



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

SAMRA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Jérôme Blanchard, UNOG

Introduction

1. By application filed on 2 October 2015, the Applicant, an interpreter at the P-3 level in the Arabic Interpretation Section, Interpretation Service, Division of Conference Management, United Nations Office at Geneva, seeks suspension of action, pending management evaluation, of the decision “to select an external candidate, working for a non-UN organization, to the position of Arabic Interpreter P-4 (JO [No.] 14-LAN-UNOG-37341-R-GENEVA) to the exclusion of two recommended internal candidates, including himself”.
2. The application was served on the Respondent on 2 October 2015, with a deadline to file a reply by 6 October 2015. The Respondent filed his reply on 6 October 2015; it comprises eight annexes submitted *ex parte*.
3. Without leave from the Tribunal, the Applicant filed observations on the Respondent’s reply on 8 October 2015.

Facts

4. On 18 September 2014, the position of Arabic interpreter, P-4, was advertised in *Inspira* under job opening No. 14-LAN-UNOG-37341-R-GENEVA (L) (“contested post”) and the Applicant applied for it.
5. On 12 January 2015, five candidates who had been short-listed for the contested post were interviewed, including the Applicant. Following competency based interviews, the Applicant, along with two other candidates, was recommended for the post. The three recommended candidates were then endorsed by the Central Review Body.
6. On 6 July 2015, the Hiring Manager recommended Ms. A. for the contested post on the basis that “[c]ompared with the other candidates, [she] demonstrated during the interview that she exceeded the requirements for 2 out of 4 competencies (Commitment to continuous learning and Professionalism)”. In comparison, the Applicant was rated as “meeting the requirements” for all four competencies.

7. Ms. A. was selected for the contested post on 15 July 2015. She was informed of her selection on 16 July 2015 and, on 17 July 2015, she confirmed her continuing interest for the post.

8. On 17 July 2015, the Applicant was notified, through *Inspira*, that following the recruitment exercise for the contested post, he was placed on a roster of pre-approved candidates for potential consideration for future United Nations Secretariat job openings with similar functions at the same level, and was encouraged to actively apply for other positions.

9. On 21 August 2015, the Applicant learned in a meeting that Ms. A. had been selected for the contested post, and that she is a staff member of the Special Tribunal for Lebanon.

10. On 1 September 2015, the Organization sent a formal offer of appointment to Ms. A. for the contested post with the appointment taking effect on 7 December 2015, “subject to medical clearance and satisfactory reference checks”. On 9 September 2015, she accepted the offer.

11. On 29 September 2015, the Applicant requested management evaluation of “the decision to deny [him] the position of P-4 (JO [No.] 14-LAN-UNOG-37341-R-GENEVA (L) in favour of an external applicant working for a non-UN organization”.

Parties’ contentions

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

Prima facie unlawfulness

a. The decision to select an “external candidate” for the contested post violates Staff Regulation 4.4 as the Applicant, who is already in the service of the United Nations and has been placed on the roster for the post, possesses the requisite qualifications and experience. It further compromises the Applicant’s “right to fair career development within [the United Nations]”;

Urgency

b. The Applicant's right to an effective remedy will be impaired if the recruitment process for the contested post is completed prior to his request for management evaluation being determined;

Irreparable damage

c. The contested decision impacts on the Applicant's psychological well-being as it compromises his career development opportunities, leads to a loss in seniority for him in favour of an external candidate, and sets a "wrongful precedent" for the Organization's language departments.

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

Receivability

a. The application is not receivable as the contested decision has been implemented since 9 September 2015, when the selected candidate unconditionally accepted the offer of appointment for the contested post;

Prima facie unlawfulness

b. The Applicant received full and fair consideration, and the proper procedures, as set out in the ST/AI/2010/3 on Staff Selection System, had been followed;

c. There is no obligation upon the Administration to select an internal candidate over an external one. Rather, such practice would be contrary to Article 101 of the Charter, which provides that the paramount consideration in the recruitment of staff "shall be the necessity of securing the highest standards of efficiency, competence and integrity";

Irreparable damage

d. The Applicant does not demonstrate how the implementation of the contested decision would cause him an injury that cannot be adequately compensated in damages;

Urgency

e. The urgency is self-created as the Applicant filed his application for suspension of action more than ten weeks after the contested decision was notified to him, on 17 July 2015.

Consideration

14. 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 case of particular urgency, and where its implementation would cause irreparable damage.

15. 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).

16. Despite different approaches with respect to the determination of the effective 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 received the selected candidate's unconditional acceptance of the offer of appointment (see *Tiwathia* UNDT/2012/109; *Murnane* UNDT/2012/128; *Basaly* Order No. 296 (NY/2014); *Kawas* Order No. 297 (NY/2014)).

17. In the present case, Ms. A. was informed of her selection for the contested post on 16 July 2015 and confirmed her continuing interest in the position the next day. On 1 September 2015, the Organization made her a formal offer of appointment detailing the terms of employment, and setting the date of entry in duty. Ms. A. accepted the offer on 9 September 2015.

18. The Tribunal notes that the offer of appointment dated 1 September 2015 is "subject to medical clearance and satisfactory reference checks", as it is generally the case for formal offers of appointment made by the Organization to external

candidates. Since it is unclear whether these conditions have yet been satisfied the question arises as to whether the contested decision has been implemented anyhow. The Tribunal finds that this question must receive an affirmative answer.

19. In the letter dated 1 September 2015, the Organization sets out the terms of its offer of appointment, and these were accepted by the selected candidate, without condition. Such unconditional acceptance of the offer is sufficient to conclude that the selection decision for the contested post has been implemented. The Organization and the selected candidate have reached an agreement upon the terms of employment, and an employment contract is to be formed without any additional formality once the two suspensive conditions set out in the offer of appointment have been met (see *Sprauten* 2011-UNAT-111; *Gabaldon* 2011-UNAT-120; *Tiwathia* UNDT/2012/109). The Organization and the successful candidate are bound by the terms of the offer, and must act in good faith to ensure that the suspensive conditions, which are to a large extent independent of their own will, materialise.

20. It follows from the above that the contested decision was implemented on 9 September 2015, the date when the selected candidate expressed her unconditional acceptance of the offer of appointment. The application for suspension of action must therefore be rejected, and it is not necessary for the Tribunal to examine the other requirements for granting a suspension of action.

Conclusion

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

(Signed)

Judge Thomas Laker

Dated this 8th day of October 2015

Entered in the Register on this 8th day of October 2015

(Signed)

René M. Vargas M., Registrar, Geneva