



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/007

Order No.: 012 (NBI/2018)

Date: 19 January 2018

Original: English

Before: Judge Goolam Meeran

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ALQUZAA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:
Aleksandra Jurkiewicz, OSLA

Counsel for the Respondent:
UN Women

Introduction

1. The Applicant is a staff member at the United Nations Women (UN Women) Country Office in Jordan. She is an Operations Associate, and is employed on a fixed-term appointment at the G7 level. She is based in Amman.

The Application and Procedural History

2. On 18 January 2018, the Applicant filed an application for suspension of action against the Respondent's decision to exclude her from consideration for the post of Operations Manager. The Applicant is also challenging the Respondent's failure to make good faith efforts to identify a suitable position for her given the decision to abolish the Operations Associate post she currently encumbers.

3. The Application was served on the Respondent on 18 January 2018.

Submissions

4. It is the Applicant's case that the Respondent, having abolished her post, should have placed her against the post of Operations Manager, which is currently vacant and the functions of which she had been performing since January 2014.¹ The Applicant also contends that it is unlawful for the Respondent to preclude her from consideration for the re-advertised Operations Manager position on the basis that she was unsuccessful when she first competed for that post. The Respondent's reliance on the UNIFEM Human Resources Selection Guidelines as a basis for the impugned decision is inconsistent with general principles of international administrative law, and the United Nations hierarchy of properly promulgated instruments. She submits that the matter is particularly urgent, as it is pending management evaluation and the selection decision could be made and implemented before management evaluation has reviewed her request. She further submits that the impugned decision will cause her irreparable harm in that she will lose the

¹ Her performance appraisals for 2014, 2015 and 2016 record and reflect on the managerial role she was performing.

opportunity to compete for the post and the abolishment of her current post will incur the risk of leaving her without employment in the United Nations.

CONSIDERATIONS

5. This application is made under art. 2.2 of the Statute and art. 13 of the Rules of Procedure of the Tribunal.

6. Art. 2.2 of the Statute provides:

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 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.

7. Art. 13 of the Rules of Procedure provides:

1. The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of 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.

2. The Registrar shall transmit the application to the Respondent.

3. The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

8. It is clear that the Tribunal is under a duty to transmit a copy of the suspension of action application to the Respondent and to issue a decision within five days thereof. There is no requirement, either under art. 2.2 of the Statute or art.

13 of the Rules of Procedure, for the Tribunal to await the Respondent's response before the applicant's request is considered.

9. The procedures governing applications for suspension of action should not, as the Tribunal pointed out in *Applicant* UNDT/2011/158 at para. 8(e), be regarded, or used, as a dress rehearsal for a determination of the merits of an application, should a substantive application be made subsequently.

10. As the Tribunal stated in Order No. 006 (NBI/2018):

It is clear that the Statute does not require the Tribunal to make a definitive finding that the decision is in fact unlawful. The test is not particularly onerous since all the Tribunal is required to do at this stage is to examine the material in the application and to form an opinion as to whether it appears that, if not rebutted, the claim will stand proven. This means that the onus is on the Applicant to provide a sufficiency of material in order to satisfy the statutory test. Any such opinion is not a finding by the Tribunal and is certainly not binding should the matter go to trial on the merits. It is merely an indication as to what appears to be the case at the SOA stage. This does not mean that unsupported allegations and/or suspicions will suffice.

11. Article 2.2 of the Statute is intended to provide an uncomplicated and cost-effective procedure for suspending, in appropriate cases, an administrative decision, which may have been wrongly made, so as to give the Management Evaluation Unit sufficient time to consider the matter and to advise management. The process itself should not become unduly complex, time-consuming and costly for the United Nations or its staff members.

12. The Tribunal has previously held in *Wilson*²that:

[A]pplications for suspension of action have to be dealt with on an urgent basis and the decision should, in most cases, be in summary form. There is no requirement to provide, and the parties should not expect to be provided with, an elaborately reasoned decision either on the facts or the law. To do so would defeat the underlying purpose of a speedy and cost-effective mechanism. Moreover, the time,

² Order No. 327 (NY/2014).

effort and costs thereby saved by all those involved in the formal system of internal justice could be utilised to facilitate the disposal of other cases.

13. The Applicant is required to satisfy the Tribunal that the impugned decision appears *prima facie* to be unlawful, is urgent and will cause him/her irreparable harm if implemented. *All* three elements of the test must be satisfied before the impugned decision can be stayed.

Prima Facie Unlawfulness

14. The Applicant must satisfy the test that the decision appears *prima facie* to be unlawful. In other words, does it appear to the Tribunal that, unless it is satisfactorily rebutted by evidence, the claim of unlawfulness will succeed?³

15. It appears, on the basis of the information provided, that the impugned decision was made in accordance with the UNIFEM Human Resources Selection Guidelines. As UNAT observed in *Villamorán* guidelines are not law.⁴ Any decision that is not, or appears not to be, in full accord with the terms and/or underlying purpose of the principal instrument is, or will appear, *prima facie* to be unlawful.

16. The Tribunal concludes on the facts presented, accompanied by the relevant documents, that the Applicant has satisfied the test that the impugned decision appears *prima facie* to be unlawful.

17. As the Tribunal stated in *Khalouta*:

Whether this will be the final decision after a full exploration of the evidence and consideration of submissions, if an application on the merits is filed, does not affect the Tribunal's decision at this stage. Should the matter go to trial, the Respondent will have a full

³ *Wilson* Order No. 327 (NY/2014).

⁴ 2011-UNAT-160 affirming UNDT/2011/126. *See also Verschuur* 2011-UNAT-149; *Contreras* 2011-UNAT-150 and *Gueddes* 2014-UNAT-418.

opportunity to challenge any application on the merits, and it may well be necessary to conduct an oral hearing on the matter.⁵

Urgency

18. The Applicant applied for the re-advertised Operations Manager position on 12 November 2017. On 15 December 2017, she was told that her application had been screened out of the selection process on the basis that she had not been successful in the previous selection exercise for the same post. The Applicant sought management evaluation on 9 January 2018, and was informed that a decision would be rendered in 45 days.

19. As the Vacancy Announcement indicated 1 January 2018 as the expected start date for the selected candidate, the Tribunal can reasonably assume that a selection decision for that vacancy will likely be made and implemented imminently and possibly before the 45-day period for management evaluation expires. In cases of this kind, speed is of the essence.

20. The requirement of particular urgency is satisfied.

Irreparable Harm

21. The Tribunal recalls that in *Khalouta it said*:

[L]oss of employment is to be seen not merely in terms of financial loss, for which compensation may be awarded, but also in terms of loss of career opportunities. This is particularly the case in employment within the United Nations which is highly valued. Once out of the system the prospect of returning to a comparable post within the United Nations is significantly reduced. The damage to career opportunities and the consequential effect on one's life chances cannot adequately be compensated by money.⁶

⁵ Order No. 138 (NY/2014).

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22. In the circumstances presented by the Applicant in this case, the Tribunal finds that the requirement of irreparable damage is satisfied.

23. All three elements for the grant of an Order for Suspension of Action are satisfied.

24. In the event that the Management Evaluation Unit upholds the impugned decision, and the Applicant files a substantive challenge before the Tribunal, the Tribunal will use its best endeavours to schedule the matter for an expedited consideration and disposal.

ORDER

25. The application for suspension of action is **GRANTED**.

26. The recruitment process for the post of “Operations Manager at the National Officer (Level C) NOC level funded by IB” is hereby suspended pending management evaluation.

(Signed)

Judge Goolam Meeran

Dated this 19th day of January 2018

Entered in the Register on this 19th day of January 2018

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