



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/078

Order No.: 156 (NY/2010)

Date: 18 June 2010

Original: English

Before: Judge Memooda Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

BARRINGER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

SUSPENSION OF ACTION

Counsel for applicant:
Self-represented

Counsel for respondent:
Melissa Bullen, ALS/OHRM, UN Secretariat

Introduction

1. On 11 June 2010, the applicant filed an application under art. 2.2 of the Statute (suspension of action pending management evaluation) for suspending a decision to appoint a candidate other than him (a psychiatric nurse practitioner) to the post of Staff Counsellor at the P-4 level in the Medical Services Division (MSD) in New York and generally challenging the selection process for this post. On 15 June 2010, the respondent filed and served its reply opposing the application. On 16 June 2010, a hearing was held at the premises of the Dispute Tribunal in New York. The applicant participated in the hearing by mobile phone from Liberia, where he currently serves at the UN mission (UNMIL) as Chief of the Staff Counseling Unit.

Facts

2. On 4 February 2010, a vacancy announcement (VA) 10-HRE-DM OHRM-423381-R-New York (G) for the position of Staff Counsellor, P-4 was posted on Galaxy, the online UN jobsite. This VA was later withdrawn on 10 February 2010, then reposted under a different reference (10-HRE-DM OHRM-423926-R-New York (G)) on 4 March 2010. The applicant contends that the new VA was altered to include as a qualification “Advanced Practice Psychiatric Nursing” contrary to previous practice for such a position. This, he says, indicates manipulation of the selection process to favour the successful candidate and exclude fair consideration of other more qualified candidates including himself. According to the respondent, however, the Office of Human Resources Management (OHRM) informed the relevant Programme Case Officer (PCO) that this VA had been posted in error as the evaluation criteria had not been approved by the Central Review Committee (CRC) as required by ST/SGB/2002/6, and the VA was therefore cancelled following which the CRC approved the evaluation criteria. The respondent contends that the only change to this VA was that under the “Other Skills” section, where the words “knowledge of” replaced the words “proficiency in”.

3. According to the respondent, on 6 April 2010, the PCO was informed by OHRM that there were two eligible candidates at the 30-day mark, who were both interviewed on 20 April 2010, no eligible candidates having been identified at the 15-day mark. The panel unanimously found one candidate to be qualified and suitable for the post and determined that she should be recommended. The outcome of the interviews was then forwarded to the Assistant Secretary-General, OHRM and the Under-Secretary-General for Management.

4. On 5 May 2010, when the applicant contacted OHRM to enquire about his standing in the selection process, his application was reviewed and it was discovered that he had been originally misclassified as a 60-day candidate. His eligibility was changed to a 30-day candidate, and the PCO and the applicant were informed accordingly. The recruitment process was suspended, and the applicant was interviewed on 11 May 2010, but the interview panel did not find him suitable for the post. The recommendation of the successful candidate was therefore maintained.

5. According to the respondent, the PCO informed the Office of the Assistant Secretary-General, OHRM, on 14 May 2010 that the applicant was not found suitable for the post and that the recommendation of the selected candidate had not changed. On 20 May 2010, the CRC informed MSD that they endorsed the proposal for filling of the vacancy. On 21 May 2010, the successful candidate was officially informed by the Executive Office, OHRM, of her selection to the post.

6. According to the respondent, the applicant was informed on 4 June 2010 that he had not been successful and that another candidate had been selected. According to the applicant, he was never informed that he was unsuccessful or that another candidate had been selected, alleging he only heard about it “through the grapevine”.

Considerations

7. Since the applicant was self-represented, I explained to him in great detail the nature of an application for a suspension of action. I further explained to him at length the three statutory prerequisites that needed to be satisfied under art. 2.2 of the

Statute, namely urgency, prima facie unlawfulness and irreparable harm. I then invited the respondent to address the Tribunal in more detail. Counsel for the respondent submitted that since the contested decision in this case had already been effectuated, by the successful candidate being notified of her selection in accordance with art. 10.2 of ST/AI/2006/3/Rev.1 (the applicable Administrative Instruction), it was no longer possible for the Tribunal to suspend it. Upon hearing counsel for the respondent's submission, upon which reliance on the order in the case of *Modeste* (Order No. 62 (NY/2010)) was also placed, and upon my clarification on the nature and purport of the submission, the applicant responded as follows:

I understand. That was the only reason I said it was urgent because I was trying to meet some deadline but if the deadline had already passed and they had been given an appointment, then the possibility of acting on the urgency is moot. I understand that.

8. As a result of counsel of the respondent's submission and a closer perusal of the documents filed by the respondent, the applicant also conceded that both VAs included "Advanced Practice Psychiatric Nursing" as a qualification, and that the second VA had not been altered in this regard contrary to his initial belief. The applicant also conceded that there was alternative relief available to him by way of an application on the merits and that any harm suffered by him was compensable.

9. In view of the above concessions, I informed the applicant that if he wanted to pursue his case he should therefore do so through an application on the merits, failing satisfaction at management evaluation level, and I recommended that he seeks legal advice. The applicant advised he would do so from the Office of Staff Legal Assistance.

10. The applicant having conceded his application was moot, therefore decided to withdraw the application for suspension of action and to follow the normal course of events through the normal procedures.

IT IS ORDERED THAT —

11. The applicant having withdrawn the application for suspension of action, there is no longer any matter for adjudication.

(Signed)

Judge Memooda Ebrahim-Cartens

Dated this 18th day of June 2010