



Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

SOHIER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALD/OHR, UN Secretariat

Introduction

1. On 25 March 2020, the Applicant filed an application contesting the decision to cancel the recruitment process for a post of Legal Officer with the United Nations Integrated Office in Haiti (“BINUH”) and its subsequent re-advertisement.

2. On 16 April 2020, the Respondent sought a summary judgment stating that the application was not receivable *ratione personae* because the Applicant was not a staff member at the time of the contested administrative decision. The Respondent further argues that the application is not receivable *ratione materiae* because the Applicant was selected for the re-advertised position.

3. For the reasons stated below, the Tribunal rejects the application as non-receivable both *ratione materiae* and *ratione personae*.

Facts

4. The Applicant separated from the Organization at the expiration of her fixed-term appointment with the United Nations Mission for Justice Support in Haiti (“MINUJUSTH) on 30 June 2019.

5. The job opening Legal Affairs-BINUH-122911-F-Port-au-Prince (M) (“original job opening”) was advertised on 9 September 2019. The Applicant applied for the original job opening.

6. On 4 November 2019, BINUH published the vacancy announcement for the same position with reference Legal Affairs-BINUH-126356-F-PORT-AU-PRINCE (M) (“re-advertised position”). The Applicant applied and was subsequently selected for this position.

Consideration

7. In light of the Respondent’s submissions on receivability, the Tribunal will review these grounds first.

Receivability ratione personae

8. The Respondent states that as the Applicant had separated from MINUJUSTH following the expiration of her fixed-term appointment on 30 June 2019 and was not a staff member at the time she applied for the original job opening, there is no nexus between her former terms of appointment and the contested administrative decision. She therefore has no standing to challenge the decision.

9. The Applicant states that the original job opening had a nexus with her former employment with MINUJUSTH because the Legal Officer function, which she occupied in MINUJUSTH, was required to ensure the continuity of operations between MINUJUSTH and BINUH. Moreover, she states that MINUJUSTH's withdrawal was to take into account the need for a seamless transition to BINUH as mandated by the Security Council. Therefore, the Applicant concludes that she should have received "the same treatment of continuity and transition received by MINUJUSTH colleagues appointed or reassigned to equivalent positions with BINUH". She further states that she was identified as a staff member on a post identified for abolition in the Organization's recruitment portal known as COSMOS and, therefore, she had a right to priority consideration for vacant posts.

10. The Applicant further argues that her Legal Officer post was not abolished until September 2019.

11. The Applicant submits that the Organization had a duty of care towards her, which continued even after her separation from service according to which she should have been reinstated when she was selected for the re-advertised position.

12. The Applicant goes on to state that the non-renewal of her fixed-term appointment was tainted by ulterior motives.

13. At the outset, the Tribunal notes that the Applicant's challenge of the non-renewal of her fixed-term appointment with MINUJUSTH constitutes a separate case currently before the Tribunal and will not be examined in the present case.

14. In *Khan* 2017-UNAT-727, paras. 28-29, the Appeals Tribunal established that a former staff member does not have standing to appeal an administrative decision that has no nexus with the terms of his or her former employment.

15. In the present case, the Applicant had separated from the Organization on 30 June 2019 and was not a staff member at the time of the contested decision. The Tribunal further notes that the Applicant's former employment was with MINUJUSTH, while the original job opening was with BINUH, a different field mission. The Tribunal therefore sees no nexus between the Applicant's former employment with MINUJUSTH and the decision to cancel the original job opening.

16. The Tribunal further notes that the Applicant separated following the expiration of her fixed-term appointment. Pursuant to staff rule 4.13(c), fixed-term appointments carry no expectation of renewal beyond their expiration date. Therefore, the Applicant had no legitimate expectation to her contract being extended beyond 30 June 2019, nor did the fact that she encumbered a similar post with another mission give her a right to be selected, or even be afforded priority consideration in her application for the original job opening.

17. The Tribunal concludes from the above that the Applicant had no standing to challenge the contested administrative decision to cancel the original job opening because it had no nexus with the terms of her former employment with the Organization.

Receivability ratione materiae

18. The Respondent argues that the Applicant cannot challenge the cancellation of the original job opening because she was eventually selected for the re-advertised position.

19. The Applicant submits that it is not established that the decision to cancel the original job opening was to her advantage. She argues that the Administration did not notify her of the decision and its reasons. She states that "this negligence, the absence of retroactive payment of salary [...], the needless stress for the Applicant, and the

absence so far of processing of reinstatement, even under [s]taff [r]ule 4.18, point to disadvantage, rather than advantage, and direct legal adverse consequences for the Applicant”.

20. From the outset, the Tribunal recalls the Appeals Tribunal jurisprudence stating that the cancellation of a recruitment process is not a challengeable administrative decision, only the final selection decision is subject to appeal (*Kawamleh* 2018-UNAT-818, para. 14).

21. Moreover, as the Applicant was eventually selected for the re-advertised position, the final administrative decision resulting from the recruitment process was actually in her favor and the Applicant has no standing to challenge it.

22. Therefore, the application is not receivable *ratione materiae*.

23. The Tribunal is perplexed by the Applicant’s submissions that she is entitled to reinstatement, rather than selection to the re-advertised position and retroactive payment of salaries. As stated above, upon the expiration of her fixed-term appointment with MINUJUSTH, the Applicant had no entitlement to being selected for another position with the Organization or even to be afforded priority consideration.

24. Priority consideration is only awarded to staff members on non-temporary appointments whose employment contracts have been terminated in application of staff rule 9.6(e). The Applicant, whose fixed-term appointment had expired and was separated from the Organization, was not covered by this provision. While COSMOS facilitates the placement of staff members from downsizing missions, it does not grant staff members entitlements they are not afforded by the regulations and rules.

25. For the reasons stated above, the Tribunal finds the application non-receivable *ratione materiae*.

Conclusion

26. In light of the foregoing, the application is dismissed.

(Signed)

Judge Joelle Adda

Dated this 21st day of April 2020

Entered in the Register on this 21st day of April 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York