



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

EL BADAOUI NEHME

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. The Applicant seeks suspension of the implementation, pending management evaluation, of her non-selection against a post of Interpreter (Arabic) advertised under Job Opening (“JO”)16-LAN-UNOG-71252-R-GENEVA (L).

Facts

2. The Applicant serves as an Arabic Interpreter (P-3) with the Department of Division of Conference Management (“DCM”), United Nations Office at Geneva (“UNOG”) under a continuing appointment.

3. On 13 December 2016, two positions of Arabic Interpreter at the P-4 level within DCM, UNOG, were advertised through the above-referenced JO. The closing date indicated on the JO was 10 February 2017.

4. Before the end of the posting period, the Hiring Manager reviewed the rostered candidates and recommended two of them for the posts. These two candidates were selected by the Director-General, UNOG, on 21 January 2017. On 23 January 2017, the two selected candidates were informed of their selection through Inspira.

5. The Applicant became aware of the outcome of the selection process on 23 January 2017 by looking at Inspira. She discussed it with the Head of the Interpretation Service, UNOG, on the same day.

6. The Applicant, who states that she was planning to apply for the positions but did not do so before the recruitment of the two rostered candidates, requested management evaluation of the selection decision at issue on 28 February 2017.

7. On the same day, the Applicant emailed the Geneva Registry of the Tribunal attaching her application for suspension of action due to technical problems with the Tribunal’s eFiling system that prevented her from submitting it.

8. By email of 2 March 2017, the Tribunal transmitted the application for suspension of action to the Respondent, who filed his reply on 6 March 2017.

9. On the same day, following resolution of the technical problems with the Tribunal's eFiling system, the Applicant submitted her application for suspension of action.

Parties' contentions

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

Prima facie unlawfulness

a. Every candidate has a right to full and fair consideration, and the Hiring Manager was aware that the Applicant intended to apply for the litigious posts. Rapidly selecting candidates from the roster without considering others and removing the JO from public advertising before the end of the posting period defeats the purpose of its publication. This not only prevents candidates from applying, but also limits the choice of candidates. It runs against the principle that the paramount consideration in selecting staff is the necessity of securing the highest standards of efficiency, competence and integrity, enshrined in art. 101.3 of the Charter, staff regulation 4.2, and against Administrative Instruction ST/AI/1999/9 (Special Measures for the Achievement of Gender Equality). Moreover, it is obvious that the selection process was biased and demonstrated the intention of the Hiring Manager to influence the choice of the candidates;

Urgency

b. The implementation of this decision will violate the Applicant's right to full and fair consideration. She has been denied it over the years she has worked in UNOG and has been subjected to intimidation, discrimination and abuse of authority by her hierarchy, causing her to lose career opportunities in various occasions;

Irreparable damage

c. The Applicant has suffered material injury arising from the loss of salary increment since she has not been promoted despite having more

experience than any of the candidates selected since 2014. She has sustained moral injury, which resulted in severe back pain and other health problems. Furthermore, the Applicant has been denied missions for nearly one year.

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

Receivability

a. The contested decision has already been implemented. The selected candidates were informed of their selection on 23 January 2017, and according to sec. 10.2 of Administrative Instruction ST/AI/2010/3 (Staff Selection System), the promotion became effective on 1 February 2017;

Prima facie unlawfulness

b. The decision is not *prima facie* unlawful. The legal framework applicable to selection exercises allows the Hiring Managers to immediately recommend the selection of rostered candidates at any stage of the process after publication of the JO. In addition, the Applicant's claims of intimidation, abuse of authority, and of violation of the special measure for gender parity are unsubstantiated;

Urgency

c. The urgency in this case was self-created. Indeed, although the Applicant came to know on 23 January 2017 that the posts had been filled from the roster, she waited for over five weeks to seize the Tribunal.

Consideration

12. Article 2.2 of its Statute caters for the Tribunal's competence to:

[H]ear 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.

13. As the Tribunal has repeatedly ruled, it follows from this provision that an application for suspension of action can only be granted if the contested decision has not yet been implemented (*Neault* Order No. 6 (GVA/2011), *Quesada-Rafaraso* Order No. 20 (GVA/2013), *Al-Baker et al.* Order No. 99 (NY/2013), *Tiwathia* UNDT/2012/109, *Nwuke* UNDT/2012/116, *Murnane* UNDT/2012/128, *Gandolfo* UNDT/NY/2013/027), *Farrimond* Order No. 113 (GVA/2016)).

14. Hence, the Tribunal must determine whether the decision that the Applicant intends to suspend has already been implemented.

15. ST/AI/2010/3—notably its secs. 9 and 10—which governs selections procedures within the Secretariat, clearly distinguishes between the selection decision as such and its notification and implementation.

16. Regarding the selection procedures that, as in this case, culminate in the promotion of a staff member who already serves in the Organization, sec. 10.2 of ST/AI/2010/3 provides:

When the selection entails promotion to a higher level, the earliest possible date on which such promotion may become effective shall be the first day of the month following the decision.

17. In this case, the record made available to the Tribunal shows that the selection decision was made by the Director-General, UNOG, on 21 January 2017. Accordingly, the first day of the following month was 1 February 2017. The Respondent filed Personnel Actions issued on 1 February 2017 reflecting that the promotion of the two successful candidates was made effective on that date.

18. In view of the above, the Tribunal finds established that the contested decision was implemented on 1 February 2017, that is, nearly a month before this application for suspension of action was filed. Consequently, at this point, the decision in question cannot be suspended.

19. Given that the suspension of action cannot be granted, it is not appropriate to examine whether the other conditions, including the Applicant's *locus standi*, the prima facie unlawfulness of the decision or the urgency of the matter, are met.

Conclusion

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

(Signed)

Judge Rowan Downing

Dated this 8th day of March 2017

Entered in the Register on this 8th day of March 2017

(Signed)

René M. Vargas M., Registrar, Geneva