



Before: Judge Eleanor Donaldson-Honeywell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

VERESTIUC

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S MOTION
FOR SUSPENSION OF ACTION
PENDING MANAGEMENT
EVALUATION**

Counsel for applicant:

Self-represented

Counsel for respondent:

Nicole Wynn, AAS/ALD/OHR

Rosangela Adamo, AAS/ALD/OHR

Introduction

1. The Applicant is the Chief of the Mission Support Centre for the United Nations Interim Force in Lebanon (“UNIFIL”). She holds a continuing appointment at the P-5 level and is based in Naqoura.

Procedural History

2. On 26 June 2020, the Applicant sought an injunction against the Respondent’s selection decision for Job Opening 129546 which carries the title Chief, Operations and Resource Management.

3. The Application was served on the Respondent the day it was received. The Registry, on direction of the Presiding Judge, requested that an urgent response be filed dealing particularly with the “status of the impugned selection decision.”

Considerations

4. Applications for suspension of action are governed by article 2.2 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.

5. 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

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

action cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented.

6. The Tribunal must therefore consider the Parties' submissions against the test stipulated in art. 2.2 of the Statute and art. 13 of the Rules of Procedure.

7. It has been variously held that the Respondent's exercise of its broad discretionary authority must not be "tainted by forms of abuse of power such as violation of the principle of good faith in dealing with staff, prejudice or arbitrariness, or other extraneous factors that may flaw his decision".²

8. The Applicant bears the burden of showing that the Respondent did not properly exercise his discretion. The Tribunal is not required at this stage to resolve any complex issues of disputed fact or law. All that is required is for a *prima facie* case to be made out by the Applicant to show that there is a triable issue before the court.³

9. Before entering into a discussion on whether the Applicant has met the requirements for the test of suspension of action, the Tribunal must first determine whether or not the impugned decision can properly be stayed.

10. While there is enough in the Applicant's submissions to persuade the Tribunal that the impugned selection exercise appears, at least *prima facie*, to have been tainted by extraneous factors, it is difficult for the court to provide effective and meaningful injunctive relief on a process which has already been concluded. Granting an injunction at this stage of the process would affect more than just the Applicant.

² UN Administrative Tribunal Judgment No. 885, *Handelsman* (1998).

³ See also: *Hepworth* UNDT/2009/003 at para. 10, *Corcoran* UNDT/2009/071 at para. 45, *Berger* UNDT/2011/134 at para. 10, *Chattopadhyay* UNDT/2011/198 at para. 31; *Wang* UNDT/2012/080 at para. 18.

11. The Tribunal therefore finds itself in the uncomfortable situation of having to allow a *prima facie* unlawful act to stand because it has already been implemented. An offer has been made to, and accepted by, the selected candidate.

12. The propriety of the recruitment process as a whole can be determined if and when the Applicant decides to challenge it as a substantive application.

13. The Application for Suspension of Action is DISMISSED.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 1st day of July 2020

Entered in the Register on this 1st day of July 2020

(Signed)

Abena Kwakye-Berko, Registrar, UNDT, Nairobi