



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2023/072
Order No.: 148 (NBI/2023)
Date: 26 September 2023
Original: English

Before: Judge Solomon Areda Waktolla

Registry: Nairobi

Registrar: Eric Muli, Officer-in-Charge

HASAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:

Hilda Ojiambo, Office of Staff Legal Assistance

Counsel for the Respondent:

Yun Hwa Ko, UNFPA

Background

1. The Applicant is a Programme Analyst at the National Officer – A level (“NOA”) level in the United Nations Population Fund (“UNFPA”) Syria Country Office (“CO”). She holds a fixed-term appointment and is based in Damascus.
2. On 19 September 2023, the Applicant filed an application for suspension of action (“the application”) at the United Nations Dispute Tribunal sitting in Nairobi to challenge the Respondent’s decision not to select her for the position of Humanitarian Programme Specialist in Islamabad, Pakistan at the P-3 level (“Job ID 11663”) because she did not meet the educational requirements.
3. The Respondent replied to the application on 20 September 2023.

Facts and Submissions

4. On 27 June 2023, the Organization advertised a temporary job opening (“TJO”) for Job ID 11663. The Applicant applied.
5. She was interviewed on 13 July 2023 for which she was the successful candidate and subsequently asked to submit a copy of her master’s degree for verification in pre-employment checks.
6. On 18 August 2023, the Applicant was informed that the Administration required the institution from which the Applicant earned her master’s degree to provide documentation to verify her academic qualification. The institution provided the documentation to the Administration and the Applicant later received indication from the Administration that the verification process had been finalized.
7. On 6 September 2023, the Applicant was informed that the verification process had established that her master’s degree from Kalu Institute in Spain was not officially recognized. Her candidature for the position could not therefore proceed any further.

8. It is the Applicant's case that the impugned decision is unlawful; it is arbitrary, inconsistent and contradictory to the Administration's previous treatment of the Applicant's master's degree as well as the treatment the Administration has accorded other staff members with the same master's degree from Kalu Institute in Spain.

9. The Applicant submits that she obtained a master's degree in international cooperation and humanitarian aid from Kalu Institute in Spain on 21 January 2022 after completing the stipulated course requirements and submitting a final thesis. In the documentation required by UNFPA's verification unit, Kalu Institute confirmed as much. Kalu also confirmed that the Institute is duly registered as a training institution by the Government of Spain.

10. The Applicant argues that the same qualification was submitted in respect of the position she currently encumbers.

11. In respect of the urgency limb of the test for suspension of action, the Applicant submits that UNFPA has readvertised the position, and that a selection decision is imminent.

12. The Applicant also argues that the loss of this opportunity to progress in her career will cause her irreparable harm.

13. The Respondent argues that UNFPA has its own system for the verification of academic credentials. UNFPA uses the OneHR Centre which performs verifications in accordance with its own guidelines. Kalu Institution did not show up when searched on the World Higher Education Database. Having reviewed all information, including information from Kalu Institution directly, the OneHR Centre concluded that the "master's degree" from Kalu Institute could not be considered an official degree.

14. In response to the Applicant's argument that the same degree was previously accepted as legitimate for the purposes of the position she encumbers, the Respondent submits that he is under an ongoing duty to correct any previous errors that may have been made. The Organisation cannot and must not perpetuate a previous error.

15. The Respondent submits that nothing in the impugned decision was arbitrary or motivated by extraneous factors so as to render it *prima facie* unlawful. The Applicant has also not satisfied the limbs of urgency and irreparable harm.

Considerations

16. Applications for suspension of action of pending management evaluations are governed by art. 2 of the Statute of the Tribunal and art. 13 of the Tribunal's Rules of Procedure.

17. Article 2.2 of the UNDT statute reads:

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 particular 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.

18. Article 13.1 of the UNDT rules of procedure reads:

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 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 particular urgency and where its implementation would cause irreparable damage.

19. The three statutory prerequisites contained in art. 2.2 of the Statute and art 13.1 of the rules of procedure are *prima facie* unlawfulness, urgency and irreparable damage prerequisites.¹ These conditions must be satisfied for an order for suspension of action to be granted by the Dispute Tribunal. To suspend the implementation of the decision in question, the Tribunal must find that all three of these requirements have been met.

¹ *Nwuke* UNDT/2012/116

20. Additionally, a suspension of action application will only succeed where an applicant can establish a *prima facie* case on a claim of right, or where he can show that *prima facie*, the case he/she has made out is one which the opposing party would be called upon to answer and that it is just, convenient and urgent for the Tribunal to intervene and, without which intervention, the Respondent's action or decision would irreparably alter the status quo.

21. At this stage, the Applicant need only show *prima facie* unlawfulness. The presumption of regularity may be rebutted by evidence of failure to follow applicable procedures, the presence of bias in the decision-making process and consideration of irrelevant material or extraneous factors.

Prima facie Unlawfulness of the Contested Decision

22. In *Nwuke* UNDT/2012/116, para. 25, the Tribunal held that when considering an application for suspension of action, the Tribunal must first determine, based on a review of the evidence presented, whether the contested decision is *prima facie* unlawful. This means that the Tribunal need not find that the decision is incontrovertibly unlawful.

23. The standard for reviewing decision under *prima facie* unlawful, is not whether it is clearly or certainly unlawful, but whether it seems to be unlawful *prima facie*. A decision, apparently examined, may be lawful, but when strictly and incontrovertibly examined, be unlawful. Therefore, in the determination of the legality of the contested decision of this case, the standard that the Tribunal applies is apparent scrutiny, not that of the strict scrutiny.

24. The Applicant argues that her non-selection for Job ID 11663 based on non-recognition of her master's degree is unlawful. The Applicant contests that the decision of the Administration to exclude her from selection for the position of this position is *prima facie* unlawful as it is arbitrary, inconsistent and contradictory to the Administration's previous treatment of the Applicant's master's degree as well as the treatment the Administration has accorded other staff members with the same master's degree from Kalu Institute in Spain.

25. The Applicant's position is that she has a master's degree in international cooperation and humanitarian aid from Kalu Institute in Spain, which she completed on 21 January 2022. She says

that she fulfilled all the course requirements, including 1500 hours of study and a final thesis. The Respondent received a verification from Kalu Institute that the Institute is authorized to award a degree and is legally registered as a training institution by the Spanish Government (application, annex 5).

26. This evidence of authorization from the Institute itself is not sufficient to confirm the validity of the degree that the Applicant received from Kalu Institute. It is self-serving evidence produced by Kalu Institute. The Tribunal, therefore, dismisses the argument raised by Applicant in this regard.

27. Further, the Applicant is currently serving in UNFPA as a Program Analyst – a position whose minimum educational criteria for the successful candidate required possession of a master’s degree. For this position, the Applicant submitted her master’s degree in international cooperation and humanitarian aid from Kalu Institute (application, annex 5 – Accreditation of the Applicant’s degree) and the same was recognized by the Administration because the Applicant got the job. (Application, annex 6 – JO that the Applicant encumbers). The Applicant in her application contests that the Administration’s recognition of her master’s degree for the position she currently encumbers and non-recognition of the same for Job ID 11663 is not justifiable.

28. In *Cranfield* 2013-UNAT-367, para. 36, the Appeals Tribunal held that:

In situations where the Administration finds that it has made an unlawful decision or an illegal commitment, it is entitled to remedy that situation. The interests of justice require that the Secretary-General should retain the discretion to correct erroneous decisions, as to deny such an entitlement would be contrary to both the interests of staff members and the Administration. How the Secretary-General’s discretion should be exercised will necessarily depend on the circumstances of any given case. When responsibility lies with the Administration for the unlawful decision, it must take upon itself the responsibility therefor and act with due expedition once alerted to the unlawful act.

29. The Applicant also contends that the “master’s degree” from Kalu Institute was recognized for purposes of her current position as Programme Analyst in the Syria CO. The Respondent submits that the Organization has a duty to correct erroneous decisions and that simply because

the degree may have been recognized once does not mean that the same must be repeated, perpetuating an unlawful situation. Undoubtedly, in situations where the Administration finds that it has made an unlawful decision or an illegal commitment, it is entitled to remedy that situation.² The Organization has the right to fix wrong decisions and that it does not have to keep recognizing the degree if it was unlawful. The Administration can certainly correct its own mistakes or illegal actions if it discovers them. Based on this established rule, the tribunal declines this argument of the Applicant.

30. The Applicant also claims that the Administration's refusal to recognize the Applicant's master's degree is not consistent with proper exercise of the Organization's duty of care given the previous recognition of the degree by the same Administration to others. This breach of duty of care denies the Applicant full and fair consideration of her candidature, rendering the non-selection decision unlawful. However, this argument is not valid, because the Applicant did not provide any proof that the Respondent hired other people based on the same master's degree from the same institute, which is Kalu Institute. The Tribunal also dismisses the Applicant's argument on this issue.

31. The Respondent claims that the Organization followed the relevant policy and that the contested decision is not *prima facie* unlawful. The relevant policy is the UNFPA Policies and Procedures Manual, Policy on Personnel of UNFPA: Fixed Term and Continuing Appointments: Staffing ("Staffing Policy"). The "Guidelines on Recruitment" in Annex VI of the Staffing Policy (reply, annex R/3) state that verifying a candidate's main academic credentials is important. This can be done by any formal or informal method, such as contacting the academic institution by phone, e-mail or letter.

32. As part of the standard procedure, UNFPA asked the OneHR Centre to verify the Applicant's academic credentials, following its own guidelines (reply annex R/4 - OneHR Background Verification Guidelines, pages 30 - 34). These guidelines state that the World Higher Education Database, which is integrated in Inspira, is used to check the recognition status of academic degrees

² Das, 2014-UNAT-421, para 15.

in different education systems. However, Kalu Institute does not appear in the World Higher Education Database. After reviewing all the information, including the one provided by Kalu Institution itself, the OneHR Centre decided that the “master’s degree” from Kalu Institute could not be regarded as an official degree.

33. A description of “Kalu Institute” on their website states that it is a registered NGO in Andalusia (R/0278) and a National Association (595169) in Spain under Law 1/2002. It also claims to be a certified humanitarian training provider. The website’s “FAQ” section answers the question “Who issues the course qualifications? What approval and validity do they have?” by saying that Kalu Institute awards a private Continuing Education certificate (non-official) to those who complete each course successfully. It adds that the qualifications are increasingly recognized among NGOs because the courses are well suited to their needs. However, it also acknowledges that the validity of these qualifications for recruitment processes depends on the specific criteria of each institution or organization (reply, annex R/5, pages from the Kalu Institute website at www.kaluinstitute.org).

34. The Organization uses the OneHR system to verify the background of its staff. This is to ensure that they meet the qualifications, suitability and integrity standards for the positions they apply for. The system follows specific rules and procedures for validating academic degrees, based on the World Higher Education Database in Inspira, which lists the recognized degrees in different education systems. However, Kalu Institute is not in this database. After reviewing all the available information, including the documents provided by Kalu Institution, the OneHR Centre concluded that the Applicant’s “master’s degree” from Kalu Institute was not a valid degree. The Applicant did not demonstrate that this verification process was arbitrary or unfair.

35. Given the foregoing, the Organization reasonably exercised its discretion when it determined that the Applicant’s “master’s degree” from Kalu Institute could not be verified as an official degree issued by an academic institution, and therefore, the Applicant could not progress further in the selection process. There was no ill motive or arbitrariness, only reasonableness based on genuine efforts to verify whether the Applicant met the education requirement required for the

position. On this basis, the Tribunal is persuaded that the Applicant has failed to establish that the contested decision is *prima facie* unlawful.

36. The contested decision passed the *prima facie* scrutiny of lawfulness, as it was reasonable and lawful according to the relevant policy. Therefore, the Tribunal concludes that the Applicant failed to prove the *prima facie* unlawfulness of the decision.

37. As the Applicant has not satisfied the limb of *prima facie* unlawfulness, there is no need for the Tribunal to further inquire into whether the impugned decision would cause irreparable harm or if the matter is urgent.

Conclusion

38. The application is therefore DISMISSED.

(Signed)

Judge Solomon Areda Waktolla

Dated this 26th day of September 2023

Entered in the Register on this 26th day of September 2023

(Signed)

Eric Muli, Officer-in-Charge, Nairobi