



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/007

Order No.: 14 (GVA/2011)

Date: 10 February 2011

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

SEYIDOVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON SUSPENSION OF ACTION

Counsel for Applicant:

Amal Oummih, OSLA

Counsel for Respondent:

Shelly Pitterman, UNHCR

Introduction

1. By application dated 4 February 2011 the Applicant requested suspension of action under article 2.2 of the Dispute Tribunal's Statute concerning the decision to terminate her indefinite appointment effective 28 February 2011.

Facts

2. Following the reclassification of the post encumbered by the Applicant in the Office in Baku, Azerbaijan, of the United Nations High Commissioner for Refugees ("UNHCR") from Programme Assistant (GL-6) to Admin./Programme Assistant (GL-6), effective 1 January 2011, the post was advertised and the Applicant submitted her candidacy therefore on 19 November 2010.

3. On 24 December 2010, the Applicant was informed that she was not selected for the post; another candidate had been selected.

4. By a separate letter sent to the Applicant on 17 January 2011, she was informed that she would be separated from service effective 28 February 2011.

5. On 4 February 2011, the Applicant requested management evaluation of the "administrative decision ... dated 17 January 2011 ... informing [her] that [she would] be separated from service effective 28 February 2011".

6. On the same day, the Applicant submitted to the Tribunal the application currently under consideration. This application was transmitted to the Respondent, who, in his reply dated 8 February 2011, stated that the decision to terminate the Applicant's appointment had been rescinded and announced that the Applicant would be formally informed of such rescission by memorandum of 9 February 2011. The Applicant was indeed notified as announced.

7. By Order 13 (GVA/2011), dated 8 February 2011, the Tribunal concluded that, in light of the circumstances described above, the application for suspension of action "appear[ed] to be moot", and requested the Applicant to advise, by Wednesday, 9 February 2011 whether she intended to withdraw her application.

8. On 9 February 2011, Counsel for the Applicant submitted, *inter alia*, that:
- (1) the decision to separate the Applicant from service and that to select another candidate for the post resulting of a reclassification of the post so far encumbered by the Applicant “are wholly interrelated and thereby should not be considered as separate administrative decisions”;
 - (2) the Applicant consents to withdraw her application for suspension of action of 3 February 2011, “if the Tribunal is of the view that the decisions are separate”.

Considerations

9. In Order 13 (GVA/2011), the Applicant was presented with a clear question and the Tribunal expected to be given with a clear-cut answer thereto. Instead, the Applicant submitted, in turn, a question to the Tribunal, namely, whether, in its view, the decision of which suspension was sought—termination of the Applicant’s appointment—and the decision not to select the Applicant for a given post, which preceded the former, were separate administrative decisions. Withdrawing an application is a prerogative that the Applicant may or may not use, not an issue to be negotiated. Withdrawal should not be subject to conditions. For this reason, the Applicant’s submission of 9 February 2011 may not be considered as a notification of withdrawal of the application at hand.

10. In any case, the decision not to select a candidate for a post, on the one hand, and the decision to terminate a staff member’s appointment, on the other hand, are distinct administrative decisions. They have different nature and effects. In the instant case, they were made at different times and notified separately. Furthermore, the provisions governing each of them, against which the legality of the respective decisions must be assessed, are different (concerning UNHCR, basically, Article IX of the Staff Regulations and Chapter IX of the Staff Rules and Chapter 9 of the Staff Administration and Management Manual, for separation from service, and the Rules of Procedure and Procedural Guidelines of

the Appointments, Postings and Promotions Committee, for selection of staff members).

11. It is not unusual that, like in the present case, two legally distinct decisions be closely related as to the facts and in terms of chronology. This in no manner affects the autonomous character of each of the concerned decisions.

12. The Tribunal therefore considers that the Applicant's separation and her non-selection for the post she holds following its reclassification are separate administrative decisions. Accordingly, each decision must be contested individually.

13. Having said that, it is clearly specified in the application that the contested decision is the Applicant's separation from service. This is, moreover, the decision identified for review in the request for management evaluation of 4 February 2011.

14. As previously held by the Tribunal, suspension of action may only be sought with regard to a decision which deploys legal consequences vis-à-vis the concerned staff member (see *Asswad* Order No. 5 (GVA/2010)). In the present case, it is plain, in view of the Respondent's reply and the memorandum addressed to the Applicant on 9 February 2011, that the contested separation has been rescinded. Consequently, this decision no longer has any effect on the Applicant's rights. The application has thereby become moot.

Conclusion

This application for suspension of action is rejected.

(Signed)

Judge Thomas Laker

Dated this 10th day of February 2011

Entered in the Register on this 10th day of February 2011

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva