



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2014/066
Order No.: 309 (NY/2014)
Date: 12 November 2014
Original: English

Before: Judge Ebrahim-Carstens
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge, Registrar

AL-MIDANI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

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

Introduction

1. On 7 November 2014, the Applicant, a Public Information Assistant at the G-6/Step 11 level on permanent appointment in the Department of Public Information, filed an application under art. 2.2 of the Statute of the Dispute Tribunal and art. 13.1 of its Rules of Procedure for suspension of action during management evaluation of the decision not to select him but another “unqualified candidate” for the post of Senior Editorial and Desktop Publishing Assistant (Arabic) in the Department for General Assembly and Conference Management (“DGACM”).

2. On 11 November 2014, the Respondent filed and served a reply opposing the application contending, *inter alia*, that the selection decision was lawful, and that in any event, having already been implemented, is therefore not capable of being suspended under art. 2.2. of the Statute.

Factual background

3. Applications for interim relief, including those for suspension of a contested decision pending management evaluation, have to be considered by the Tribunal within a very short period of time. Parties approaching the Tribunal for such relief must do so on genuine urgency basis and with sufficient information for the Tribunal to preferably decide the matter on the papers before it. In view of the urgent nature of such applications, the Tribunal has to deal with them as best as it can depending on the particular circumstances and facts of each case. The application may therefore well stand or fall on its founding papers. In this instance, the paucity of material facts in his application is in part supplemented by the Applicant’s annexure of the request for management evaluation he made to the Management Evaluation Unit (“MEU”), and the documentation provided by him and, in particular, the Respondent. The following facts appear from the record, with much of the material details, being provided by the Respondent.

4. The Applicant together with five other candidates applied for the contested position via Job Opening number 14-LAN-DGACM-34787-R-NEW YORK (R) (“the JO”) posted on Inspira (an online United Nations job-site) for a posting period of 29 April to 29 May 2014.

5. Based on their applications, all six candidates were deemed suitable for the Post and shortlisted for interview. Following these interviews, two candidates, including the Applicant, were found not to meet the competency requirements, whilst the four remaining candidates were placed on the recommended list. Eventually, one candidate was recommended for selection as she received the highest rating of the four candidates in all relevant competencies against which the candidates were appraised, namely Professionalism, Planning and Organizing, Technological Awareness and Managing Performance.

6. By email dated 23 October 2014, the Secretary of the Central Review Committee and Panel confirmed that the Panel endorsed the filling of the JO with the selected candidate and requested that the necessary action be taken to select her for the vacancy.

7. On 27 October 2014, the selected candidate was informed of her selection for the Post and was requested to confirm her continued interest in and her availability for the Post within five business days.

8. On the same date, the selected candidate confirmed her interest and availability for the contested position. The Applicant submits that he came to know about the decision not to select him also on this date, apparently as it was indicated on his Inspira webpage that the “Recruitment [was] Completed”.

9. On 29 October 2014, the Applicant filed his request for management evaluation with the MEU, which evaluation is still pending.

10. On 1 November 2014, according to the information provided by the Applicant in his application, the decision not to select him was implemented, whilst the Respondent, in the reply, contends that this occurred on 27 October 2014.

11. On 7 November 2014, the Applicant filed the present application.

Consideration

12. Article 2.2 of the Tribunal's Statute provides that it may suspend the implementation of a contested administrative decision during the pendency of 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 Tribunal can suspend the contested decision only if all three requirements of art. 2.2 of its Statute have been met. This extraordinary discretionary relief is generally not appealable and is intended to preserve the *status quo* pending management evaluation. It is not meant to make a final determination on the substantive claim.

13. The Applicant contends that the selected candidate does not meet the JO's requirements and that by selecting an unqualified candidate, his and other qualified candidates' rights to a fair and transparent implementation of the staff selection system have been violated, all of whom would suffer irreparable harm.

14. The Respondent contends, *inter alia*, that the Applicant has failed to show that the decision was unlawful, improperly motivated or otherwise unreasonable, and submits that the selected candidate fully meets the experience and competency requirements of the JO. In particular, the Respondent contends that the selected candidate having been formally notified, and having accepted her selection and indicating her availability for the position on 27 October 2014, has resulted in the implementation of the selection decision and created a legal obligation upon the Organization to appoint her pursuant to sec. 10.2 of ST/AI/2010/3 (Staff selection

system). Thus, the impugned decision having been implemented, a suspension of action is rendered impossible.

Receivability

Applicant's standing to file the present application

15. In terms of art. 2.1 of the Tribunal's Statute, it is competent to hear and pass judgment on an application appealing "an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment" (art. 2.1). Article 2.2 provides that the Tribunal is competent to hear and pass judgment on an application seeking to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision, provided that the conditions specified in art. 2.2 have been met.

16. For the purposes of art. 2.2 of the Statute, it is not sufficient for an applicant to merely state that there was an administrative decision that she or he disagrees with. As the Tribunal has held in a number of cases, to have standing before the Tribunal, the applicant must show that the contested administrative decision affects her or his legal rights (*Jaen* UNDT/2010/165, *Nyakossi* UNDT/2011/101, *Warintarawat* UNDT/2011/053). The Respondent has quite correctly not taken the point that there is no challengeable administrative decision. However, the decision to contest an administrative decision alleged to be in non-compliance with the terms of appointment or the contract of employment is an individual right and it is for each staff member to make.

17. Accordingly, the Tribunal finds that to the extent the Applicant seeks to make any claims on behalf of other staff members, such claims are not receivable. However, with respect to the claims made by the Applicant in relation to his own legal rights, the application satisfies the statutory requirements and is receivable.

Implementation

18. Pursuant to art. 2.2 of the Statute of the Dispute Tribunal, the Tribunal is (emphasis added):

competent to hear and pass judgment 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.

19. It follows from art 2.2 that if a contested decision has already been fully implemented, there is no longer anything for the Tribunal to suspend. However, in cases where the implementation of the decision is of an ongoing nature (see, e.g., *Calvani* UNDT/2009/092; *Hassanin* Order No. 83 (NY/2011); *Adundo et al.* Order No. 8 (NY/2013); *Gallieny* Order No. 60 (NY/2014), the Tribunal may grant a request for a suspension of action.

20. Sec. 10.2 of ST/AI/2010/3 (Staff selection system) stipulates that “the decision to select a candidate shall be implemented upon its official communication to the individual concerned”. In the instant case, the selected candidate was informed of her selection for the contested position on 27 October 2014, and she unconditionally accepted the offer by email of the same day. Whilst it is unclear whether she has signed a letter of appointment and has taken up the post already, in terms of section 10.2 of ST/AI/2010/3, the Organisation had a legal obligation to appoint the selected candidate on 27 October 2014. In any event, in his application, the Applicant acknowledges that the decision has been implemented.

21. Consequently, as the contested decision in this case was implemented prior to the filing of the present application for suspension of action, the Tribunal is not in a position to order its suspension.

22. Therefore, it is not necessary to examine if the three statutory requirements specified under art. 2.2 of the Tribunal’s Statute and art. 13.1 of its Rules of Procedure are met.

Conclusion

23. The application for suspension of action is dismissed.

(Signed)

Judge Ebrahim-Carstens

Dated this 12th day of November 2014