



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

BUCKLEY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for the Applicant:

Self-Represented

Counsel for the Respondent:

Steven Dietrich, Nairobi Appeals Unit, ALS/OHRM, UN Secretariat

Bérengère Neyroud, Nairobi Appeals Unit, ALS/OHRM, UN Secretariat

Introduction

1. On 24 October 2012, the Applicant, a staff member of United Nations Disengagement Observer Force (“UNDOF”) filed an application for Suspension of Action with the United Nations Dispute Tribunal (“Tribunal”). The Application was served on the Respondent on the same day.

2. On 29 October 2012 the Applicant filed a supplementary Application which he referred to as an addendum to his original application and the Respondent filed his reply on 30 October 2012.

3. He is seeking the suspension of:

a. The decision of 26 September 2012 to cancel Vacancy Announcement Number 12-LOG-DFS-23194-R-NEW YORK (R) for the position of Chief Supply Officer (Chief of Supply Section);

b. The decision of 26 September 2012 to cancel Vacancy Announcement Number 12-LOG-DFS-22903-R-NEW YORK (R) Chief Contingent-Owned Equipment and Property Management Support Section (“Chief Property Management”) and

c. The ongoing selection process for the post of Chief Supply Section, subject of Temporary Vacancy Announcement (“TVA”) TVA-2012-DFS-LSD-23636-CSS-P5 dated 28 September 2012;

Background

4. The Applicant is currently the Chief, Integrated Support Service in UNDOF at the P5 level holding a permanent appointment.

5. On 13 October 2009, the then Under-Secretary-General, Department of Field Support (“USG/DFS”) made a decision to cancel the recruitment process for the post of Chief Property Management and the Applicant informed of the same.

6. The Applicant requested Management Evaluation of the decision of the USG/DFS on 27 October 2009 and on 28 October 2009, filed an Application for Suspension of Action with the New York Registry of the Tribunal arguing that he had a legitimate expectation of appointment, and that the decision to re-advertise the post violated the provisions of Administrative Instruction ST/AI/2006/3, the United Nations Charter, and the Staff Regulations, which dealt with the selection, appointment and promotion of staff.

7. In determining his Application, Judge Adams, found that (*Buckley* UNDT/2009/064) the contested decision albeit disappointing to the Applicant, was not unlawful and therefore denied the Suspension of Action Application.

Facts

8. On 30 May 2012 Temporary Vacancy Announcement number TVA/2012/LSD/SSS/COE-PMSS/579800/Chief/P5 for the post of Chief of section in the Contingent-Owned Equipment and Property Management Support Section was issued and the Applicant submitted his application for the position. The Applicant avers that a similar vacancy announcement was published in INSPIRA on 13 July 2012 to which he also applied. Both vacancy announcements were subsequently cancelled.

9. The recruitment process for the 28 September 2012 TVA for the position of Chief Supply Section is ongoing.

10. He is now contending that he is a victim of a series of vacancy cancellations in 2012 for the same post and that he fears that even though the recruitment process for the TVA is ongoing, he suspects that somebody will be laterally transferred to the position, and should this happen, he will be denied another opportunity.

Applicant's submissions

Prima facie unlawfulness

- a. That the repetitive cancellation of vacancy announcements for similar posts to which he had applied are not mere coincidence but shows that these administrative decisions were tainted with bias and bad faith and contravene applicable rules and regulations of the Organization;
- b. The failure by the Administration to give an explanation as to why the similar vacancy announcements of 2009 and 2012 were cancelled immediately after he was selected raise the issue of *prima facie* unlawfulness;
- c. The unlawfulness is obvious in “the contiguous activities subsequent to the cancellation of the recruitment process”; and
- d. Applicant had been denied procedural fairness and lack of respect for his legal rights as a result of bias towards him.

Urgency

- a. The Applicant argued that he lost a promotion opportunity for several years and
- b. That the Administration must be held accountable for unlawful decisions and abuse of authority.

Irreparable harm

- a. The Applicant submits that judicial action is required to reverse the irreparable harm committed against his reputation, integrity, good name and character.

11. The Applicant prays the Tribunal to suspend the decision to cancel the two vacancy announcements and to stay the selection process for the TVA pending the outcome of Management Evaluation.

Respondent's submissions

12. The Respondent submits that:

a. Any Application related to the 13 October 2009 decision to cancel the recruitment process for the post of Chief Property Management is not receivable because a Suspension of Action cannot be granted where the contested decision has been implemented;¹

b. Any Application related to the 26 September 2012 decision to cancel the recruitment process for the post of Chief Supply Officer is not receivable because the decision has been implemented and further there is no pending management evaluation in respect to the said decision;

c. The Applicant has failed to show the unlawfulness of the contested decisions, irreparable harm that would be caused him and urgency of the Application.

13. The Respondent prays the Tribunal to dismiss the Application.

Consideration

14. Article 2.2 of the Statute of the Tribunal provides:

The Dispute Tribunal shall be competent to hear and pass judgment 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

¹ *Nwuke* UNDT/2012/002, *Tiwathia* UNDT/2012/109

where its implementation would cause irreparable damage. ...
[Emphasis Added]

Can the Tribunal suspend the cancellation of a Vacancy Announcement?

15. The Applicant raises the issue of the cancellation of vacancy announcements for the posts of Chief Supply Officer (Chief of Supply Section) and Chief Contingent-Owned Equipment and Property Management Support Section on 26 September 2012.

16. Article 2.2 of the Tribunal's Statute read together with art. 13 of the Rules of Procedure clearly state that the Tribunal can only suspend the implementation of an administrative decision that is the subject of an ongoing management evaluation.²

17. In the instant case, cancellation of vacancy announcements are administrative decisions that have been implemented, these decisions therefore cannot be subject of a Suspension of Action application.

Can the Tribunal properly suspend the process of the ongoing recruitment?

18. The Applicant seeks the suspension of the ongoing recruitment against TVA for the post of Chief Supply Section.

19. The Respondent has argued that the Applicant has not sought Management Evaluation of the recruitment process.

20. A perusal of the Applicant's Management Evaluation request in this case shows that he sought evaluation of the decision of the former USG/DFS of 13 October 2009 to cancel the recruitment process for the position of Chief Contingent-Owned Equipment and Property Management Support Section (VA 08-LOG-DFS-419131-R-NEW YORK) at the P5 level within the Logistics Support Division of the DFS.

² See *Caldarone* UNDT/2009/035

21. The above cancellation decision had been the subject of a previous management evaluation request and of a Suspension of Action Application in 2009 which was adjudicated upon by judgment UNDT/2009/061 of 29 October 2009.

22. This matter aside of being of being out of time, cannot be re-litigated by way of Suspension of Action.

23. It is clear from his request for Management Evaluation dated 23 October 2012 that the Applicant has not sought evaluation of the ongoing recruitment process which he applies to the Tribunal for a Suspension of Action.

24. The Tribunal therefore cannot entertain this Application.

Judgment

25. In view of the foregoing, the Application for Suspension of Action is rejected.

(Signed)

Judge Nkemdilim Izuako

Dated this 31st day of October 2012

Entered in the Register on this 31st day of October 2012

(Signed)

Jean-Pelé Fomété Registrar, Nairobi