



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/29
Order No.: 089 (NBI/2014)
Date: 2 May 2014
Original: English

Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

RIECAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

DECISION ON AN APPLICATION FOR
SUSPENSION OF ACTION

Counsel for the Applicant:
Self- Represented

Counsel for the Respondent:
Steven Dietrich, ALS/OHRM
Alister Cumming, ALS/OHRM

The Application and Procedural History

1. The Applicant is the Director of the Statistics Division at the United Nations Economic and Social Commission for Western Asia (ESCWA). He holds a permanent appointment and serves at the D1 level in Beirut, Lebanon.
2. On 28 April 2014, the Tribunal received an Application for Suspension of Action challenging the Respondent's decision in the selection exercise for the position of the Chief (D1) of the Development Statistics and Information Branch at the United Nations Conference on Trade and Development (UNCTAD).
3. The Application was served on the Respondent on the same day, and a Reply was filed on 29 April 2014. The Respondent also filed additional submissions, which the Tribunal received on 30 April 2014.

Submissions

4. The Applicant submits that he was not given a fair assessment in the selection exercise. The Panel, he says, "did not probe" his answers, which gave him the "impression that they were satisfied with" his answers.
5. The Applicant has five years of experience in a position with "almost equal qualifications and competencies" and performance appraisals which have rated him as fully competent or outstanding on the competencies required for the position he applied for.
6. The Applicant submits that he is coming to the limit of the number of years he can serve in his current position given the mobility policy. If he was fairly evaluated, he should at least have been placed on a roster.

7. The Applicant submits that the urgency requirement of the test is met because the selection decision is likely to be implemented as early as 1 May 2014, particularly if the selected candidate is already serving in Geneva.

8. With regard to irreparable harm, the Applicant argues that not being rostered puts him at a disadvantage for future applications for jobs at the same level in the field of statistics. His scope for “lateral mobility is limited” as there are few positions for statisticians within the system. The impugned decision also denies him the opportunity to move from the hardship duty station he currently serves in and further develop his career.

9. The Respondent’s initial Reply took the position that the Applicant has not met the burden of proving that the impugned decision was *prima facie* unlawful, in that he has not shown that there were irregularities in the selection exercise which denied him full and fair consideration for the position he applied for.

10. The Respondent then sought leave to file additional submissions based on instructions which were received from UNCTAD after the filing deadline set by the Registry of the UNDT in Nairobi.

11. The Respondent submits that the Application is not materially receivable because the impugned decision has already been implemented.

12. An offer was made to the successful candidate on 23 April 2014, which the candidate accepted on 24 April 2014.

Deliberations

13. Applications for suspension of action are governed by article 2 of the Statute of the United Nations Dispute Tribunal (“the Tribunal”) and article 13 of the Tribunal’s Rules of Procedure. The three statutory prerequisites contained in art. 2.2

of the Statute, i.e. *prima facie* unlawfulness, urgency and irreparable damage, must be satisfied for an application for suspension of action to be granted. Under art. 13.3 of the UNDT Rules, the Tribunal has five working days from the service of an application on the respondent to consider an application for *interim* measures.

14. A suspension of action order is, in substance and effect, akin to an *interim* order of injunction in national jurisdictions. It is a temporary order made with the purpose of providing an applicant temporary relief by maintaining the *status quo* between the parties to an application pending trial. It follows, therefore, that an order for suspension of action cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented.

15. Before entering into a discussion on whether the Applicant has met the test for the injunctive relief that is sought, the Tribunal must determine whether or not the impugned decision has been implemented.

16. The Respondent has adduced incontrovertible evidence to show that the impugned decision has been implemented; that the selected candidate has formally acknowledged and accepted the offer.

17. It is well established that where a contested decision has been fully implemented, suspension of action cannot be granted.¹

18. The Applicant could not have known that the decision he sought to challenge had been implemented. The difficulty and curiosity posed by this type of a situation was observed in *Nwuke* UNDT/2012/002 where the Tribunal observed

If a staff member is notified of the decision not to appoint him after the selected candidate has been offered the position and accepted it, the staff

¹ See for example, *Tadonki* UNDT/2009/016; *Applicant* UNDT/2011/158; *Kweka* UNDT/2011/122; *Tiwathia* UNDT/2012/109; *Laurenti* Order No. 243 (NBI/2013).

member who has not been selected is powerless under article 2.2. His only remedy is to seek reparation by way of a substantive case.

19. The Tribunal cannot therefore grant the injunctive relief that is being sought.
20. The Application for Suspension of Action is **DISMISSED**.

(signed)

Judge Vinod Boolell

Dated this 2nd day of May 2014

Entered in the Register on this 2nd day of May 2014

(signed)

Abena Kwakye-Berko, Registrar, Nairobi