



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/060

Order No.: 191 (NBI/2014)

Date: 30 July 2014

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

SKOURIKHINE

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:
Jerome Blanchard, UNOG

The Application and Procedural History

1. The Applicant is a Translator in the Russian Translation Section (RTS) within the Language Services (LS) of the Division of Conference Management (DCM) in the United Nations Office at Geneva (UNOG). He serves at the P4 level on a permanent appointment.

2. On 25 July 2014, the Applicant filed an Application for suspension of action challenging a selection decision for the post of Senior Reviser within RTS (JO 31441), which the Applicant had applied for. The impugned decision was made by the Chief of RTS and the Chief of LS.

3. The Respondent filed his Reply to the Application on 28 July 2014.

Facts

4. The Applicant had previously contested the selection decisions for two other P5 posts within RTS.

5. On 4 September 2013, the UNDT issued a judgment (*Skourikhine* UNDT/2013/113) in favour of the Applicant. The Respondent filed an appeal which is still pending against the said judgment.

6. On 12 November 2013, the Applicant filed a complaint pursuant to ST/SGB/2008/5 (Prohibition of discriminations, harassment, including sexual harassment and abuse of authority), against the Chief of RTS. The Applicant's complaint is that he has been subjected to harassment and verbal attacks since the judgement was issued in his favour.

7. The Applicant applied for JO 31441 on 29 November 2013.

8. On 2 December 2013, the Applicant wrote to the Human Resources Management Services (HRMS/UNOG) stating that he was concerned “as to his chances to obtain fair treatment under the present circumstances”.

9. On 31 January 2014, the Applicant was informed that a fact finding panel had been appointed to investigate the allegations made by him. On the same day, the Chief of RTS was informed that a complaint had been lodged against him.

10. On 7 February 2014, the Chief of RTS withdrew from the selection process for JO 31441.

11. The Applicant was interviewed for the post on 14 March 2014.

12. On 26 May 2014, a list of six recommended candidates, which included the Applicant, was forwarded to the Central Review Body (CRB).

13. The CRB endorsed the list of recommended candidates on 6 June 2014.

14. The Acting Director-General of UNOG selected one candidate from the recommended list on 17 June 2014.

15. On 18 June 2014, the Applicant was informed that he had been placed on a roster of pre-approved candidates for positions of similar function and level as that of JO 31441.

16. On the same day, the selected candidate was informed of his selection for the post and that the promotion would be effective on 1 July 2014.

17. On 24 July 2014, the Applicant sought management evaluation of the decision not to select him for the said post and filed this Application the following day.

Submissions

Applicant

18. The Applicant submits that the selection decision was unlawfully made because the process was “improper, irregular and flawed”. The resultant decision was therefore tainted by extraneous factors and undue considerations. He was denied the right to full and fair consideration of his candidacy.

19. No corrective measures were taken following his complaint on prohibited conduct; and the decision to change the hiring manager in the selection exercise cannot be viewed as a “corrective measure within the meaning of ST/SGB/2008/5”.

20. The impugned decision demonstrated retaliation and bias on the part of the Respondent.

Respondent

21. The Application is not receivable as the impugned decision was implemented on 1 July 2014.

22. Even if the Application for the suspension of the impugned decision was receivable, the Applicant failed to demonstrate that the decision was *prima facie* unlawful or that there is urgency to justify the injunctive relief that is being sought.

23. The Applicant’s candidature was given full and fair consideration in the selection exercise. The Applicant’s complaint on the fairness of the selection exercise was taken so seriously that the initial hiring manager was withdrawn from the selection exercise.

Deliberations

24. Applications for suspension of action are governed by article 2.2 of the Statute of the United Nations Dispute Tribunal (“the Tribunal”) and articles 13 and 14 of the Tribunal’s Rules of Procedure. The three prerequisites contained in art. 2.2 of the Statute, are *prima facie* unlawfulness, urgency and irreparable damage. These must be cumulatively satisfied for an application for suspension of action to be granted.

25. This Tribunal has previously held that¹

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.

26. Before entering into a discussion as to whether the Applicant has met the requirements for determining whether a suspension of action is warranted in the circumstances, the Tribunal must first determine whether or not the impugned decision can properly be stayed.

27. In the particular circumstances of this case, it is patently clear that a candidate was not only selected for the position, but that the said candidate’s appointment took effect on 1 July 2014.

28. It is indeed impossible for the court to provide effective and meaningful injunctive relief in a process which has been completed. There is, in effect, no *status quo* to be preserved in this Application. An injunction after the fact is not only incompatible with the law but also antithetical to the concept and purpose of injunctions. It cannot properly be granted in this case.

¹ See *inter alia Applicant* Order No. 087 (NBI/2014).

29. It is open to the Applicant to have this matter litigated on the merits.

30. The Application for Suspension of Action is accordingly denied.

(signed)

Judge Nkemdilim Izuako

Dated this 30th day of July 2014

Entered in the Register on this 30th day of July 2014

(signed)

Abena Kwakye-Berko, Registrar, Nairobi