



Before: Judge Goolam Meeran

Registry: New York

Registrar: Santiago Villalpando

STEPHENS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Joseph Grinblat, OSLA

Counsel for Respondent:
Alan Gutman, ALS, UN Secretariat

Introduction

1. On Sunday, 18 September 2011, the Applicant filed her application for suspension of action with the Registry of the Dispute Tribunal, New York. The application was registered as having been received on 19 September 2011. In this application, she contests the decision to advertise externally the post of Director (D-1), Inter-Governmental Support Division, UN Women, and requests the Tribunal to order the recruitment process be suspended pending management evaluation.
2. On 20 September 2011, the Registry acknowledged receipt of the application and served it on the Respondent.
3. On 22 September 2011, the Respondent filed and served his response.

Background

4. The Applicant joined the Organization in August 1994 on a fixed-term appointment. She transferred to the Office of the Special Adviser on Gender Issues and Advancement of Women (“OSAGI”) on 1 November 2008 as Special Assistant to the Secretary-General’s Special Adviser (P-5). On 9 September 2010, her appointment became permanent, effective retroactively to 30 June 2009. In October 2010, she was promoted to Principal Officer (D-1).
5. On 2 July 2010, OSAGI merged with the Division for the Advancement of Women (“DAW-DESA”), the International Research and Training Institute for the Advancement of Women (“INSTRAW”) and the United Nations Development Fund for Women (“UNIFEM”) to become the United Nations Entity for Gender Equality and the Empowerment of Women (“UN Women”) by General Assembly resolution 64/289, to become operational on 1 January 2011.
6. As part of this conversion, UN Women adopted Human Resources Guidelines to Support the Consolidation Process (“Guidelines”), dated 6 December 2010, which

included procedures by which internal and external staff would be appointed to positions. This document set out the Competitive Selection Process: Phase I for internal staff and Phase II for external staff.

7. On 18 February 2011, the post of Director (D-1), Inter-Governmental Support Division, was advertised under Phase I.

8. As of 3 March, 2011, the Applicant was designated as Officer-In-Charge of that Division.

9. On 7 March 2011, the Applicant submitted her application and, on 30 March 2011, she was interviewed.

10. On 14 April 2011, the Applicant was informed that she had not performed well at interview and therefore, the interview panel had not recommended her.

11. Following discussions with the Office of the Ombudsman, the Applicant was re-interviewed for the position on 26 May 2011, having been informed that a new hiring manager had the right to interview her.

12. On 1 August 2011, the Applicant was informed by her interviewers who had interviewed her on 26 May 2011 that although they had recommended her, the Central Review Body (“CRB”) had opposed the appointment, the position would be advertised externally and that she was welcome to reapply.

Law

13. Art. 2.2 of the Statute of the Dispute Tribunal makes provision for rules to be enacted giving the Tribunal power to suspend the implementation of an administrative decision where the decision appears to be *prima facie* unlawful, where the matter is particularly urgent and where the implementation of the decision would cause irreparable damage. Art. 13 of the Rules of Procedure of the Dispute Tribunal directly reflects this provision in the Statute.

Applicant's submissions

14. The Applicant's principal contentions may be summarised as follows:

Prima facie unlawfulness

- a. Being the only short-listed applicant with an outstanding record, it is "unbelievable" that the current Officer-in-Charge would not be found suitable for "her own post";
- b. The Respondent has breached para. 58 of the Guidelines by not informing the Applicant of the selection decision in writing;
- c. Under para. 61 of the Guidelines, staff on permanent appointments should only be submitted for review to the CRB where it concerns a promotion, not a lateral move;
- d. The CRB could not have blocked the decision of the Executive Director, especially in light of the positive recommendation following the second interview and therefore "the only logical explanation for the sequence of events is that Applicant is the victim of some illegal machination to get rid of her in order to give her post to somebody from outside";

Urgency

- e. At any moment, a decision could be taken to recruit somebody else on her post if the recruitment process is not suspended.

Irreparable damage

- f. Even if she later is successful in an appeal to the Management Evaluation Unit ("MEU"), the post would have been given to someone else, so she would lose the opportunity;

g. There would not be any other D-1 positions available to her at UN Women;

h. UN Women would probably terminate her permanent contract, and she would find herself unemployed and having to leave the United States of America.

Respondent's submissions

15. The Respondent's principal contentions may be summarised as follows:

Prima facie unlawfulness

a. The Applicant's claims under this heading have no merit, particularly as the Applicant has no automatic right to appointment;

b. There was no violation of the Guidelines in that, although she was not informed in writing, the Applicant was informed in person by the Assistant Secretary-General on 1 August 2011, as admitted by the Applicant;

c. The CRB did not block her selection and carried out its role in line with the functions of other central review bodies, particularly in light of para. 62(g) of the Guidelines, which requires the CRB to review the sign-off of the selection recommendation by a hiring manager;

d. The Applicant's allegation with regard to being the victim of an "illegal machination" is unfounded;

Urgency

e. There is no particular urgency and the urgency is self-created, as the Applicant waited one-and-a-half months before filing her application for suspension of action;

f. The Applicant is not in imminent danger of losing her employment and UN Women will work in good faith with her to locate a suitable post;

Irreparable damage

g. The Applicant has not demonstrated how the implementation would cause her irreparable harm;

h. The Applicant's claims with regard to being left unemployed and not finding another D-1 position have no factual basis.

Consideration

Urgency

16. At the hearing, Counsel for the Applicant explained his submissions on urgency and explained that the urgency was not self-created, contrary to the reply of the Respondent, as the Applicant had been working with the Ombudsman to try and resolve the issue informally.

Irreparable damage

17. On the matter of irreparable damage, Counsel for the Applicant reiterated his submissions as set out above. Counsel for the Applicant was unable to provide a persuasive explanation as to what benefit would accrue to the Applicant by suspending the interview process pending management evaluation. Furthermore, the Applicant herself was one of the candidates for the position. The Tribunal noted that such a suspension would have the effect of freezing the process for 27 days. It would then continue with whatever the outcome might be irrespective of the Judgment. The Tribunal also noted that the Applicant may well be selected. If she was not, she could bring a substantive claim which would be considered on its merits. In the event of her claim being successful, any losses incurred could, in this case, be adequately compensated by a monetary award.

18. At the hearing, the Tribunal explained that the process of suspension of action was one which did not involve a determination on the merits and that no evidence was considered in order to make such a determination. The Tribunal set forth the three-prong test as set out in art. 2.2 of its Statute and explained that all three parts of the test had to be met in order to warrant the ordering of a suspension.

19. On the basis of the information provided in the documents and at the hearing, the Tribunal finds that the application does not meet the test as set out in art. 2.2 of the Statute, noting with particular regard that it fails to meet the requirements for irreparable damage and particular urgency. As set out above, failure to meet any one of the three requirements of art. 2.2 of the Statute is sufficient to warrant a rejection of the application. The Tribunal therefore considers it unnecessary to consider the issue of *prima facie* unlawfulness.

Conclusion

20. For the reasons as set out above, the application for suspension of action is refused.

(Signed)

Judge Goolam Meeran

Dated this 22nd day of September 2011

Entered in the Register on this 22nd day of September 2011

(Signed)

Santiago Villalpando, Registrar, New York