
UNITED NATIONS DISPUTE TRIBUNAL

Cases Nos.: UNDT/NY/2021/021/R1
UNDT/NY/2021/024/R1
Judgment No.: UNDT/2023/006
Date: 26 January 2023
Original: English

Before: Judge Joelle Adda
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge

OVCHARENKO ET AL.
KUTNER ET AL.

v.

SECRETARY-GENERAL

Introduction

1. The Applicants contest the “unilateral change in the individual workload

arbitrariness and lack of proportionality are some of the grounds on which tribunals may for good reason interfere with the

its implications on resources, but did not mandate the particular mode of implementation decided on by the Respondent”. The “absence of any objection by [the General Assembly] or even taking note of something does not indicate approval, particularly in the absence of important information”:

b. The “new documentation” is not relevant, because “the Applicants do not have standing to speak on behalf of the General Assembly and that the resolution entails implied

policy and its implications on resources, but did not mandate or approve the particular mode of implementation decided on by the Respondent”;

d. Following “the unsuccessful discussions in DGACM, the matter was then referred to the Staff Management Committee (“

Was the contested decision, namely to increase the daily workload requirement of self-revision services to 6.4 pages, a lawful exercise of the USG's discretionary authority?

16. The Applicants' submissions may be summarized as follows:

a. The Applicants "are not contesting any decision by the General Assembly but rather the managerial decisions of the Respondent on how it is to implement [General Assembly resolution] 75/252". This resolution "was adopted in the context of budgetary allocations", and how "new workload standards are to be applied, which the General Assembly did not mandate, is within the purview of the Respondent". The "fairness and reasonableness of such discretionary decisions falls within the mandate of the Tribunal to review";

b. The Respondent's "attempt to justify his actions as being mandated by the General Assembly are entirely misplaced and based on a misreading of what the General Assembly decided". The "operative word" in Gein G

evaluation ... by unilaterally changing their conditions of service”. This increase in the workload requirements “for self-revisers was neither reported to nor approved by the General Assembly”, and “[t]he fact that, based on the same analysis, the Respondent chose not to increase the workload standards of revisers confirms the arbitrary nature of the decision”;

d. The General Assembly specifically referred to “workload standards for the translation service”, and that “[t]his goal has been improperly applied by the Department to all translators, self-revisers and revisers, when required to perform translation or self-revision, on an individual basis”. It thereby “imposes a job requirement that was never intended as a performance metric, with the intention of introducing new work requirements that will affect performance evaluation and contractual decisions”. The “primary goal of the workload standard calculation was budgetary; it allowed management to determine the appropriate staffing for DGACM units depending on their projected workload, including for temporary assistance (translators and revisers hired for peak periods)”. Also, “it allowed them to calculate the programme budget implications (PBis) of the decisions of governing bodies concerning conferences that required additional documentation”. However, “these standards are henceforth also being used as quantitative metrics to evaluate the individual performance of staff”.

e. After “application of discounting rates of 0.42 and 0.91 for revision and self-revision, respectively, the quantity of word[s] done during the year is

of

to restructure and reorganize its units and its departments to lend to greater efficiency”
(subsequently affirmed in *Sarieddine* 2018-UNAT-852).

23. Whereas the Tribunal notes that the General Assembly only regulated the

management evaluation of an issue for the Dispute Tribunal to review it (see in line herewith, for instance, the Appeals Tribunal in *Nouinou* 2020-UNAT-981, para. 57). The Tribunal further notes that none of the Applicants have provided evidence that any of them raised the issue of the Working Group's composition when it was constituted or while the consultative process was ongoing.

33. Regarding the lawfulness of these staff consultations, the Tribunal takes note of the facts set out by the Appeals Tribunal in *Ovcharenko et al. Kutner et al.* 2022-UNAT-1262. Therein, the Appeals Tribunal found that the "implementation of this new workload standard, as decided by the General Assembly, was discussed at several meetings between DGACM management and staff representatives, namely one on 15 January 2021 and another one on 18 March 2021". In addition, "[s]ubsequently, on 8 April 2021, [the USG] held a townhall meeting with staff members in which he discussed the implementation of the General Assembly resolution".

34. The Tribunal further observes that in the Working Group's 24 March 2021 report is explained that five "information sessions" were organized by the Working Group at which affected staff were invited to comprehensive briefings on the Working Group's composition, programme of work and detailed considerations. These sessions were held on 20 January, 3 February, 10 February, 17 February and 22 February 2021 and therefore prior to the USG announcing the contested decision on 8 April 2021.

35. Based thereon, the Tribunal therefore find that the affected staff members were indeed appropriately consulted regarding the contested decision as per staff regulation 8.1 and ST/SGB/274. In this regard, the Tribunal recalls that the Appeals Tribunal in *Leboeuf et al.* 2015-UNAT-568 (see paras. 91 and 92) upheld the Dispute Tribunal's finding in UNDT/2014/033 that "[c]onsultations are not negotiations, and it is not necessary for the Administration to secure consent or agreement of the consulted parties".

36. Accordingly, the Tribunal finds that the USG followed proper procedures when taking and implementing the contested decision.

Conclusion

37. The application is rejected.

(Signed)

Judge Joelle Adda

Dated this 26th day of January 2023

Entered in the Register on this 26th day of January 2023

(Signed)

Morten Michelsen, Officer-in-Charge, New York