



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/037

Judgment No.: UNDT/2011/121

Date: 7 July 2011

Original: English

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

REID

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

**ON APPLICATION FOR SUSPENSION
OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Shelly Pitterman, UNHCR

Introduction

1. By an application filed on 5 July 2011, the Applicant requests the United Nations Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of the decision dated 11 May 2011 to re-advertise the position of Senior Career Management Assistant, to which she had not been appointed.

Facts

2. The Applicant joined the United Nations High Commissioner for Refugees (“UNHCR”) in June 2003 on a one-month fixed-term contract as Secretary at the G-3 level. Her contract was renewed several times and in July 2005, she was promoted to the G-4 level. In January 2008, she was appointed as Performance Management Clerk in the then Staff Development Section. In January 2009, her functional title changed to Career Management Clerk in the Performance Management Unit (“PMU”) of the Career Management Support Section. This is her current position.

3. The position encumbered by the Applicant was reclassified at the G-5 level as Senior Career Management Assistant and was advertised internally on 25 January 2011. The Applicant applied for the position.

4. The selection process included a test and an interview. On 18 March 2011, the Applicant sat for a test in which she scored less than 50%. She was nevertheless interviewed for the vacant position. Based on the results of the test and the interview, the manager, on behalf of the panel, recommended another candidate for the vacant position.

5. On 28 April 2011 and 3 May 2011, the Appointments, Postings and Promotions Committee (“APPC”) reviewed the selection process. The APPC noted that the manager’s recommended candidate had already been recommended for another position and that the manager had requested to re-advertise the position, should her recommended candidate not be appointed. Nevertheless, it

reviewed the Applicant's candidacy and, taking into consideration her fully effective performance in her current position, the APPC recommended her to be retained against the position.

6. On 11 May 2011, the Deputy High Commissioner, UNHCR, noting that the manager's recommended candidate was no longer available and that the Applicant's personal grade was inferior to the level of the vacant position, decided to re-advertise the vacancy. On 12 May 2011, the Applicant was notified by an all-staff email of the decision.

7. In June 2011, the Applicant's contract was renewed until 31 December 2011.

8. By letter dated 23 June 2011, the Applicant requested management evaluation of the decision to re-advertise the position of Senior Career Management Assistant.

9. On 24 June 2011, the above-mentioned position was re-advertised with an application deadline of 7 July 2011.

10. On 5 July 2011, the Applicant filed an application for suspension of action with the Tribunal against the decision of the Deputy High Commissioner to re-advertise the position of Senior Career Management Assistant to which she had not been appointed.

Parties' contentions

11. The Applicant's primary contentions may be summarized as follows:

Prima facie unlawfulness

a. She has been performing the functions of the position since January 2008 with fully effective or superior performance evaluations;

b. The APPC was provided with inaccurate information concerning her candidacy. However, through the three years that she has been working in PMU, she has never received any feedback from her

supervisors mentioning, neither the slow pace of her work, nor poor performance. The comments made to the APPC concerning her work are not in line with her performance evaluations;

c. The Deputy High Commissioner did not appoint her to the vacant position despite the APPC recommendation in her favour;

Urgency

d. The position was re-advertised on 24 June 2011 and the closing date for the submission of applications is 7 July 2011;

e. To stop the re-advertisement of the position would prevent the selection of a new staff while her case is being examined;

Irreparable damage

f. She has suffered undue distress because of the damage made to her professional reputation and integrity;

g. She would suffer irreparable harm because her contract may be terminated.

12. The Respondent's primary contentions may be summarized as follows:

Receivability

a. The application is not receivable since the re-advertisement of the position does not constitute an administrative decision within the meaning of the Tribunal's Statute and its Rules of Procedure, nor of the relevant jurisprudence;

b. The re-advertisement does not, in itself, adversely affect the Applicant's legal situation since it modifies neither the scope nor the extent of her rights. Furthermore, her contract has been renewed until 31 December 2011 in order to allow her to be considered for the one-time

review for the granting of indefinite appointments and to further compete for the position;

c. The re-advertisement has been already implemented on 24 June 2011 and, as such, it cannot be suspended;

Prima facie unlawfulness

d. The Applicant's candidature was given full and fair consideration and there are no serious and reasonable doubts about the lawfulness of the re-advertisement decision;

Urgency

e. The Applicant does not establish the criterion of urgency. No final decision has been taken on the filling of the position and she is free to reapply;

Irreparable damage

f. The Applicant failed to substantiate that the contested decision would cause her irreparable harm. There has been no final decision on the selection process and the Applicant's contract has been extended to enable her to compete for the re-advertised position and to ensure that she is duly considered in the context of the upcoming one-time review for the granting of indefinite appointment.

Consideration

13. In order to identify the contested decision, the Tribunal reviewed the Applicant's request for management evaluation and her application. It is clear from both documents that the Applicant seeks to suspend the implementation of the decision to re-advertise the position of Senior Career Management Assistant to which she had not been appointed. It is noted that she did not contest the decision not to select her for the vacant position but only the decision to re-advertise it.

14. The Tribunal must first examine whether the Applicant's rights were affected by the decision to re-advertise the position of Senior Career Management Assistant, and to this extent she has a legitimate interest in requesting its suspension. Indeed, the Tribunal considers that the contested decision is not, in itself, unfavourable to the Applicant since it does not prevent her from applying for the position again.

15. The only decision which the Applicant would have had a legitimate interest in contesting, is the decision not to appoint her to the position she encumbered after its reclassification as Senior Career Management Assistant at the G-5 level. However, the Applicant has not contested this decision at this point.

16. Even assuming that the Tribunal could suspend the ongoing selection process which started with the re-advertisement of the position, this suspension would be of no help to the Applicant, whose goal is obviously to be selected for the re-advertised position.

17. In light of the above, the Tribunal considers that the application is not receivable, since the Applicant does not have any legitimate interest in requesting the suspension of the decision to re-advertise the position. However, should the Applicant consider herself affected by the decision not to select her for the reclassified position of Senior Career Management Assistant at the outcome of the initial selection process, she is entitled to file an application against this decision within the mandatory time limit.

Conclusion

18. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Jean-François Cousin

Dated this 7th day of July 2011

Entered in the Register on this 7th day of July 2011

(Signed)

Víctor Rodríguez, Registrar, Geneva