UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2017/103
Order No.: 223 (GVA/2017)
Date: 29 November 2017
Original: English

Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

NEOCLEOUS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON AN APPLICATION FOR SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Steven Dietrich, ALS/OHRM

Introduction

1. By application filed on 21 November 2017, the Applicant requests suspension of action, pending management evaluation, of the decision to advertise two Associate Civil Affairs Officer posts ("NO-B posts") at the United Nations Peacekeeping Force in Cyprus ("UNFICYP") that require "that work experience … be acquired following completion of a university degree".

2. The application was served on the Respondent on 23 November 2017, and he submitted his reply on 24 November 2017.

Facts

3. On 10 August 2017, two NO-B posts at the UNFICYP were advertised under Job Openings ("JOs") number 5/2017 and 6/2017. The JOs were circulated, *inter alia*, to all UNFICYP staff by UNFICYP Mission Circulars number 2017-0216 and 2017-0217 respectively. The circulars indicated that the deadline for receipt of applications was 21 September 2017.

4. Under the "Experience" qualifications, both JOs required "[a]t least 4 years [of experience] following completion of a first level university degree or two (02) years [of experience] following completion of an advanced university degree of progressively responsible experience in the field of inter-communal relations, community development, peace-building, or program management, or related area".

5. As per the Applicant, he applied to the JOs—and became aware of the language of the above-mentioned experience requirement—"at the closure of the [application] deadline, on October 11, 2017".

6. On 10 November 2017, the Applicant requested management evaluation of the decision to advertise the two NO-B posts requiring "that work experience … be acquired following completion of a university degree".

Parties' contentions

7. The Applicant argues that the contested administrative decision is *prima facie* unlawful because professional working experience should be recognized "regardless of when or in which field it was acquired", and not after the acquisition a university degree as indicated in the JOs.

8. He further argues that there is urgency since it is imperative "to correct the recruitment process before it continues to an irreversible stage", and that irreparable damage would result from allowing the recruitment process to continue "in a wrongful manner [for it] might result in [his disqualification], thus suffering potential career loss because part of [his] relevant working experience prior to acquiring [his] degree will not be recognized".

9. The Respondent contends that the application is not receivable *ratione materiae* because the advertisement of the JOs does not constitute a reviewable administrative decision under staff rule 11.2(a), which produced direct legal consequences for the Applicant.

10. Moreover, the Respondent asserts that the selection process is ongoing and that the Applicant, together with other candidates, is currently being considered for shortlisting. The Respondent also maintains that should the Applicant's candidacy be unsuccessful following the completion of the selection exercise, he has recourse under Chapter 11 of the Staff Rules.

11. Finally, the Respondent puts forward that the Applicant has not demonstrated that the advertisement of the JOs is *prima facie* unlawful, as well as that there is urgency and irreparable harm.

Consideration

Receivability

12. Article 2.2 of the Tribunal's Statute and art. 13 of its Rules of Procedure provide that the Dispute Tribunal may order the suspension, during the pendency of management evaluation, of "the implementation of a contested administrative

decision that is the subject of an on-going 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. It follows from these provisions that an application for suspension of action may only be granted if it concerns an "administrative decision" that has not yet been implemented and is under an on-going management evaluation.

14. Article 2.1(a) of the Tribunal's Statute reads:

> The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual
>
> (a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance[.]

15. The Appeals Tribunal holds that "[w]hat constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision (see *Andati-Amwayi* 2010-UNAT-058).

16. Pursuant to well-established jurisprudence, preparatory decisions are generally not considered administrative decisions capable of challenge, as they merely constitute one of the steps and/or findings leading to a final or operable administrative decision. They do not in themselves adversely affect a staff member's legal situation, since they modify neither the scope nor the extent of a staff member's rights.

17. With respect to selection processes, the Appeals Tribunal has held, and this Tribunal is bound to follow, that they involve "a series of steps or findings which lead to the administrative decision", and that "[t]hese steps may be challenged only in the context of an appeal against the outcome of the selection process, but cannot alone be the subject of an appeal to the UNDT" (*Ishak* 2011-UNAT-152).

18. In the present case, the Applicant is challenging the publication of two JOs on the ground of what he alleges to be an illegal requirement to assess professional experience. However, a JO publication does not carry by itself direct legal consequences on the rights of candidates. The terms of a JO may only be challenged, incidentally, at the earliest once a determination is made on an individual candidacy. Such a determination is lacking in the instant case, and the Tribunal can only conclude that the application for suspension of action is not receivable *ratione materiae*.

Merits of the application for suspension of action

19. In view of the above conclusion, it follows that it is not necessary for the Tribunal to ascertain whether the other prerequisites for the granting of a suspension of action, namely *prima facie* unlawfulness, urgency and irreparable damage, are met in the case at hand.

IT IS ORDERED THAT:

20. The application for suspension of action be rejected.

(*Signed*)
Rowan Downing
Dated this 29th day of November 2017

Entered in the Register on this 29th day of November 2017
(*Signed*)
René M. Vargas M., Registrar, Geneva