



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2021/030

Order No.: 094 (NBI/2021)

Date: 10 May 2021

Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

SAWADOGO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON AN APPLICATION FOR SUSPENSION
OF ACTION PENDING MANAGEMENT
EVALUATION**

AND

**ON A MOTION FILED PURSUANT TO
ARTICLES 19 AND 36 OF THE UNDT
RULES OF PROCEDURE
("VILLAMORAN")**

Counsel for the Applicant:

Evelyn Kamau, OSLA

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR

Maureen Munyolo, AAS/ALD/OHR

Introduction

1. The Applicant is a Security Sector Reform Officer (“SSR Officer”) at the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”). He serves on a fixed-term appointment at the P-3 level.

2. On 3 May 2021, he filed an application for suspension of action (“SOA”) seeking to suspend the decision to improperly exclude him and not select him for the position of P-4 SSR Officer-in-charge of the Policy and Planning Cell, advertised through Position Specific Job Opening No. 105244 (“PSJO No. 105244”) in MINUSCA (“the contested decision”). He also filed a motion pursuant to arts. 19 and 36 of the UNDT Rules of Procedure seeking an order for suspension of the contested decision pending the determination of the art. 13 SOA proceedings (“Villamorán Order”).

3. The Respondent filed his reply on 6 May 2021 in which it was argued that the application was not receivable.

Relevant facts

4. In October 2018, PSJO No. 105244 was advertised. The Applicant applied for it on 27 October 2018 and underwent a competency based interview on 15 October 2019.¹

5. On 16 June 2020, the Applicant was placed on the P-4 SSR roster following his application to PSJO No. 105244.²

6. According to the Applicant, the recruitment process for PSJO No. 105244 is on hold but may be finalized soon because the hiring manager for the position copied

¹ Application, para. 26 and annex A.

² Application, para. 29.

the private email address of one of the candidates for the position in a work email.³

7. On 22 April 2021, the Applicant submitted a management evaluation request concerning the contested decision.⁴

Considerations

Whether the application is receivable.

8. This application is not receivable *ratione materiae* on two grounds. First, the Dispute Tribunal lacks jurisdiction over the matter by operation of section 10.2 of ST/AI/2010/3 (Staff selection system) which provides that “[t]he decision to select a candidate shall be implemented upon its official communication to the individual concerned”.

9. On 15 June 2020, MINUSCA officially notified the first selected candidate about the selection, and the selection decision was entered into *Inspira*. The other seven recommended candidates, including the Applicant, were informed of their non-selection, and of the fact that they had been included on the roster of candidates pre-approved for similar functions at the level of the job opening.⁵

10. Further evidence is that when the first selected candidate declined to take up the appointment (R/1), the MINUSCA Special Representative of the Secretary-General (“SRSG”) selected another candidate not being the Applicant, from the roster in accordance with section 10.4 of ST/AI/2010/3 on 15 March 2021.⁶

11. On 21 March 2021, MINUSCA notified that candidate of her selection and she accepted the offer of appointment on 30 March 2021.⁷ MINUSCA raised a travel request and sent an airline ticket to the selected candidate to travel on 8 May 2021 to

³ Application, para. 42.

⁴ Application, annex I.

⁵ Reply, para. 7 and annexes R1-R4.

⁶ Reply, annex R2.

⁷ Reply, annex R1 and R3.

report to duty.⁸

12. Since an order for suspension of action cannot restore or reverse an allegedly unlawful decision, which has already been implemented⁹, in keeping with Tribunal precedents¹⁰, the Tribunal lacks jurisdiction to suspend the implementation of the impugned decision.

13. Secondly, the Applicant failed to request management evaluation within the prescribed time. A request for management evaluation must be submitted to the Secretary-General within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.¹¹ In non-selection cases, the time starts to run as soon as a staff member knows or is expected to have reasonably known of his non-selection.¹²

14. The Applicant did not seek management evaluation within 60 days from the 16 June 2020, the date he was first notified of the contested decision. The management evaluation deadline was, therefore, 15 August 2020, yet he requested management evaluation on 22 April 2021, nine months late.

Conclusion

15. Without subject matter jurisdiction over the claim, the Dispute Tribunal is not competent to hear this application and it stands dismissed as irreceivable.

⁸ Reply, annex R4.

⁹ *Igbinedion* UNDT/2011/110, para. 26; *El-Awar*, UNDT/2017/023, paras. 19-21; UNDT Statute, arts. 2.2 and 10.2; UNDT Rules of Procedure, arts. 13 and 14.

¹⁰ *Passarelli*, Order No. 57 (NY/2020), paras. 16-20; *Lackner*, Order No. 138 (GVA/2018), paras. 13-15; *Samra*, Order No. 195 (GVA/2015), paras. 19-20).

¹¹ Staff rule 11.2(c).

¹² *Olga Mokrova*, 2021-UNAT-1092, paras. 29-31.

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(Signed)

Judge Margaret Tibulya

Dated this 10th day of May 2021

Entered in the Register on this 10th day of May 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi