UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/078
Judgment No. UNDT/2010/216
Date: 22 December 2010
Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Santiago Villalpando

BARRINGER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Melissa Bullen, ALS/OHRM, UN Secretariat

Introduction

1. On 11 June 2010 the Applicant filed an application under art. 2.2 of the Statute of the Dispute Tribunal for suspension of action of a decision to appoint another candidate to the post of Staff Counsellor at the P-4 level in the Medical Services Division ("MSD") in New York. In essence, the Applicant was requesting a suspension of action on the offering of the position to this other candidate until there had been an investigation into the selection process which he alleged was flawed. On 15 June 2010 the Respondent filed and served his reply, objecting to the suspension of the contested decision. On 16 June 2010 a hearing was held at the premises of the Dispute Tribunal in New York. The Applicant participated by telephone from Liberia, where he currently serves at the UN Mission in Liberia ("UNMIL") as Chief of the Staff Counseling Unit, while the Respondent was represented by his Counsel in person.

Facts

2. On 4 February 2010 vacancy announcement ("VA") 10-HRE-DM-OHRM-423381-R-New York (G) for the P-4 level position of Staff Counsellor was posted on Galaxy, the online UN jobsite. According to the Respondent, the Office of Human Resources Management ("OHRM") informed the relevant Programme Case Officer ("PCO") that this VA had been posted in error as the evaluation criteria had not been approved by the Central Review Committee ("CRC") as required by ST/SGB/2002/6 (Central review bodies), and the VA was therefore cancelled.

3. A new VA—the one relevant to this case, namely 10-HRE-DM-OHRM-423926-R-New York (G)—was issued on 4 March 2010, following which the CRC approved the evaluation criteria. The only change compared to the previous one was that under the "Other Skills" section the words "knowledge of the modern medical information technology" replaced the words "proficiency in the modern medical information technology". In his application for suspension of action, the Applicant alleged that the terms of reference and the VA were altered to suit the successful candidate.

4. According to the Respondent, on 6 Apri1 2010 the PCO was informed by OHRM that there were two eligible candidates at the 30-day mark (this did not include the Applicant). No eligible candidates had been identified at the 15-day mark. Both 30-day candidates were interviewed on 20 April 2010. The panel unanimously found one of the two candidates to be qualified and suitable for the post, and determined that she should be recommended. The outcome of the interviews was then forwarded to the Under-Secretary-General for Management and the Assistant Secretary-General, OHRM, by memorandum dated 27 April 2010.

5. On 5 May 2010 the Applicant contacted OHRM to inquire about his standing in the selection process, which reviewed his application and determined that he had been originally misclassified as a 60-day candidate. His eligibility was changed to a 30-day candidate and the PCO and the Applicant were informed about this. The recruitment process was suspended, and the Applicant was interviewed on 11 May 2010, but the interview panel did not find him suitable for the post. According to the Applicant, he was, however, never informed about the reasons for rejecting his candidacy. The recommendation of the successful candidate was therefore maintained.

6. According to the Respondent, on 14 May 2010 the PCO informed the Office of the Assistant Secretary-General, OHRM, that the Applicant was not found suitable for the post and that the recommendation of the selected candidate had not changed. On 20 May 2010 the CRC informed the MSD that they endorsed the proposal for filling the vacancy. On 21 May 2010 the successful candidate was officially informed by the Executive Office, OHRM, of her selection to the post.

7. According to the Respondent, the Applicant was informed on 4 June 2010 that he had not been successful and that another candidate had been selected. In his submissions to the Tribunal, the Applicant objected to this and stated that he was never informed about the outcome of the selection, but only heard about it “through the grapevine”.

8. The Applicant therefore alleged that all was not well in the selection of the successful candidate, thus he would be challenging the selection process in the substantive matter. Before the Tribunal, the Respondent contended that, this being a case of promotion, even if the Applicant were to succeed in the substantive matter, the Tribunal would not be able to quash the promotion decision and order removal of the successful candidate. The only remedy available to the Applicant would be the payment of appropriate compensation for loss of a chance of promotion. In sum, the Respondent contended that the selected candidate having been appointed, the Tribunal had no power to remove her and the selection decision could no longer be suspended.

Considerations

9. Since the Applicant was self-represented, I explained to him at the hearing of 16 June 2010 that the three statutory prerequisites included in art. 2.2 of the Statute all need to be satisfied for granting an application for suspension of action, namely urgency, prima facie unlawfulness and irreparable harm. I also explained the Respondent's contention that sec. 10.2 of ST/AI/2006/3/Rev.1 (Staff selection system) provides that a decision to select a candidate is implemented upon its official communication to the individual concerned. As the selected candidate was officially notified of the selection and promotion to the position she was consequently considered by the Organisation to have been appointed and to have acquired the right to the appointment and promotion specified in the official communication. The Tribunal also noted that in accordance with sec. 10.3 of this administrative instruction a successful candidate is obliged to accept the position.

10. I indicated that, since the contested decision in this case had already been implemented by the successful candidate being notified of her selection in accordance with sec. 10.2 of ST/AI/2006/3/Rev.1, it was my view that it would no longer be possible for the Tribunal to suspend it. The Applicant was informed that if he wanted to pursue his case he should therefore do so through an application on the merits, and I recommended that he seek legal advice on this from the Office of Staff Legal Assistance.

11. The Applicant noted my explanation and affirmed that he believed that his application for a suspension of action was moot. He therefore decided to withdraw that application and reserve his rights to move a substantive application if necessary. This withdrawal was confirmed by Order No. 156 (NY/2010) which was sent to the Parties on 18 June 2010.

12. In the intervening six-month period, no further correspondence, application or pleadings have been received by the Tribunal from either party to the proceedings. As noted by this Tribunal in *Saab-Mekkour* UNDT/2010/047 and *Monagas* UNDT/2010/074, an applicant must continue to have a legitimate interest in the maintenance of his or her proceedings. As this is no longer the case in this matter, the proceedings shall be closed.

Conclusion

13. In light of the Applicant's withdrawal of his application for suspension of action and subsequent lack of prosecution of the proceedings, there is no matter for adjudication before the Tribunal. The application is dismissed for want of prosecution, without determination of its merits, and the case is closed.

(*Signed*)

Judge Ebrahim-Carstens

Dated this 22nd day of December 2010

Entered in the Register on this 22nd day of December 2010

(*Signed*)

Santiago Villalpando, Registrar, New York