



Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: René M. Vargas M.

FARRIMOND

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Bettina Gerber, UNOG

Introduction

1. By application filed on 10 September 2013, the Applicant, a P-4 Interpreter at the United Nations Office at Geneva (“UNOG”), Division of Conference Management (“DCM”), Interpretation Service, seeks suspension of action, pending management evaluation, of the decision not to recommend her for selection for one of the positions of Senior Interpreter (English) P-5, opened under Job Opening 13-LAN-UNOG-27767-R-GENEVA (L).

Facts

2. In October 2012, the Applicant applied for the post of Senior Interpreter (English), P-5, Job Opening 12-LAN-UNOG-25125-R-GENEVA (L), which was advertised on 14 September 2012. In total, seventeen applications were received for the position and the names of seven candidates, including the Applicant, were forwarded to the Hiring Manager, the Chief, Interpretation Service, DCM, UNOG, for evaluation. These seven candidates were invited for a competency-based interview in December 2012, following which the Assessment Panel determined that they all met the requirements for the position. Consequently, the names of all seven candidates, including the Applicant’s, were placed on the list of recommended candidates that was transmitted to the Central Review Board (“CRB”) on 28 January 2013.

3. Following its meeting of 13 February 2013, the CRB decided that it was not in a position to endorse the list of recommended candidates at this stage and requested that the comparative analysis report be re-written, in order to reflect the conclusions and assessment of the Hiring Manager.

4. On 27 March 2013, the CRB endorsed the recommendation of all seven candidates for Job Opening 12-LAN-UNOG-25125-R-GENEVA (L), after all evaluations had been duly revised.

5. On 3 May 2013, the Hiring Manager sent a memorandum to a Senior Human Resources Officer, Human Resources Management Service (“HRMS”),

UNOG, through the Director, DCM, stating that following the CRB endorsement of all seven candidates he wished to recommend Mr. A. D. for promotion, for Job Opening 12-LAN-UNOG-25125-R-GENEVA (L). On 17 May 2013, this recommendation, along with the list of the seven candidates endorsed by the CRB, was transmitted to the Director-General, UNOG, for final selection.

6. On 22 May 2013, the Director-General, UNOG, selected Ms. R. E., one of the seven recommended candidates, for the post advertised under Job Opening 12-LAN-UNOG-25125-R-GENEVA (L). The names of the other six candidates, including the Applicant's, were included in the roster of suitable candidates for future similar positions.

7. On 16 April 2013, Job Opening 13-LAN-UNOG-27767-R-GENEVA (L) was published for two new posts of Senior Interpreters (English), P-5. The vacancy was identical to the one advertised in 2012 (see para. 2), and the Applicant applied to it in June 2013. A total of nine eligible candidates, of which seven were roster candidates (including the Applicant), were submitted by HRMS, UNOG, to the Hiring Manager, who was at the time the Chief, Interpretation Service, DCM, UNOG, for evaluation. The Hiring Manager decided to only review roster candidates.

8. On 31 July 2013, the Applicant wrote an e-mail to the Hiring Manager, telling him that she had been informed that he did "not wish to recommend [her] for the P5 posts currently under consideration", and that she would like to seek clarification as to the reasons for that. Following this e-mail, the Hiring Manager met with her on 3 August 2013.

9. By memorandum dated 20 August 2013 and addressed to a Senior Human Resources Officer, HRMS, the Hiring Manager, through the Director, DCM, recommended for final selection by the Director-General, UNOG, two of the roster candidates, namely Mr. A. D. and Ms. E. P., for the two posts opened under Job Opening 13-LAN-UNOG-27767-R-GENEVA-(L), without further review by the CRB.

10. On 10 September 2013, the Applicant requested management evaluation of the decision not to forward her name as a recommended candidate for the two posts opened under Job Opening 13-LAN-UNOG-27767-R-GENEVA (L). The same day, she filed before this Tribunal the present application for suspension of action of that decision, pending management evaluation.

11. On 11 September 2013, the application was served on the Respondent, who was instructed by the Tribunal to submit his reply by Friday, 13 September 2013.

12. On the same day, *i.e.* on 11 September 2013, the Associate Human Resources Officer, HRMS, UNOG, in charge of preparing the submission to the Director-General, UNOG, sent an e-mail to the Hiring Manager, indicating that according to the new guidelines for roster selection the transmittal memorandum needed to be generated in *Inspira* prior to the submission. Furthermore, she pointed out that a more detailed comparative analysis of all roster candidates was needed. Finally, she requested that some clarifications/corrections be provided and pointed out several inconsistencies in the justification of the Hiring Manager's recommendation.

13. On 12 September 2013, the Respondent met with the Hiring Manager.

14. On 13 September 2013, the Respondent wrote an e-mail to the Hiring Manager, referring to the meeting they had and informing him that following receipt of the detailed comparative analysis of all roster candidates provided by the Hiring Manager, HRMS/UNOG would review it and "only once ensured that all information is correct and complete, it will be transmitted to the Director-General (...)". Furthermore, the Hiring Manager was informed that it had been decided that the names of seven roster candidates—including the Applicant—" [would] be included in the submission to the Director-General in an alphabetical order for final selection decision". The Hiring Manager was informed that in view of the foregoing, the decision not to include the Applicant's name on the list of recommended candidates had been "reversed" and was therefore "moot".

15. On the same day, the Respondent submitted his reply to the application with Annexes 2 to 6 and 8 to 9 filed *ex parte*. Following receipt of the reply, the

Tribunal instructed the Respondent to file a missing Annex, along with the Hiring Manager's written agreement to rescind the contested decision, by Monday, 16 September 2013.

16. Also on 13 September 2013, the Applicant submitted comments on the Respondent's reply.

17. On 16 September 2013, the Respondent filed Annex 10 as requested by the Tribunal, as well as an e-mail from the Hiring Manager in which the latter agreed with the course of action taken and in which he stated that "the decision will be rescinded".

Parties' contentions

18. The Applicant's contentions, as listed in her application for suspension of action of 10 September 2013, may be summarized as follows:

Prima facie unlawfulness

- a. The decision not to recommend her name for Job Opening No. 13-LAN-UNOG-27767-R-GENEVA (L) is manifestly tainted by bias "notably towards Mr. [A. D.]" and against her;
- b. Also, as a woman she should have benefited from the favourable special measures listed by administrative instruction ST/AI/1999/9 (Special measures for the achievement of gender equality), in particular its sec. 1.8 (a), since her qualifications are substantially equal or superior to those of the competing male candidate Mr. A. D.;
- c. Despite the fact that the decision seems to have been rescinded, the Respondent does not "provide an assurance that the comparative analysis will limit itself to the competencies required by the job opening announcement and duly verified by the Panel at Competency-Based Interview", therefore "it cannot be considered as matters stand that the Respondent has made adequate arrangements for full and fair consideration

of [her] application” and she requests that the Tribunal finds the application for suspension of action receivable;

Urgency

d. The decision to select other candidates than herself to the positions at stake is going to be implemented very soon, since the selection request is currently before the Director-General, UNOG, for final decision;

Irreparable harm

e. If the decision is implemented, she “would be denied a fair chance to progress from the roster to a promotion” for a position for which she considers herself “better qualified than the candidates requested for selection”, and this for a long time since the next P-5 position “may be expected in 2020”, “given the procedures under way to extend the retirement age”.

19. The Respondent’s contentions can be summarized as follows:

a. The Tribunal is requested to dismiss the application as irreceivable because the contested decision—not to include the Applicant’s name on the list of candidates to be transmitted to the Director-General for selection decision—has been reversed in the meantime, hence the request for suspension of action is now moot;

b. In order to support his request, the Respondent refers to the actions undertaken following receipt on 10 September 2013 of the memorandum dated 20 August 2013 from the Hiring Manager, in particular to the fact that the Hiring Manager has been required to provide clarifications and corrections as well as to prepare a detailed comparative analysis of all roster candidates;

c. This detailed comparative analysis “will be verified by HRMS and only once ensured that all information is correct and complete it will be transmitted to the Director-General, who according to [sec.] 9.2 of

ST/AI/2010/3 on the Staff Selection System makes the final selection decision on the basis of the proposal made by the Hiring Manager”,

d. Also, it has been decided by HRMS that the names of seven roster candidates, including the Applicant, “will be included in the submission to the Director-General in an alphabetical order for final selection decision”. Also, “the Director-General will be provided with an analysis report which includes information about the representation of women in higher-level posts within UNOG in order to be able to take an informed selection decision”;

e. The Hiring Manager expressly agreed to such course of action and the Respondent stresses that “the described course of action ensures a full and fair consideration of the Applicant as well as of the other roster candidates throughout the entire selection procedure”, and it is also “avoided that the selection decision is influenced by any alleged improper motives”.

Consideration

20. Article 2.2 of the Statute of the Dispute Tribunal and art. 13 of its Rules of Procedure provide that it may order the suspension, during the pendency of management evaluation, of the implementation of a contested administrative decision that is the subject of an on-going management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

21. It follows from these provisions that an application for suspension of action may only be granted if the contested decision has not yet been implemented and is the subject of an on-going management evaluation.

22. In the present case, the decision that is being challenged is contained in the memorandum dated 20 August 2013, addressed to HRMS through the Director, DCM, by the Hiring Manager, who was at the time Chief, Interpretation Service, DCM. The decision consists in the non-recommendation of the Applicant for selection for one of the two vacant posts of Senior Interpreter (English), P-5,

published under Job Opening 13-LAN-UNOG-27767-R-GENEVA (L). The decision, if implemented, would result in the Applicant's non-selection, since her name would not figure on the list of recommended candidates forwarded to the Director-General, UNOG, for final selection.

23. The Tribunal notes that HRMS/UNOG decided that it could not forward the memorandum of 20 August 2013 to the Director-General for final decision, *inter alia*, because more clarifications were needed in order to comply with the selection procedures and since a new transmittal memorandum should be generated directly in Inspira (see para. 12 above). After the Respondent met with the Hiring Manager, the latter agreed in writing to rescind the decision (see paras. 14 and 17).

24. In view of the above, the Tribunal considers that because the Administration (*i.e.* HRMS) itself informed the Hiring Manager that the memorandum of 20 August 2013 could not be transmitted to the Director-General as it stood, this was tantamount to a suspension of the implementation of the contested decision. Moreover, the Hiring Manager—who is the author of the contested decision—committed himself in writing to rescind the decision, and the Tribunal considers that there is no reason not to trust him.

25. Therefore, since the contested decision has already been suspended by the Administration and the Hiring Manager expressly stated that he is going to rescind it, the Tribunal can only conclude that the request for suspension of action has become moot.

26. It follows that it is not necessary for the Tribunal to examine if the three statutory requirements specified in art. 2.2 of its Statute and art. 13.1 of its Rules of procedure, namely *prima facie* unlawfulness, urgency and irreparable damage are met in the case at hand.

27. Finally, in view of the foregoing, the Tribunal considers that it is not necessary for the disposal of the case to share the *ex parte* Annexes filed by the Respondent along with his reply with the Applicant.

Conclusion

28. In view of the foregoing, the Tribunal DECIDES that the present application for suspension of action is moot and there is no need to further decide on the Applicant's request.

(Signed)

Judge Jean-François Cousin

Dated this 17th day of September 2013

Entered in the Register on this 17th day of September 2013

(Signed)

René M. Vargas M., Registrar, Geneva