



**Before:** Judge Rowan Downing

**Registry:** Geneva

**Registrar:** René M. Vargas M.

MELPIGNANO

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:**

Marisa Maclellan, OSLA

**Counsel for Respondent:**

Alan Gutman, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant filed an application seeking suspension, pending management evaluation, of the implementation of the decision to consider him ineligible for the post advertised under Vacancy Announcement VA-13-14 (046), Human Resources Assistant (GS-6), Reference Verification Unit with the United Nations Logistics Base/Global Service Centre (UNLB/GSC), in Brindisi.

## **Facts**

2. The Applicant joined UNLB in 1999 as an Administrative Clerk (GS-3). Since then he has held several different positions, and was promoted to the GS-4 and later to the GS-5 level. He currently holds a fixed-term appointment as a Human Resources Assistant (GS-5).

3. On 3 June 2014, the Applicant applied to Temporary Job Opening TJP 13-14 (048), Human Resources Assistant (GS-6), Reference Verification Unit, UNLB/GSC. On 21 June 2014, he was notified of his selection for this Temporary Job Opening and he took up these functions on a temporary assignment as from July 2014.

4. On June 2014, the Applicant applied for Vacancy Announcement VA-13-14 (046), Human Resources Assistant (GS-6), Reference Verification Unit, UNLB/GSC.

5. On 5 February 2015, the Applicant was informed that he had been found ineligible for Vacancy Announcement VA-13-14 (046) due to the time in grade requirements contained in said vacancy announcement.

6. The Applicant submitted a request for management evaluation on 31 March 2015. On the same day, he filed an application for suspension of action pursuant to art. 2.2 of the Tribunal's Statute and art. 13 of its Rules of Procedure.

7. By letter dated 7 April 2015, the Management Evaluation Unit (“MEU”) informed the Applicant that his request for management evaluation was deemed irreceivable.

8. On 7 April 2015, the Respondent filed his reply to the present application.

**Parties’ contentions**

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

*Prima facie unlawfulness*

a. While UNLB seems to hold that the vacancy announcement at issue reflects the time in grade requirements of four years for a G-5 candidate to apply to a G-6 position as articulated in the Guidelines on Placement and Promotion of Locally Recruited General Service Staff Members, dated 8 August 1996 (“Guidelines”), it is unclear how these Guidelines apply to UNLB. UNLB/GSC is not a mission, but a hybrid operation (as expressly stated e.g., in the Frequently Asked Questions for Executive Offices/Local Personnel Offices regarding Continuing Appointments). As such, the application of ST/AI/2010/3 to recruitments of UNLB staff is not excluded by virtue of sec. 3.2(h) of the instruction;

b. Sec. 6 of Administrative Instruction ST/AI/2010/3 (Staff Selection System) does not require that General Service staff must serve a specific number of years at a particular level to be eligible to apply for the next level. Any interpretation of the Guidelines inconsistent with sec. 6 should be void, pursuant to sec. 2.6 of the same instruction;

c. The Administration’s reliance on the Guidelines, which do not rise to the level of the Staff Rules or even administrative instructions, cannot be the basis of the additional and new requirement that experience must be gained for five years at one level before being able to apply to the next higher level. Based on *Johnson* 2012-UNAT-240, not only must inferior issuances not supersede superior ones, but they must not add substantive requirements, unless expressly permitted to do so;

d. The time-in-grade requirement amounts factually and legally to a type of discrimination, in that locally recruited staff would be penalised via-à-vis external candidates. Moreover, such requirement is no longer applicable at headquarters;

e. The application of the Guidelines ends up imposing too specific a requirement for internal candidates. It places undue restrictions on internal candidates, rendering the Vacancy announcement dangerously narrow, as envisaged in para. 5.51.6 of the Inspira Recruiter's Manual;

f. UNLB has waived this requirement in other recruitments, including the TJO for the same post, in which the Applicant currently serves;

*Urgency*

g. According to the Tribunal's case-law, urgency exists when an applicant may be denied the chance of regaining the position he was occupying or should be occupying despite being successful on the substantive case, especially if the position is filled. If the Administration is allowed to implement the decision, another candidate will be selected;

*Irreparable damage*

h. Suspension of action is the only remedy available to him to suspend the recruitment process and selection of another candidate and review the use of the time in grade rule. Pursuant to the Tribunal's case-law, harm is irreparable if it can be shown that the suspension of action is the only way to ensure that an applicant's rights be observed; also, a wrong on the face of it should not be allowed to continue simply because the wrongdoer is able and willing to compensate for the damage inflicted.

10. The Respondent's only contention is:

The contested decision is no longer pending management evaluation, since MEU replied to the Applicant's management evaluation request on 7 April 2015. As a consequence, the Tribunal no longer has jurisdiction to

suspend the implementation of the impugned decision under art. 2.2 of its Statute.

### **Consideration**

11. Art. 2.2 of the Tribunal's Statute and art. 13.1 of its Rules of Procedure cater for the Tribunal's jurisdiction to suspend the implementation of an administrative decision provided certain conditions are met. In doing so, both provisions make clear that the Tribunal may suspend action "during the pendency of the management evaluation".

12. It is thus evident that the Tribunal's power in this respect is limited to such time in which the management evaluation of the decision in question is finalised. Consistently, the Appeals Tribunal has held that any jurisdictional decision ordering the suspension of a contested administrative decision for a period beyond completion of management evaluation exceeds the Tribunal's jurisdiction (*Onana* 2010-UNAT-008, *Igbinedion* 2011-UNAT-159).

13. In the present case, the Tribunal is satisfied that the management evaluation of the determination that the Applicant was ineligible for the post advertised under Vacancy Announcement VA-13-14 (046) was completed as of 7 April 2015, as it has been provided with a copy of this management evaluation.

14. Accordingly, the Tribunal finds that it no longer has jurisdiction to rule on the present application for suspension of action.

15. The above is without prejudice to the possibility open to the Applicant to institute proceedings to contest the decision at issue on the merits, since the initial step of requesting management evaluation has been duly effected and the Administration has pronounced itself thereupon.

### **Conclusion**

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

*(Signed)*

Judge Rowan Downing

Dated this 9<sup>th</sup> day of April 2015

Entered in the Register on this 9<sup>th</sup> day of April 2015

*(Signed)*

René M. Vargas M., Registrar, Geneva