



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2014/002

Order No.: 29 (GVA/2014)

Date: 20 February 2014

Original: English

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**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** René M. Vargas M.

HUBBLE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Simon Buettner, UNOG  
Nathalie Defrasne, UNOG

## **Introduction**

1. On 11 February 2014, the Applicant filed an application for suspension of action, pending management evaluation, of the decision to appoint Mr. A. D. to one of the two posts advertised under Job Opening (“JO”) 13-LAN-UNOG-27767-R-GENEVA (L) Senior Interpreter (English), in the Division of Conference Management (“DCM”), at the United Nations Office at Geneva (“UNOG”) for which the Applicant had also applied.

## **Facts**

2. From 16 April to 15 June 2013, two posts of Senior Interpreters, P-5 (English), Interpretation Service, DCM, were advertised in Inspira, under JO 13-LAN-UNOG-27767-R-GENEVA (L). This JO was identical to a prior JO advertised in 2012 and for which the selected candidate and the Applicant had been rostered after review by the Central Review Board (“CRB”). The Applicant, a P-4 Interpreter, applied to JO 13-LAN-UNOG-27767-R-GENEVA (L) on 24 May 2013.

3. By memorandum dated 20 August 2013 addressed to a Senior Human Resources Officer, HRMS, through the Director, DCM, Mr. Z. L.—then Officer-in-Charge (“OIC”), Interpretation Service, DCM—recommended two rostered candidates, namely Mr. A. D. and Ms. E. P., for final selection by the Director-General, UNOG, without further review by the CRB, for the two above-mentioned posts.

4. On 11 September 2013, an Associate Human Resources Officer, HRMS, UNOG, in charge of preparing the selection recommendation submission to the Director-General, UNOG, sent an e-mail to the OIC, Interpretation Service, DCM, indicating, *inter alia*, that a more detailed comparative analysis of all considered rostered candidates was needed.

5. According to information provided by the Respondent, the D-1 post of Director, Interpretation Service, DCM, was transferred on loan to the Department for General Assembly and Conference Management (DGACM) upon request of the Under Secretary-General, DGACM, effective 27 September 2013 through 30 June 2014. The post is expected to return to DCM, UNOG, on 1 July 2014. At the moment of the transfer to DGACM, the post was vacant. The post has been advertised three times, a first time under JO ID number 26430, with a closing date of 12 March 2013, without generating a successful candidate; subsequently, under JO ID number 28846, which was cancelled upon the temporary transfer of the post to DGACM. The post is currently advertised under JO ID number 32508, with a closing date of 23 March 2014.

6. Referring to the above transfer of post, on 3 October 2013, the Director, DCM, assigned “the responsibility for the Interpretation Service” to Mr. A. V., Interpretation Service, DCM, initially until 5 December 2013. On 3 December 2013, the Director, DCM, decided that Mr. A. V. “will continue to serve OiC of the Interpretation Service until the selection of the new Chief of Service”.

7. On 9 December 2013, Mr. A. V., acting as “Officer-in-Charge, Interpretation Service, DCM”, sent a memorandum to HRMS, UNOG, containing a comparative analysis of all seven rostered candidates considered under JO 13-LAN-UNOG-27767-R-GENEVA (L) and recommending two of them, Mr. A. D. and Ms. E. P., for selection to the two posts advertised under said JO.

8. On 10 December 2013, the Director of Administration, UNOG, transmitted the recommendation for the two posts advertised under JO 13-LAN-UNOG-27767-R-GENEVA (L), including the list of the rostered candidates, to the Acting Director-General, for a final selection decision. The above-mentioned memorandum of 9 December 2013 was an integral part of the submission to the Acting Director-General.

9. On 12 December 2013, the Acting Director-General, UNOG, selected Mr. A. D. and Ms. E. P. for the two posts. Accordingly, on 13 December 2013, the two selected candidates were notified of their selection. The Applicant became aware of this decision when he logged into his INSPIRA account on 17 December 2013.

10. On 20 December 2013, a female rostered candidate who had not been selected for one of the posts advertised under JO 13-LAN-UNOG-27767-R-GENEVA (L), submitted a request for suspension of action of the decision to select Mr. A. D. to one of the posts (application registered under Case No. UNDT/GVA/2013/074). The Tribunal, by Order No. 200 (GVA/2013) of 31 December 2013, ordered that the decision to select Mr. A. D. be suspended, pending the outcome of said candidate's request for management evaluation.

11. The Applicant filed a request for management evaluation of the decision to select Mr. A. D. to one of the posts advertised under JO 13-LAN-UNOG-27767-R-GENEVA (L) on 26 January 2014.

12. On 11 February 2014, after end of business, the Applicant filed an application for suspension of action of the decision to appoint Mr. A. D. to one of the posts advertised under JO 13-LAN-UNOG-27767-R-GENEVA (L), pending his request for management evaluation. The application was served on the Respondent on 13 February 2014, directing the Organization not to undertake any further steps with respect to the recruitment against the contested post, until the determination of this application.

13. The Respondent filed his reply on 14 February 2014, noting that no further steps towards implementing the selection decision had been taken, and the Applicant filed additional comments on 17 February 2014.

14. The Tribunal, by Order No. 28 (GVA/2014) of 18 February 2014, requested the Respondent to provide it with additional information with respect to the transfer to DGACM of the D-1 post of Chief, Interpretation Service, DCM. The Respondent provided the requested information on the same day.

15. On 20 February 2014, both parties submitted to the Tribunal the response from the Management Evaluation Unit (“MEU”) to the Applicant’s request for management evaluation, upholding the contested decision. The response letter of the MEU is dated 4 February 2014, but was sent to the Applicant only by email of 19 February 2014, at 9.23 p.m..

**Parties’ contentions**

16. The Applicant’s primary contentions may be summarized as follows:

*Prima facie unlawfulness*

a. The Hiring Manager was appointed as OIC on 6 December 2013 by the Head, DCM, UNOG, at the P-5 level. Prior to that, in August 2013, the D-1 post of Chief, Interpretation Service, UNOG, had been temporarily transferred to the New-York office of the Under-Secretary General, DGACM, until 1 June 2014. The OIC is therefore not an Acting Director, and as a P-5 Interpreter does not have the authority to act as Hiring Manager for a P-5 post; since the OIC was solely and directly appointed by the Head, DCM, who also signed the memorandum recommending the successful candidate, due process was not applied in the selection process;

b. The candidature of the successful candidate, Mr. A. D., and his own candidature were not correctly assessed; the former’s candidature was presented in a better light, while information relating to his own candidature was omitted, and his qualifications were diminished;

*Urgency*

c. The Tribunal ordered suspension of the decision by Order No. 200 (GVA/2013) on 31 December 2013; he submitted a request for management evaluation on 26 January 2014 and wants to ensure that the suspension of the decision does not lapse before his case has been duly revised by the Management Evaluation Unit;

d. The Respondent's argument that the urgency was self-created is without merit; the Applicant had been ill and had underwent an emergency operation and subsequent convalescence; he was not in a position to file an application; he concentrated his first efforts into the filing of a request for management evaluation within the statutory time limits;

*Irreparable damage*

e. He was better qualified than the selected candidate; as such, he was denied a fair chance of progression for promotion from the roster, which causes irreparable harm to his professional reputation and career prospects.

17. The Respondent's primary contentions may be summarized as follows:

*Prima facie unlawfulness*

a. The Appeals Tribunal held that "[t]he Secretary-General enjoys broad discretion in selection matters and it is not the function of the UNDT or [the Appeals Tribunal], in the absence of evidence of bias, discriminatory practices or mala fides, to substitute its judgment for that of the Secretary-General" (*Charles* 2013-UNAT-285);

b. Therefore, the Tribunal is limited to examine whether the procedure was properly followed, that it was not biased and that the decision was not based on extraneous factors;

c. The Applicant, as well as the other rostered candidates, received full and fair consideration; the comparative analysis was based on their respective PHPs; the selection decision of the Acting Director-General was based on the selection memorandum and its attachments, to wit, the JO, the PHPs of the selected candidates, and the recommendation of the Hiring Manager of 9 December 2013; no other factors were taken into account and the decision constitutes a proper exercise of discretion;

- d. The assessment of the rostered candidates by the Hiring Manager was done in accordance with Chapter 2.1, sec. 11.a of the Inspira Manual for the Hiring Manager, based on their respective PHPs;
- e. While the argument that the OIC was not vested with the authority to act as Hiring Manager is not a subject of the present application, since it was not subject to management evaluation, the OIC designation was in line with staff rule 3.10(a); also, the final decision was made by the Acting Director-General, within his delegation of authority;
- f. Since the Applicant failed to prove that the decision was based on extraneous considerations, biased, discriminatory or made mala fides, or procedurally flawed, the presumption of the legality of the selection decision stands and the criteria of *prima facie* unlawfulness is not met;

*Urgency*

- g. The criteria of particular urgency, under art. 2.2 of the Tribunal's Statute is not met, since it was self-created by the Applicant, who, although he was informed of the contested decision no later than 17 December 2013, waited for 57 days after the notification to file his application for suspension of action;
- h. The criteria of particular urgency relates not only to the urgency of the matter itself, but also to the question of whether the Applicant acted with due diligence; in the case at hand, the Applicant lacked the necessary diligence; indeed, had the application for request of suspension of action submitted by another female candidate not been granted pursuant to Order No. 200 (GVA/2013), the selection decision would have been implemented by now; moreover, with respect to the suspension pursuant to Order No. 200 (GVA/2014), by the time the Applicant submitted the present request for suspension of action, the decision could already have been implemented if the management evaluation relating to the request of that other female candidate had already been answered and had upheld the decision;

- i. Therefore, since the urgency was self-created, the test of particular urgency under 2.2 of the Tribunal's Statute must fail;

*Irreparable damage*

- j. The Applicant failed to show how the implementation of the decision would cause him irreparable harm, since the question whether the Applicant or any of the other rostered candidates would have been selected had Mr. A. D. not been selected is speculative.

**Consideration**

18. Article 2.2 of the Statute and art. 13 of the Rules of Procedure of the Tribunal provides that the Tribunal can 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 to the Applicant. All of these requirements must be met in order for a suspension of action to be granted.

19. As the Appeals Tribunal has emphasized more than once, it follows from these statutory provisions that an application for suspension of action can only be apposite before the Tribunal when it is subject to ongoing management evaluation, because such a request can only be granted, pending the outcome of a management evaluation request (see *Igbinedion* 2011-UNAT-159).

20. The Tribunal notes that the Applicant filed his request for management evaluation on 26 January 2014. The request for suspension of action was received by the Tribunal on 12 February 2014, and served on the Respondent the next day. The Respondent filed his reply on 14 February 2014.

21. In the morning of 20 February 2014, both parties filed an additional submission to the suspension of action, namely the response to the Applicant's request for management evaluation, dated 4 February 2014, which had been sent to the Applicant by the MEU by email of 19 February 2014, at 9:23 p.m..



22. In view of the fact that the MEU responded to the Applicant's request before the determination of the application for suspension of action by the Tribunal, the Applicant's request becomes moot.

23. The Tribunal is nevertheless very concerned that it took the MEU more than two weeks to communicate to the Applicant its response dated 4 February 2014 and, as such, needlessly extended the time during which the Applicant could legitimately submit a request for suspension of action, as he did on 11 February 2014, under the above-quoted statutory provisions. The Tribunal stresses that the MEU failure to timely send its response of 4 February 2014 to the Applicant resulted in the parties, as well as the Tribunal, being brought to focus their limited resources in proceedings that proved to be completely superfluous.

24. Finally, the Tribunal underlines that its decision on the application for suspension of action does not entail any assessment with respect to the lawfulness of the contested decision.

### **Conclusion**

25. In view of the foregoing, it is ORDERED that the application for suspension of action be rejected.

*(Signed)*

Judge Thomas Laker

Dated this 20<sup>th</sup> day of February 2014

Entered in the Register on this 20<sup>th</sup> day of February 2014

*(Signed)*

René M. Vargas M., Registrar, Geneva