



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Hafida Lahiouel

TIEFENBACHER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Ronja Bandyopadhyay, UNDP

Introduction

1. On 15 February 2016, the Applicant, a former D-1 level permanent staff member of the United Nations Development Programme (“UNDP”), filed an application contesting the decision not to “award [him]” the position of Directorate Manager, Bureau of Programme and Policy Support, UNDP. The Applicant submits, in essence, that the contested decision was procedurally flawed and tainted by bias against him.

2. The Applicant seeks rescission of the contested decision with retroactive payment of salary or, alternatively, compensation in the amount of 2 years’ net base salary plus all entitlements in view of the loss of his permanent contract; compensation for moral injury in the amount of three months’ net base salary; and pre-judgment and post-judgment interest.

3. On 16 March 2016, the Respondent filed a reply to the application, submitting that the contested decision was lawful and that the Applicant’s claims are without merit.

4. This case was assigned to the undersigned Judge on 1 July 2016.

Case management

5. The Tribunal considers it appropriate to order the parties to file a joint submission and to attend a case management discussion in preparation for a hearing on the merits.

6. The joint submission shall include, *inter alia*, agreed and disputed facts and legal issues, as well as proposed date(s) for a hearing on the merits, joint bundles of documents, and lists of witnesses together with brief statements of evidence each party intends to elicit from their respective witnesses.

7. Following the filing of the joint submission, the Tribunal considers it appropriate to hold a case management discussion to address any issues that may still be outstanding at that time.

8. The Tribunal notes that the parties refer to staff rule 9.6(e) (Termination for abolition of posts and reduction of staff), which contains provisions regarding the order of retention of staff on abolished posts. However, given that the Applicant held a permanent appointment, it would appear that the applicable staff rule was 13.1(d) (Permanent appointment), which concerns retention of permanent staff on abolished posts. The Tribunal further notes, in this regard, that further submissions will be required from the parties on the issue of the application of staff rule 13.1(d), particularly in view of the case law of the United Nations Dispute Tribunal (see, e.g., *Shashaa* UNDT/2009/034; *Bye* UNDT/2009/083; *Dumornay* UNDT/2010/004; *Abdalla* UNDT/2010/140; *Tolstopiatov* UNDT/2010/147; *Mistral Al-Kidwa* UNDT/2011/199) and the United Nations Appeals Tribunal (see, e.g., *Dumornay* 2010-UNAT-097; *Abdalla* 2011-UNAT-138).

9. The Tribunal further notes that, para. 30 of his application, the Applicant submits that he “reserve[s] the right to request through this Tribunal pertinent documentation, such as instructions related to the issuance of the external vacancy announcement, the shortlist of candidates, and the interview panel report, from UNDP [at] a later stage.” He further states that he “reserve[s] the right to amend [his] filing should the need arise.” The parties are reminded that, when filing submissions before the Tribunal, they are expected to state their claims in full and provide all relevant supporting documentation and relevant legal authority.

10. The parties are free to attempt informal resolution of the dispute through the United Nations Ombudsman and Mediation Services or via *inter partes* discussions. Should the parties decide to attempt informal resolution of the matter,

they shall promptly inform the Tribunal thereof and seek suspension of the proceedings.

11. Pursuant to art. 19 of the Dispute Tribunal's Rules of Procedure, the Tribunal considers it appropriate and in the interests of a fair disposal of the case to make the following orders.

IT IS ORDERED THAT:

12. By **5:00 p.m., on Tuesday, 19 July 2016**, the Applicant and Counsel for the Respondent are to confer with a view to resolving the matter informally. In the event the parties agree to attempt informal resolution of the matter, they shall file a joint submission asking for a suspension of the proceedings.

13. In the event no informal resolution is possible, by **5:00 p.m., Tuesday, 26 July 2016**, the parties shall file a jointly-signed submission responding under separate headings to each of the following issues. Where there is disagreement over an issue, fact or statement, the submission shall identify the parties' respective positions:

- a. A consolidated list of agreed legal issues (addressing, *inter alia*, the effect of the application of staff rule 13.1(d));
- b. A consolidated list of agreed facts in chronological order (reflecting, *inter alia*, whether the successful candidate for the contested post was a staff member of the Organization at the time of the selection exercise and, if so, the successful candidate's type of appointment (permanent, continuing, fixed-term, or temporary));
- c. A joint proposal as to the date(s) for a hearing on the merits, ensuring availability of their proposed witnesses;

d. Lists of witnesses that the Applicant and the Respondent intend to call, confirming whether the witnesses will appear in person and providing their contact information to the Tribunal. The parties shall also include a proposed order of appearance for their witnesses;

e. Brief statements of the evidence each party intends to elicit from their respective witnesses;

f. A consolidated, paginated bundle of legal authority relied upon by the parties in support of their submissions, including relevant case law of the United Nations Dispute and Appeals Tribunals, as well as the full text of any relevant administrative issuances;

g. An agreed bundle of documents which the parties intend to rely upon at the hearing. The bundle shall contain an index of the documents contained therein, with each page of the bundle clearly paginated for ease of reference.

14. At **3:00 p.m., Thursday, 28 July 2016**, the parties shall attend a case management discussion in preparation for a hearing on the merits.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 11th day of July 2016