



Before: Judge Alexander W. Hunter, Jr.

Registry: Nairobi

Registrar: Abena Kwakye-Berko

WAINIBULI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

AND

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

Counsel for the Applicant:
Evelyn W. Kamau, OSLA

Counsel for the Respondent:
Nicole Wynn, AAS/ALD/OHR, UN Secretariat
Maureen Munyolo, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a Transport Assistant, working with the United Nations Multidimensional Integrated Stabilization Mission in Mali (“MINUSMA”), based in Timbuktu, Mali. He serves on a continuing appointment at the FS-5 level.¹

2. On 21 September 2021, the Applicant filed an application for suspension of action before the United Nations Dispute Tribunal (“UNDT”) in Nairobi. He seeks suspension of the decision which he describes as a “continued failure by the MINUSMA Director of Mission Support Division (“DMSD”) and the Chief Service Delivery Management (“CSDM”) to consider the recommendation of the hiring manager, the then-Officer-in-Charge (“OIC”) Transport, selecting the Applicant to the vacant Transport Officer FS-6 position in Kidal, following a Recruit from Roster exercise (Job Opening Number 150253), and their improper decisions to reissue the vacancy as a Transport Officer FS-6 Kidal (Job Opening Number 162555), Transport Officer FS-6 Kidal (Temporary Job Opening Number 162851) and most recently Transport Officer FS-6 Multiple Duty Stations (Job Opening Number 1639310)”.

3. By the same application, the Applicant also seeks a *Villamoran* suspension of the contested decision pending the art. 13 suspension of action proceedings pursuant to arts. 19 and 36 of the UNDT Rules of Procedure.

4. The Respondent filed a reply on 23 September 2021.

Facts

5. On 17 February 2021, MINUSMA advertised the position of Transport Officer FS-6 (Job Opening Number 150253-Kidali) as a Recruit from Roster vacancy. The closing date for the advertisement was on 3 March 2021.²

¹ Application, section I.

² Application, annex 2.

6. The Applicant applied for the position.³ On 7 May 2021, Mr. Glendon Gill, the OiC, Transport Section recommended to DMSD, through CSDM, the appointment of the Applicant as the most suitable candidate for the position.⁴

7. On 25 June 2021, DMSD declined to approve the recommendation. He stated that after consultation with the Special Representative of the Secretary-General (“SRSG”) the job opening would be re-advertised in order to attract a wider pool of candidates, focused on females and preferably bilingual candidates.⁵

8. Following the non-approval of the Applicant and the decision to re-advertise the post, Job Opening Number 150253 was cancelled.⁶

9. On 26 August 2021, a new advertisement for Job Opening Number 162555, Transport Officer, FS-6, was issued. The closing date for the advertisement was on 24 September 2021.⁷

10. While awaiting the completion of the recruitment process for Job Number Opening 162555, MINUSMA advertised Transport Officer, FS-6, Temporary Job Opening Number 162851 to run from 30 August 2021 to 5 September 2021.⁸

11. On 3 September 2021, the Applicant requested management evaluation of the contested decision.⁹ The Management Evaluation Unit is yet to respond.¹⁰

12. On 15 September 2021, MINUSMA advertised Transport Officer, FS-6, multiple duty stations, Job Opening Number 163931, whose closing date is on 14 October 2021.¹¹

³ Application, section VII, para. 25.

⁴ Application, annex 3.

⁵ Reply, R/1.

⁶ Reply, R/2.

⁷ Application, annex 5.

⁸ Application, annex 6.

⁹ Application, annex 1.

¹⁰ Application, section VI.

¹¹ Application, annex 7.

Considerations

13. The application is made under art. 2.2 of the UNDT Statute and art. 13 of the UNDT Rules of Procedure, which allow the Tribunal to suspend the implementation of the impugned decision pending management evaluation. The matter of non-appointment of the Applicant has passed that stage because the post he seeks to occupy was cancelled on 25 June 2021. Further, the Tribunal has no powers to suspend implementation of the impugned decision because the post in question no longer exists.

14. It follows from the above that the request for suspension of the non-selection decision is not receivable.

Conclusion

15. The application is dismissed.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 27th day of September 2021

Entered in the Register on this 27th day of September 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi