



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

RONVED

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON A MOTION FOR
INTERIM MEASURES**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Maureen Munyolo, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant filed an application on 21 August 2022 contesting the decisions to: (i) grant the Applicant a special post allowance (“SPA”) instead of a temporary promotion; and (ii) find the Applicant ineligible to apply for Job Opening (“JO”) 178301 because applicants may only apply for vacancies one level above their current grade (“contested decisions”). JO 178301 is a position at the P-5 level.

2. The Respondent filed a reply to the application on 20 September 2022 in which he asserts that the application is not receivable *ratione materiae* because: the Applicant failed to timely request management evaluation of the SPA decision; and there has been no administrative decision to find the Applicant ineligible to apply for the P-5 position advertised as JO 178301. In the event that the Tribunal finds the application receivable, the Respondent’s position is that: the Applicant could not be considered for a temporary promotion because ST/AI/2010/4/Rev.1 (Administration of temporary appointments), does not provide for temporary promotions for assignments within the same peacekeeping mission; and under section 6.5 of ST/AI/2010/3 (Staff selection system), the Applicant was ineligible to apply for a P-5 position because it was more than one level higher than the Applicant’s personal grade of P-3.

3. On 30 September 2022, the Applicant filed a motion, pursuant to articles 10.2 of the Statute and 14 of the Rules of Procedure of the United Nations Dispute Tribunal, seeking suspension of the recruitment process for JO 178301 pending the Tribunal’s judgment on the merits.

4. The application was transmitted to the Respondent on 3 October 2022, and he filed a response on 4 October 2022. On the same day, the Applicant submitted a motion for permission to comment on the Respondent’s response. The motion included, *inter alia*, comments on what the Applicant termed as “inconsistencies and misrepresentations in the reply”. The Tribunal has taken note of the Applicant’s comments.

Facts

5. The Applicant serves as a Human Resources Officer with the United Nations Support Office in Somalia (“UNSOS”). At the time the Applicant applied for JO 178301, their personal grade was at the P-3/13 level.¹ Effective 1 September 2022, the Applicant has been promoted to P-4 Human Resources Officer.

6. On 24 March 2020, the Applicant was selected for the temporary position of Human Resources Officer at the P-4 level against Temporary Job Opening (“TJO”) 131330. The Applicant assumed the functions of the post effective 1 April 2020 through 30 January 2021 and was granted SPA effective 1 July 2020 pursuant to section 6.3 of ST/AI/2003/3.² The Applicant’s temporary assignment and SPA were subsequently extended until 31 May 2021.³

7. In March 2022, the UNSOS Human Resources Section recommended the extension of the Applicant’s SPA from 1 June 2021 through 30 June 2022.⁴ There is an email from one PG to the Applicant dated 26 April 2022 informing the Applicant of the extension of their SPA from 1 June 2021 to 30 June 2022 and that payment would be reflected in their May salary.⁵

8. Between 20 April to 19 May 2022, UNSOS advertised a P-5 Senior Logistics Officer position in *Inspira* under JO 178301.⁶ The Applicant applied for JO 178301 on 1 May 2022, and subsequently learned that their application was rejected, and that they would not be further considered.⁷ According to the Respondent, recruitment for JO 178301 is still ongoing.⁸

¹ Reply, annex R1.

² Application, annex 01 and annex 04, pages 4-5.

³ Application, annex 06 (response from the Management Evaluation Unit).

⁴ Application, annex 04.

⁵ Reply, annex R7.

⁶ Reply, para. 16.

⁷ Application, p. 4, para. 5.

⁸ Reply, para. 16.

9. On 12 May 2022, a Personnel Action (“PA”) form was issued retroactively extending the Applicant’s temporary assignment and SPA from 1 June 2021 to 30 June 2022.⁹

10. On 22 May 2022, the Applicant requested management evaluation contesting the decision on placement on SPA and the decision to find them ineligible for JO 178301.¹⁰

11. In a response dated 1 July 2022, the Management Evaluation Unit (“MEU”) found the Applicant’s management evaluation request to not be receivable because the challenge against the SPA decision was time-barred and there was no administrative decision with respect to the Applicant’s ineligibility for JO 178301.

12. According to the Applicant, several colleagues, who are also applicants for JO 178301, informed them on 23 September 2022 that they have already participated in a written assessment and a competency-based interview. The Applicant submits that this proves they have been found ineligible.¹¹

Applicant’s submissions

13. The motion is receivable by the Tribunal because:

a. This case does not fall under the exclusionary clause in articles 10.2 of the UNDT Statute and 14 of the Rules of Procedure. Relying on *Siri* 2016-UNAT-609, the Applicant submits that the current motion to suspend JO 178301 does not fall into the narrow definition of “promotion” in the UNDT Statute since this dispute is about their contract modality following their selection for TJO 131330.

⁹ Application, annex 02.

¹⁰ Application, annex 05, p. 2.

¹¹ Motion for interim measures, p. 2, para. 6.

b. The MER was submitted within the stipulated deadline because a new situation occurred in June 2021, which triggered an entirely new decision to grant the SPA from 1 June 2021 through 30 June 2022. The Applicant was informed of this new decision no earlier than 26 April 2022 and their request for management evaluation is dated 22 May 2022, well within the 60-day timeframe.

c. The Applicant submits that they have been found ineligible for JO 17830 because the status of their application in *Inspira* for JO 178301 is “Reject”, which according to the Staff Selection System manual means they were determined to be “not eligible to be considered” and that their application was not even released to the Hiring Manager for assessment. Relying on *Melpignano* UNDT/2015/075, the Applicant submits that this decision has direct and final consequences for their chance of promotion.

14. The contested decision is *prima facie* unlawful because:

a. Pursuant to staff rule 3.10(b), “promotion under staff rule 4.15 shall be the normal means of recognizing increased responsibilities and demonstrated ability” and that SPA should be granted only in exceptional cases when a staff member is called upon to assume the full duties and responsibilities of a post at a clearly recognizable higher level than their own for a temporary period exceeding three months.

b. The selection of a staff member following a fully competitive process in accordance with ST/AI/2010/4 (Temporary appointments) cannot be described as being “called upon”. It follows from staff rule 3.10(b), that the only alternative is promotion, in this case temporary, as the availability of the post was originally for less than one year, from 1 April 2020 up till 31 January 2021. Similarly, selection from a TJO, of which there are literally hundreds every year cannot be considered as exceptional.

c. If the decision to grant the Applicant SPA instead of temporary promotion is *prima facie* unlawful, it follows clearly that the decision to find them ineligible for JO 178301 is equally unlawful, as it would be one level above their grade at the date of promotion.

d. Section 6.5 of ST/AI/2010/3 violates the legal maxim of equal pay for equal work because it creates an arbitrary distinction between a staff member from a headquarters location temporarily assigned to a peacekeeping or special political mission, and a staff member from a field location temporarily assigned to the same position. In addition, an external applicant selected for the same position would be granted a temporary appointment at the higher level advertised.

15. The matter is urgent because JO 178301 has moved into its final stages with the completion of competency-based interviews last week. A selection, which would effectively prevent the Applicant from being considered for selection or rostering is thus imminent.

16. The Applicant would suffer the irreparable harm of loss of opportunity for career growth through promotion or rostering that cannot be compensated by a later monetary award.

Respondent's submissions

17. The motion is not receivable because:

a. The Tribunal does not have competence to order the relief sought by the Applicant. Under articles 10.2 of the Dispute Tribunal's Statute and 14.1 of the Rules of Procedure, the temporary relief ordered by the Dispute Tribunal "may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination. The Applicant challenges the recruitment for the P-5 position which will result in a new appointment or promotion of the successful candidate. As held by this

Tribunal in *Auda*¹², this is a clear case of appointment under art. 10.2 of the Statute and does not concern a matter that is merely “related” to an appointment as stated by the Applicant.

b. The *Inspira* entry that the Applicant refers to in the motion is not a final administrative decision. The entry that the Applicant identified is a prefatory step in the recruitment process, the likes of which the Appeals Tribunal has consistently held is not appealable.¹³ The Applicant’s allegation that they heard from their colleagues on the progress of the recruitment is hearsay which cannot establish an administrative decision. Selection decisions are notified through formal *Inspira* correspondence.

18. The contested decision is lawful. Pursuant to section 6.5 of ST/AI/2010/3, staff members are ineligible to apply for positions more than one level higher than their personal grade. The Applicant’s personal grade was P-3 when they applied for the P-5 position on 1 May 2022. Consequently, the Applicant was ineligible to apply for the P-5 post. The Applicant’s allegation that they were eligible to apply for the P-5 Position because they had been temporarily promoted to the P-4 level in May 2022 when they applied for the position is without merit. The Applicant was not temporarily promoted to the P-4 level during their temporary assignment. Rather, they were temporarily reassigned within the same peacekeeping mission to the P-4 level and paid SPA at the P-4 level in accordance with the established legal framework. During the temporary assignment, the Applicant’s personal level remained P-3. There was no violation of the principle of equal pay for equal work because the payment of SPA ensured that principle was observed.

19. Any urgency is self-created and therefore does not satisfy the requirements for interim measures. The Applicant received the MEU’s response on the alleged decision to find them ineligible for the P-5 position on 1 July 2022 but waited almost three

¹² Order No. 156 (NY/2016).

¹³ *Nguyen-Kropp and Postica* 2015-UNAT-509, para 33; *Ishak* 2011-UNAT-152

months, i.e., until 30 September 2022 to seek suspension of the recruitment. A delay of 10 days or more without explanation is self-created urgency.¹⁴

20. There is no irreparable harm to the Applicant's career because effective 1 September 2022, the Applicant has been promoted to P-4 Human Resources Officer and is expected to serve at that job for at least one year before being eligible to be appointed to another job.¹⁵ Additionally, the Applicant lost no chance of selection because being at the P-3 level, the Applicant had no right to be considered for the P-5 position.

Considerations

21. The Tribunal is not *prima facie* convinced of the non-receivability of the application on the merits for the reasons stated by the Applicant. Therefore, without prejudice to any such decision on receivability as may follow in the future judgement, it will entertain the present application for an interim measure.

22. Pursuant to articles 10.2 of the Statute and 14 of the Rules of Procedure, the Tribunal may, at any time during the proceedings, order an interim measure to provide temporary relief to either party, where the contested administrative decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, **except in cases of appointment, promotion or termination** (emphasis added).

23. In so far as the Applicant contests having been rejected in the competitive process for JO 17830, this case, no matter the convoluted arguments advanced on both sides, is clearly a case of promotion, in the understanding of article 10.2 of the Statute, where the legislative decision has been not to halt the recruitment processes after management evaluation has endorsed them. The matter of timeliness, legal standing,

¹⁴ *Handy* Order. No. 228 (NBI/2019), para. 7.

¹⁵ Respondent's response to the Applicant's motion for interim relief, annex R9.

legality of SPA etc., will be examined in the judgment on the merits. Meanwhile, however, a suspension of the contested decision is not allowed.

ORDER

24. The motion for interim measures is refused.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 6th day of October 2022

Entered in the Register on this 6th day of October 2022

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi