



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/020

Order No.: 057 (NBI/2014)

Date: 24 March 2014

Original: English

**Before:** Judge Vinod Boolell

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

ACHIA CHRISTENSEN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Tamara Shockley, UNICEF

## **Introduction**

1. The Applicant is a staff member of the United Nations Children’s Fund (UNICEF). She filed the current application with the United Nations Dispute Tribunal (the Tribunal) on 17 March 2014 seeking suspension of the decisions not to select her for an Information Communications Technology Specialist post at the P-3 level and to separate her from service on 31 March 2014 (Contested Decisions).
2. The Respondent submitted his Reply on 18 March 2014.
3. By Interim Order No. 055 (NBI/2014), dated 20 March 2014, the Tribunal suspended implementation of the Contested Decisions until 24 March 2014 and directed the Parties to submit additional documentation by 21 March 2014. The Parties complied with Order No. 055 as directed.

## **Facts**

4. The Applicant joined the UNICEF Office in Bangui, Central African Republic (UNICEF CAR) as an Information and Communications Technology Officer (ICT) at the P-2 level in April 2009 on a fixed-term appointment.
5. On 8 January 2014, she received a letter from Mr. Souleymane Diabate, the Representative of UNICEF CAR, informing her that her P-2 ICT post was among the posts slated for abolishment as of 31 March 2014 due to “necessities of service”. The letter went on to say:

In accordance with this policy [CF/AI/2010-001], during the period of notice served to you by this letter, you are expected to apply for all available posts for which you believe you have the required competencies. The Division of Human Resources (DHR) will assist you in identifying and applying for available posts for which you have the core and functional competencies required. Also, your name will be included on lists of applicants and/or shortlists, even if you did not submit an application. Every effort will be made to keep you informed of the posts for which you are being reviewed.

...

Should you not be selected for a post, I regret to have to inform you that you will be separated from service on **31 March 2014**.

6. On 7 February 2014, the Applicant was invited by DHR to take a written test for the newly established post of P-3 Information Communications Technology Specialist (Contested Post) with UNICEF CAR. She took the test on 10 February and was interviewed for the Contested Post on 19 February.

7. According to the Applicant, she was informed verbally on 6 March 2014 by Mr. Diabate that even though she had performed very well on the test, she had not passed the interview and had therefore not been selected for the Contested Post.

8. On 13 March 2014, she submitted a request for management evaluation of the decision not to select her for the Contested Post to the Deputy Executive Director of UNICEF, Mr. Martin Mogwanja. On 14 March, she requested suspension of action of the recruitment for the Contested Post.

9. On 14 March 2014, Mr. Stephan Grieb, Chief of the Policy and Administrative Law Section, DHR, UNICEF, acknowledged receipt of the Applicant's request for management evaluation and her request for suspension of action. He rejected her request for suspension of action on the basis that the selected candidate had already accepted the offer of appointment and as such, the contested decision had been implemented. He further informed her that pursuant to staff rule 11.2(d), UNICEF has 45 days from 13 March 2014 to consider and respond to her request for management evaluation and that if she did not receive a response by 28 April 2014, she could file an application with the Tribunal.

10. On 15 March 2014, she wrote to Mr. Mogwanja to request suspension of action of the decision to separate her from service on 31 March 2014.

11. On 17 March 2014, she filed the current application for suspension of action.

## **Parties' submissions**

### *Applicant's submissions*

12. The Applicant submits that the decision not to select her for the Contested Post is unlawful because UNICEF did not follow proper procedure before, during and after the recruitment process and failed to fairly and properly consider her application.

13. The Applicant submits that her application is urgent because her post is set for abolishment effective 31 March 2014. A suspension of her separation will enable the Organization to properly complete the review process. Further, a suspension of action will allow UNICEF enough time to fulfill its obligation to identify other suitable placements for her.

14. The Applicant submits that she will suffer the following irreparable damage:

- a) She is facing the prospect of being subjected to an unlawful decision that will have an unquantifiable impact on her prospects for continued employment and career development within the United Nations;
- b) Loss of employment is to be seen not merely in terms of financial loss but also in terms of loss of career opportunities. The damage to her career opportunities cannot be adequately compensated by money; and
- c) Loss of the right to be considered seriously for the Contested Post and other relevant openings for which she is qualified.

### *Respondent's submissions*

15. The Respondent submits that the Applicant's request for suspension of action of the decision to separate her from service is not receivable because there is neither a "pending management evaluation" nor an "ongoing management evaluation".

16. With respect to the Applicant's request for suspension of action of the decision not to select her for the Contested Post, the Respondent submits the following:

- a) The decision was not prima facie unlawful because proper procedure was followed and the Applicant was accorded full and fair consideration;
- b) The Applicant failed to file a timely application for suspension of action even though she was informed of the abolishment of her post on 14 January 2014. Since she created the urgency by her lack of diligence, she has failed to satisfy one of the conditions for a grant of suspension of action;
- c) The Contested decision has already been implemented since the selected candidate was offered the Contested Post on 5 March and accepted the offer on 6 March;
- d) The Applicant has failed to identify specifically how her career prospects will be irreparably damaged. The Tribunal can only make decisions based on tangible matters placed before it. The Applicant's lack of specificity will make it difficult to conclude that she will, in fact, suffer irreparable damage.

### **Considerations**

17. Since the Applicant is seeking suspension of two administrative decisions, the Tribunal will review these decisions separately.

### ***Separation from service***

18. Article 2.2 of the Statute of the Dispute Tribunal provides that:

The Dispute 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.

19. Pursuant to art. 8.1(c) of the Statute of the Dispute Tribunal, the jurisdiction of the Dispute Tribunal can only be invoked in certain cases if a contested administrative decision has been previously submitted for management evaluation. Thus, a mandatory first step for an applicant prior to the submission of an application to the Dispute Tribunal is to request a management evaluation of the contested administrative decision.

20. Staff rule 11.2(a) provides in relevant part that a staff member wishing to formally contest an administrative decision shall, as a first step, submit a request for management evaluation to the Secretary-General.

21. It is apparent from articles 2.2 and 8.1(c) of the Statute that the Dispute Tribunal is competent to hear and pass judgment on an application for suspension of action only if there has been a preceding request for management evaluation.

22. In *Wondimu* Order No. 027 (NBI/2014), this Tribunal stated that:

An application for suspension of action can only be granted if the administrative action is *prima facie* unlawful, there is an element of urgency and the administrative decision complained of has not been implemented. In addition to these conditions, article 2.2 of the Statute of the Tribunal states that the suspension can only be granted during the pendency of a management evaluation. The all-important word here is “pendency”. As long as the decision on a request for management evaluation is pending, the Tribunal retains jurisdiction to deal with an application for suspension of action.

23. In the present matter, the Applicant submitted a request for management evaluation on 13 March 2014. The first paragraph of this request stated the following:

I write to you as a matter of urgency as I have been informally informed that I have not been selected for the upgraded post of ICT Officer, CAR Bangui, P-3; upgraded effective 1 April 2014. On this background I hereby request a management evaluation of the decision not to select me for the post. To date, I have not received any official notification that I was not selected, neither from the

recruitment system nor DHR; I have only received an administrative letter outlining all the separation formalities.

24. She then proceeded to detail her qualifications and skills and to highlight what she considered as the flaws in the recruitment process. She ended the letter with the following:

[...] I request a management evaluation of the decision not to select me for the CAR Bangui P3 ICT Officer post, if indeed that is the decision taken. There are other posts currently open for which I clearly qualify; I should be given priority and given one of those posts. Time is of essence as my post is abolished as of 31 March this year.

25. There is nothing on the record to show that the Applicant submitted another request for management evaluation subsequent to the one dated 13 March 2014. She then sought to move the Tribunal to suspend the decision to separate her from service on 17 March 2014.

26. Although the Tribunal has scrutinized the Applicant's 13 March 2014 request carefully, it cannot conclude that she implicitly or expressly requested management evaluation of the separation decision. Although she mentioned the abolishment of her post on 31 March 2014, the Tribunal interprets the reference as a polite but firm nudge to the decision maker to conclude quickly on the actual reason for her request, which was the non-selection decision.

27. In light of the foregoing, the Tribunal can only conclude that the Applicant has not complied with one of the core requirements enunciated in articles 2.2 and 8.1(c) of the Statute of the Dispute Tribunal and in staff rule 11.2(a) in relation to the issue of her separation on 31 March 2014. The issue is therefore not receivable and cannot be entertained by the Tribunal.

28. This Tribunal unreservedly adopts the reasoning in *Servas* 2013-UNAT-349 that:

A staff member must be familiar with the Staff Rules and understand her obligation to act in conformance with those rules. This means that a request for management evaluation must be submitted *prior to* bringing an application before the Dispute Tribunal. As we have noted many times, the requirement of management evaluation assures that there is an opportunity to quickly resolve a staff member's complaint or dispute without the need for judicial intervention.

***Non-selection decision***

29. The three statutory prerequisites contained in articles 2.2 and 13.1 of the Statute and Rules of Procedure, i.e. *prima facie* unlawfulness, urgency and irreparable damage, must all be satisfied for an application for suspension of action to be granted.

30. The Tribunal notes that the selection decision was officially communicated to the selected candidate by UNICEF DHR on 5 March 2014 and he accepted on 6 March 2014, which was more than a week before the Applicant filed her application for suspension of action. Thus, the only conclusion that can be drawn is that the Contested Decision had already been implemented by the time the application for suspension of action was filed. The Tribunal finds therefore that the test of particular urgency in this case has not been made out by the Applicant.

31. The Tribunal finds that due to the circumstances outlined above, it would be not be a judicious use of the Organization's resources to continue to review this matter.

**Decision**

32. Pursuant to art. 19 of the UNDT Rules of Procedure, the Tribunal may at any time issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

33. Consequently, pursuant to art. 19 of the Tribunal's Rules of Procedure this Application for Suspension of Action is dismissed.



*(Signed)*

Judge Vinod Boolell

Dated this 24<sup>th</sup> day of March 2014

Entered in the Register on this 24<sup>th</sup> day of March 2014

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi