



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2013/005

Order No.: 20 (GVA/2013)

Date: 18 February 2013

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

QUESADA-RAFARASOA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Karen Farkas, UNHCR

Introduction

1. The Applicant is a staff member at the United Nations High Commissioner for Refugees (“UNHCR”) serving as a Supply Officer at the P 3 level in Property Plant Equipment (“PPE”) and Asset Management, Supply Management Services (“SMS”) in Budapest, Hungary.

2. On 11 February 2013, the Applicant filed an application for suspension of action of the decision to select, instead of her, an external candidate for the post of Senior Supply Officer (PPE and Fleet Management), SMS, (“contested decision”), job opening number 7359 position number 10012858 (“contested post”).

3. The application was served on the Respondent on 12 February 2013 with a requirement to file a reply by Thursday, 14 February 2013 at 5:30 pm (CET).

4. The Tribunal directed the Respondent’s counsel in filing the reply to address the following matters:

- a. Whether the selection of the successful candidate with regard to the contested post had taken place;
- b. Whether the selected candidate had been informed of this decision; and
- c. Whether the selected candidate had accepted the offer.

5. The Tribunal further directed the Respondent to produce on an *ex parte* basis the un-redacted version of documents relating to the decision making process of the contested post. The Respondent was also directed not to undertake, as from the date of service, any further steps regarding the recruitment against the contested post until the determination of the suspension of action.

6. On 14 February 2013, the Respondent filed the reply together with the requested documents.

Facts

7. In March 2012, the contested post was advertised both internally and externally and the Applicant applied for it.

8. Interviews for the post were carried out between 14 and 22 November 2012 and a total of six candidates were interviewed. The hiring manager, in a memorandum dated 28 November 2012, agreed with the findings of the interview panel, which found the Applicant and other candidates not suitable and recommended an external candidate for the contested post.

9. The Joint Review Board, in its meetings between 10 and 13 December 2012, endorsed the recommended candidate and on 27 December 2012, the “summary of decisions of the High Commissioner on assignments No.11/2012” (“summary of decisions”) were circulated to all staff members via email.

10. The Applicant received the summary of decisions on 7 January 2013 in which she got to know that her candidature for the contested post was unsuccessful and that an external candidate had been selected.

11. On 17 January 2013, UNHCR sent an offer letter to the selected external candidate, describing the major aspects of the appointment, including grade, step and other entitlements. The selected candidate accepted the offer on the same day, without any conditions. He is expected to take up the contested post on 25 February 2013.

12. On 8 February 2013, the Applicant requested management evaluation of the decision to select an external candidate against the contested post.

Parties’ contentions

13. The Applicant’s main contentions may be summarized as follows:

Prima facie unlawfulness

a. The selection of an external candidate is contrary to UNHCR *Policy and Procedures on Assignment and Promotions* (“PPAP”),

IOM/FOM/033/2010, considering that there were two suitable internal candidates.

Urgency

b. Since the selected candidate has not yet taken up the position in Budapest the contested decision may still be suspended pending management evaluation.

Irreparable damage

c. Since her Standard Assignment Length (“SAL”) ends on 31 December 2013, she would not be in a position to find another suitable position in Budapest before then; and

d. She has a special constraint relating to her daughter’s health status which is recognised by the UNHCR Special Constraints Panel, which recommended that she be stationed in Budapest.

14. The Respondent’s primary contentions may be summarized as follows:

Receivability

a. The Application is not receivable, because the contested decision has been implemented.

Prima facie unlawfulness

b. The selection process for the contested post was properly conducted in accordance with the PPAP; and

c. The Applicant’s candidature received fair and adequate consideration for the contested post.

Urgency

d. There is no urgency because the contested decision has already been implemented.

Irreparable damage

e. The contested decision has no impact on the Applicant's rights, since she was accorded full and fair consideration;

f. The Applicant will not suffer irreparable damage when her SAL expires on 31 December 2013, because she is a holder of an indefinite contract and as such will become a staff member in between assignments and will receive all entitlements until reassigned; and

g. The Special Constraints Panel has recommended that the Applicant be given support in her job applications to family duty stations with appropriate educational and psychological facilities, including Budapest, subject to review by the Director, DHRM.

Consideration

15. Article 2.2 of the Tribunal's Statute provides that the Tribunal shall be competent to suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage.

16. For an application for suspension of action to be determined by the Tribunal, the contested decision must be pending management evaluation and it must not have been implemented (see *Tiwathia* UNDT/2012/109, *Nwuke* UNDT/2012/116 and *Murnane* UNDT/2012/128).

17. Despite different approaches with respect to the determination of the proper date of the implementation of a selection decision, (see *Wang* UNDT/2012/080 and *Nwuke* UNDT/2012/116) there is no dispute that a selection

decision has to be considered as implemented when the Administration receives the selected candidate's unconditional acceptance of the offer of appointment (see *Tiwathia* UNDT/2012/109).

18. In the present case, the selected candidate was informed on 17 January 2013 of his selection for the contested post. He unconditionally accepted the offer of appointment on the same date. Thus, the Tribunal can only conclude that the contested decision in this case had already been implemented prior to the filing of the application for suspension of action on 11 February 2013.

19. If the decision has been implemented, as in the present case, the question of suspension does not arise and it is not necessary for the Tribunal to examine the other requirements for granting a suspension of action.

Conclusion

20. In view of the foregoing, the application for suspension of action is rejected.

(Signed)

Judge Thomas Laker

Dated this 18th day of February 2013

Entered in the Register on this 18th day of February 2013

(Signed)

René M. Vargas M., Registrar, Geneva