



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

SIMMONS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. On 11 March 2013, the Applicant, a Programme Budget Officer in Office of Programme Planning, Budget and Accounts (“OPPBA”), Department of Management of the United Nations Secretariat in New York, filed an application for suspension of action, pending management evaluation, of the decision to cancel an advertised job opening for a P-4 level Programme Budget Officer post and “to deny her candidacy full and fair consideration”.

2. The Applicant alleges that the cancellation of the job opening and the decision to fill the post through a lateral move was arbitrary and unlawful. She states that, since 2011, this was her fifth lost chance of promotion, and yet another example of attempts to frustrate her career progression, and that there is a level of collusion surrounding her candidacy for several vacancies. In this regard she gives background information on her previous applications for other positions, where she alleges conflict of interest and other irregularities. In particular, she states that those sitting on interview panels for prospective P-4 posts are former staff member competitors who are aware that she contested the outcome of selection exercises in relation to the very posts they were selected to fill.

3. The Applicant requests a suspension of the decision to cancel the job opening and seeks any other temporary relief that the Tribunal may deem appropriate and that would ensure that she receives full and fair consideration.

4. In the reply, filed on 14 March 2013, the Respondent submits that the decision to cancel the job opening was implemented and therefore can no longer be suspended. The Respondent further submits that there is no evidence that the contested decision was influenced by any improper considerations. The Respondent submits that “job openings may be cancelled when a request to

fill a position is withdrawn”. The Respondent submits that the Applicant has failed to satisfy the requirements of irreparable harm and particular urgency.

5. The Applicant filed for management evaluation of the contested decision on 8 March 2013 and filed this application with the Tribunal on Monday, 11 March 2013, on which day it was also served on the Respondent. Therefore, the Tribunal had until Monday, 18 March 2013, to consider the present application.

Background

6. The following background information is based on the parties’ written submissions and the record.

7. The Applicant was placed on a roster of pre-approved and eligible candidates in November 2011.

8. The contested job opening for the position of a P-4 level Programme Budget Officer in the Programme Planning and Budget Division (“PPBD”), OPPBA, was advertised on 29 August 2012. The Applicant was advised of the opportunity to fill the advertised post and, on 31 August 2012, she affirmed her interest as a candidate from a pre-approved roster of eligible candidates. The job opening was closed on 11 November 2012.

9. The Respondent submits that although one hundred and ninety-one candidates were screened for the job opening, the Office of the Controller was unable to begin the evaluation of the candidates given the demands of servicing the Fifth Committee of the General Assembly during its sixty-seventh session and the subsequent workload associated with preparation of the Proposed Programme Budget for the biennium 2014–2015.

10. By 12 February 2013, no further progress was apparently made to fill the job opening, and the Assistant Secretary-General, Controller, decided to cancel the job opening and to laterally transfer another staff member holding a P-4 level position to the vacant post. The Controller explained in her memorandum of that date to the Executive Officer, Department of Management, that PPBD “has not yet begun the evaluation of applicants for the job opening”. Below is her memorandum in full:

1. The purpose of this memorandum is to request cancellation of Job Opening 24760, which was advertised for a P-4 Programme Budget Officer in Service I of [PPBD] and to laterally transfer Ms. [P], P-4 Programme Budget Officer, Office of the Director, PPBD, to the advertised post.

2. ... In view of the demands of servicing the General Assembly during the main part of the sixty-seventh session and the subsequent workload related to the preparation of the proposed programme budget for the biennium 2014–2015, Service I has not yet begun the evaluation of applicants for the job opening.

3. I have now decided to laterally move Ms. [P], P-4 Programme Budget Officer in the Office of the Director, PPBD to the vacant position. The staff member, the Chief of Service I (the Hiring Manager) and the Director of PPBD agree to the transfer.

4. In view of the above, it would be appreciated if [Job Opening] 24760 could be canceled in Inspira and if Ms. [P] could be laterally transferred to post no. 56843 in Service I, PPBD.

11. The decision to cancel the job opening was implemented on 5 March 2013 by automatic notification sent to all the candidates through Inspira (the Organization’s online recruitment system). The Applicant states that she received the automatic notification on 6 March 2013.

Consideration

12. This is an application for a suspension of action pending management evaluation. It is an extraordinary discretionary relief, which is generally not appealable, and which requires consideration by the Tribunal within five working days of the service of the application on the Respondent (art. 13.3 of the Rules of Procedure). Parties approaching the Tribunal must do so with sufficient information for the Tribunal to, preferably, decide the matter on the papers before it. An application as well as the Respondent's reply may well stand or fall on their founding papers.

13. The Respondent submits that the impugned decision has already been implemented and that therefore the matter is not receivable.

14. The implementation of a decision will not necessarily and always prohibit the granting of an application for suspension of action (see, e.g., *Calvani* UNDT/2009/092; *Hassanin* Order No. 83 (NY/2011); *Adundo et al.* Order No. 8 (NY/2013)). There may well be—and there have been—cases in which the implementation of the decision was of an ongoing nature that was capable of suspension.

15. However, the present matter is not of such nature. The cancellation of the job opening, whether rightfully or not, has already taken place, of which the candidates were informed in early March 2013. The decision to fill the post through a lateral transfer, too, appears to have taken place, although it appears to have preceded the official cancellation of the selection exercise. The limitations of an effective remedy in such instance must also be acknowledged at this stage of the proceedings.

16. If the Applicant if is still dissatisfied with how the entire process was carried out, the proper avenue to challenge it at this stage would be to file an application on the merits under art. 2.1 of the Statute and not by way of an application for temporary relief under art. 2.2 of the Statute.

17. For the reasons stated above, the Tribunal finds that, in the particular circumstances of this case and due to the implemented cancellation of the job opening, of which all the candidates were apparently notified, the decision to carry out the comparative review process can no longer be suspended.

18. As the contested decision is not capable of being suspended at this juncture, the Tribunal need not determine whether the conditions required for temporary relief under art. 2.2 of the Statute have been satisfied.

Observations

19. In view of the findings above, the Tribunal need not examine whether the contested decision to cancel the job opening was prima facie unlawful. Should the Applicant decide to file an application under art. 2.1 of the Tribunal's Statute in connection with the contested selection exercise, further submissions and evidence will be required from both parties with regard to the legal basis for the cancellation of an advertised position-specific job opening (after undertaking the initial screening of 191 candidates) and for the decision to fill the position through the lateral transfer prior to such cancellation. The Tribunal notes, in this regard, that the only document referred to by the Respondent in support of the Administration's power to do so is the Instructional Manual for the Hiring Manager on the Staff Selection System (see para. 9 of the reply).

20. The Tribunal also notes the Applicant's allegation that there was some form of collusion against her candidacy for several vacancies, including the job

opening contested in this case. From the Respondent's explanation and the documents on record, in this particular case, however, the cancellation of the job opening appears not to be related to the Applicant's candidature, but rather to the apparent inability of Service I, PPBD, OPPBA, to even commence the evaluation of any of candidates. Although this may raise some understandable questions as to management's inability to carry out and conclude the selection exercise some eight months after it commenced—after all, General Assembly sessions and budget preparations are regular occurrences that take place on annual basis—it does not appear from the record presently before the Tribunal that the decision was targeted at the Applicant specifically.

Conclusion

21. The present application for suspension of action is rejected.

(Signed)

Judge Ebrahim-Carstens

Dated this 15th day of March 2013