



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

BELSITO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**DECISION ON THE APPLICANT'S
APPLICATION FOR SUSPENSION OF
ACTION**

Counsel for the Applicant:

George G. Irving

Counsel for the Respondent:

Melissa Bullen, UN Women

Mylene Spence, UN Women

Introduction

1. The Applicant is the Senior Advisor to the Director of Programme at the headquarters of United Nations Women (UN Women) in New York. He previously served as country Representative for United Nations Women (UN Women) in Jordan. He is on a fixed-term appointment at the P-5 level.

Procedural History

2. On 10 July 2017, the Registry of the United Nations Dispute Tribunal in Nairobi received an application for suspension of action challenging the Respondent's decision dated 6 July 2017 to "cancel the current selection process and to re-advertise the post of UN Women Regional Director for Europe and CIS."

3. The Respondent filed his Reply to the Application on 11 July 2017.

4. On the same day, the Applicant filed a motion for production of documents relating to the selection exercise.

Facts

5. On 23 October 2016, the Applicant applied for the D-1 post of Regional Director for Europe and CIS. He did a written test for the position on 6 February 2017 and interviewed on 24 March 2017.

6. On 12 May 2017, the Selection Panel recommended candidates to the Senior Review Group (SRG), and the SRG submitted its recommendation to the Executive Director (ED) of UN Women on 22 May 2017.

7. The Applicant maintains that on 11 June 2017, he was informed by the Hiring Manager, who is also his supervisor, that the ED had decided not to select him for the D-1 position because she wanted a woman in that position and that he was instead offered the opportunity to serve as the Organization's Special Representative to Palestine, as an alternative to the posting in Albania. On the same date the Applicant drafted a request for management evaluation and consulted with the Hiring Manager, including on the date of the communication of the decision being 12 June 2017. He indicated that he wished to file the management evaluation request on 13 June 2017.

8. On 14 June 2017, the Applicant wrote to Human Resources asking for confirmation of the ED's decision to not select him for the D-1 position. He indicated that based on a verbal communication received on 11 June 2017, he was not "appointed" to the position.

9. On 15 June 2017, Human Resources told the Applicant that they were not aware that a formal decision had been made.

10. On 19 June 2017, the Applicant sought management evaluation of the decision not to select him for the D-1 position, arguing violation of legitimate factors relevant for the selection process.

11. On 6 July 2017, the Applicant and other candidates for the D-1 position were informed that the "selection process has been cancelled and the post will be readvertised."

Submissions

Applicant

12. The Applicant's case is that the impugned decision is procedurally flawed, violates ST/AI/210/3 and is unduly influenced by extraneous factors. He argues that

the applicable rules do not allow heads of departments to cancel a selection process with unfettered discretion, particularly, when s/he is not satisfied with the recommended candidates. He argues irreparable harm to his career prospects and urgency resulting from imminent re-advertising the vacancy.

Respondent

13. The Respondent submits that the application is not receivable because the Applicant has sought management evaluation of the decision not to select him, but not of the decision to cancel the selection process.

14. The Respondent also submits that in the event the Tribunal finds this application receivable, the Applicant has not met his burden in proving the three elements of the test for suspension of action.

Considerations

15. This application for suspension of action has been filed pursuant to art. 2 of the Statute of the Tribunal.

16. Article 2 of the Statute of the Dispute Tribunal provides, in relevant part, 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 [...] (emphasis added)

17. As seen above, pendency of management evaluation is a statutory condition for the receivability of an application for suspension of action. A pending management evaluation and suspension of action request must be related to the same decision. The Tribunal is required to factually find that the decision that is impugned before it is in the process of being reviewed by the Administration.

18. As a corollary obligation, in seeking review by the Management Evaluation Unit (MEU), a staff member is required to clearly identify the administrative decision he or she is seeking to challenge. In the event of litigation before the Dispute Tribunal, an applicant must demonstrate that the decision being challenged is pending review before the MEU or has previously been the subject of a request for management evaluation and that both the request and the claim to the Tribunal complied with the required deadlines and time limits.¹

19. In this case, on 19 June 2017 the Applicant sought management evaluation of the decision “rejecting [his] candidacy for the post of UN Women Regional Director for Europe and CIS (Job No. 68863).” The management evaluation request argued merits of the selection process and inappropriateness of using gender criterion for non-selection. The Applicant withdrew from indicating the communication from the Hiring Manager as the date of notification of the decision; instead he impugned the silence of the administration. He also pleaded that the Respondent refrain from cancelling the selection process.

20. The decision on cancellation of the selection process, which is subject to the current application for suspension of action, was communicated on 6 July 2017. There is no evidence of any earlier or different decision on the matter of results of Job No. 68863. As such, the impugned decision post-dates the management evaluation request filed on 19 June 2017. Moreover, it has a different subject than argued in the management evaluation request. The Applicant sought a review by management evaluation of a non-selection decision, the existence of which he presumed based on an unspecified verbal communication, and not the cancellation of the selection process. The Applicant has not requested management evaluation of the decision of 6 July 2017 and his arguments directed against the cancellation of the selection process have not been submitted for administrative review.

21. The Tribunal, therefore, lacks jurisdiction to review the present application.

¹ *Manly-Spain* UNDT/2016/205.

22. The Application for Suspension of Action is **REJECTED**.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 13th day of July 2017

Entered in the Register on this 13th day of July 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi