increase and enhance the access and usability of the content in the six official languages. The majority of the United Nations documents that have been digitized are stored in the Official Document System, with basic formats that can be preserved in their versatility, integrity, quality, and completeness well into the future ...

... A portion of the funds will be set aside to continue the digitization of documents that are in the collection of the Dag Hammarskjold Library and are not digitized (prior to 1993). The tasks to digitize these documents will be as follows:

- The Project Team will determine the priority for selective digitization of the remaining DHL collection based on a set of pre-defined criteria (year, subject, inter-governmental body).
- Digitization may be carried out by external specialized vendors selected by DGACM in accordance with UN Procurement rules and procedures;
- Digitization will be carried out under controlled conservation conditions and, for reasons of authenticity and accountability, appropriate audit trails will be created and event metadata (technical, administrative, and preservation metadata) will be captured during the process, and provided to the UN in frequent reports;
- At the end of the digitization process the United Nations will return the originals to the DHL ...

Project Management

The project is anticipated to begin in the 4th quarter of 2018 and will last an estimated five (5) years ending in the 3rd quarter of 2023. A Project Manager will be designated and she/he will review all deliverables developed from this proposal. Additionally, the Project Manager will outline specific deliverables tasked to external service providers and provide periodic reports on activities, and on major milestones.

20. The Applicant contends that the newly discovered DGACM project proposal which has been submitted to the Government of Qatar for funding, envisages a second phase of the digitization project. The Respondent replies that DGACM had already explained to the Applicant that the proposal for the second phase of the digitization project is still under discussion with the Government of Qatar and that the Government of Qatar has not yet approved the project nor provided any funding. The Tribunal notes that the first document invoked by the Applicant is

titled “Project Proposal 2ndPhase of Digitization: Turning Seven Decades of United Nations Work into Open Knowledge” states as follows:

... The General Assembly, since 1997, has repeatedly requested the digitization and uploading of important older United Nations documents in all official languages (General Assembly Resolution A/RES/51/211 of 18 December 1996). The latest resolution on this subject (A/RES/67/237 of 24 December 2012) requests the Secretary-General once again to complete this task.

... The digitization programme will continue to be important in promoting the

(including rent for those outside the UN compound) and entities worldwide which lead to efficiency gains;

g. Cost-savings through making indefinite hard copy storage of United Nations documents;

h. Contribution to the historic preservation of historically significant and monumental documents; modernizing documentation through digitization as part of the United Nations reform and contribution to the UN's green initiative, reducing carbon printing and consumption of paper;

i. Assured worldwide availability and access to additional four to five million UN documents in the short run and 12.5 million UN documents in the medium-term and approximately 20 million in the long run;

Enable the Secretary-General to respond robustly to repeated General Assembly resolutions to carry out the retrospective digitization of all important older official documents, including achieving aspects of equal treatment of the six official languages and multilingual presentation of UN websites.

...

Risks:

...

to approval, is the continuation of the initial project for digitization with a 2nd phase under the terms and conditions drafted as presented in para. 22 above. The second phase of the digitization project appears therefore to be a continuation/extension of the initial Project for which the Applicant was hired. The proposed implementation of this project would comprise ten DGACM staff members at the GS level, with five “on board” and five “when as employed (“WAE”)”.

24. In light of this evidence, it appears that the Project is expected to continue beyond 31 October 2018 for another five years and to require DGACM for its implementation, the utilization of five general service staff members and five general service WAE staff members with language and technical skills. According with the proposal, it appears that the contracts of any of the staff members currently employed for the first phase of the project which may continue to implement the second phase are expected to be renewed/extended for the duration of this second phase and the remaining staff is expected to be provided with a contract for one-year starting from 1 July 2018 the proposed date for the beginning of the 2nd phase of the project.

25. Therefore, it appears that the reason provided by DGACM not to extend the Applicant’s fixed-term, namely “the closure of the ‘pr

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