



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

ALLOUS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for Applicant:

Evelyn W. Kamau, OSLA

Counsel for Respondent:

Yehuda Goor, AAS/ALD/OHR, UN Secretariat

Introduction

1. By application filed on 5 November 2021, the Applicant, a staff member of the United Nations International Residual Mechanism for Criminal Tribunals (“IRMCT”), requests suspension of action, pending management evaluation, of the decision to exclude him from participating in the recruitment process for the position of Chief of Unit (P-3), Information Technology Support Section (“ITSS”), advised under Job Opening 161692 (“the Position”), and the implied decision not to select him to the Position.

2. On 8 November 2021, the application for suspension of action was served on the Respondent, who filed his reply on 10 November 2021.

Facts

3. The Applicant holds a permanent appointment and is currently working in ITSS with IRMCT.

4. On 30 August 2021, the Position was advertised.

5. On 24 September 2021, the Applicant submitted his application for the Position.

6. On 28 September 2021, the posting period for the Position expired.

7. By an internal memorandum dated 1 October 2021, the Chief of the Human Resources Section (“HRS”), IRMCT, notified the Applicant that his appointment would be terminated on 31 December 2021 due to the abolition of his post. According to the Applicant, this notice shows that he was not being considered for the Position or had not been selected for it despite it being originally his post which had been reclassified, him holding a permanent appointment thus requiring priority consideration and him being on the roster for similar positions.

8. On 29 October 2021, the Applicant filed a request for management evaluation challenging the following decisions:

- a. The improper termination of his permanent appointment, based on the improper reclassification of his post;
- b. The Administration's failure to make good faiths efforts to place him in another suitable position and in particular the impugned position; and
- c. The failure to give his candidature full and fair consideration for the reclassified position.

9. On 3 November 2021, IRMCT decided to cancel the advertisement of the Position without selecting any candidate due to certain issues with its content. On the same day, the *Inspira* system generated an automated notice informing all job candidates, including the Applicant, of such cancellation. According to the HRS, IRMCT, there may have been a technical issue with the delivery of such notice to the Applicant through *Inspira* and, therefore, a second notice was manually generated on 9 November 2021.

10. By email of 10 November 2021, the HRS, IRMCT, notified the Applicant of the cancellation of the Job Opening.

Consideration

11. The Tribunal notes that the Respondent objects to the receivability of the application for suspension of action. In this respect, he argues that the application is not receivable *ratione materiae* because the Applicant failed to identify a reviewable administrative decision.

12. The Tribunal recalls that art. 2.2 of its Statute provides that:

The Dispute Tribunal shall be competent to hear and pass judgement 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. This provision confers jurisdiction upon the Tribunal to hear and pass judgment on an application requesting to suspend the implementation of a contested administrative decision. It is thus trite law that the applicant must “identify an administrative decision capable of being reviewed, that is, a specific decision which has a direct and adverse impact on the applicant’s contractual rights” (see, e.g., *Haydar* 2018-UNAT-821, para. 13; *Farzin* 2019-UNAT-917, para. 36).

14. In the present case, the Applicant identified the decision to exclude him from participating in the recruitment process for the Position and the implied decision not to select him to the Position as the contested decisions. Having considered the application in its entirety, the Tribunal notes that no selection decision was taken regarding the Applicant’s candidacy for the Position. The Applicant’s inference, based on the termination notice of 1 October 2021, that he was not considered for the Position amounts to speculation. Accordingly, the Tribunal finds that the application is not receivable in that the Applicant failed to identify an administrative decision within the meaning of art. 2.2 of its Statute.

15. Moreover, the evidence on record shows that the advertisement of the position was cancelled on 3 November 2021. This means that the purported contested decisions ceased to exist at the time the application was filed. There is thus no longer a decision that the Tribunal can suspend under art. 2.2 of its Statute. Accordingly, the Tribunal finds that the application is moot.

Conclusion

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

(Signed)

Judge Teresa Bravo

Dated this 12th day of November 2021

Case No. UNDT/GVA/2021/059

Order No. 166 (GVA/2021)

Entered in the Register on this 12th day of November 2021

(Signed)

René M. Vargas M., Registrar, Geneva