



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

PEACE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:
Robbie Leighton, OSLA

Counsel for Respondent:
Steven Dietrich, ALS/OHRM

Introduction

1. By application filed on 30 November 2016, the Applicant seeks the suspension of the implementation, pending management evaluation, of the decision to exclude him from the recruitment process for the temporary position of Principal Logistics Officer (D-1) at the United Nations Logistic Base (“UNLB”), advertised under TJO 16-Logistics and Supply Chain-UNLB-68734-J-BRINDISI.
2. The Respondent filed his reply on 1 December 2016.

Facts

3. The Applicant serves as Chief (P-5), Logistics Service, UNLB, a post that he has held since September 2010. He claims that he is rostered for the positions of Deputy Director of Mission Support/Chief of Mission Support (D-1), Chief of Service Delivery (D-1) and Supply Chain Management (D-1).
4. In April 2015, during a Global Classification exercise ran by the Field Personnel Division, the Director of the Global Service Centre (“GSC”) sought to reclassify the Applicant’s current position upwards due to additional responsibilities that had been assigned to the Logistic Service. This attempt was unsuccessful as the post was deemed outside the Global Classification exercise.
5. The current Director of GSC decided to reassign the existing post of Deputy Director (D-1) as Chief (D-1), Logistics Service, to perform a combination of both supply and service delivery functions. He also decided to re-profile the Applicant’s post as Senior Logistics Officer (P-5) to provide managerial support to the new Chief of Logistics Service.
6. On 21 October 2016, a temporary job opening was advertised for the new position of Principal Logistics Officer (“TJO”). The Applicant applied for it on 27 October 2016.

7. On 22 November 2016, the Applicant was invited into the office of the Director of GSC and was informed that while the recruitment for the TJO was still ongoing, it had been decided not to consider his candidacy any further, and that he would not be included in the list of candidates to be interviewed for the post.

8. On 24 November 2016, the Applicant wrote to the Director of GSC asking why he had not made the shortlist for interview. He received no answer.

9. On 29 November 2016, the Applicant requested management evaluation of the decisions to issue a TJO for the post of Principal Logistics Officer, and to exclude him from recruitment against the TJO. This request was rejected on 30 November 2016 by the Management Evaluation Unit, on the ground that it was not receivable.

Parties' contentions

10. The Applicant's primary contentions may be summarized as follows:

Receivability

a. The exclusion of a candidate from a recruitment process prior to the interview stage amounts to a completed administrative decision impacting on the legal order and, thus, constitutes a reviewable decision;

Prima facie unlawfulness

b. The post could not lawfully be advertised as a TJO because the need for the functions performed are expected to last for at least one year or more and, consequently, the conditions under staff rule 4.12 and sec. 2.2 of ST/AI/2010/4/Rev.1 (Administration of temporary appointments) for issuing a temporary appointment are not met; the decision to advertise the post as a TJO vitiates the whole recruitment process and tainted the decision to exclude the Applicant;

c. The decision not to allow the Applicant to compete for the post was unlawful as he has been performing the functions of this newly created post for a significant period with excellent performance evaluation; furthermore, the Applicant is rostered at the D-1 level for all posts that correspond to that which has now been advertised;

Urgency

d. The Applicant might be denied the chance of being appointed to the TJO if the decision is implemented before his application on the merits is considered;

Irreparable damage

e. The Applicant is uniquely well placed for consideration for the relevant D-1 position, and because such high level posts become less frequently available than lower posts, the unlawful recruitment exercise and his exclusion from that recruitment process have the capacity to cause the Applicant irreparable harm.

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

Receivability

a. The Tribunal does not have jurisdiction to hear the application under art. 2 of its Statute since the management evaluation has been completed;

b. Contrary to the Applicant's submissions, no decision has been made to exclude him from the selection process;

c. Consequently, the Respondent requests the Tribunal to reject the application.

Consideration

12. Pursuant to art. 2 of its Statute:

The Tribunal shall be competent to hear and pass judgment on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

13. The Tribunal finds that it has no jurisdiction to consider the application given that a decision has been made on the Applicant's request for management evaluation.

Conclusion

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

(Signed)

Judge Teresa Bravo

Dated this 2nd day of December 2016

Entered in the Register on this 2nd day of December 2016

(Signed)

René M. Vargas M., Registrar, Geneva