



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Nerea Suero Fontecha

TRUPPIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON WITHDRAWAL OF AN
APPLICATION FOR SUSPENSION OF
ACTION**

Counsel for Applicant:
Natalie Dyjakon, OSLA

Counsel for Respondent:
Bart Willemsen, UNICEF

Introduction

1. On 23 November 2018, the Applicant, an Editor Communication Specialist at the P-4 level, step 9, in the United Nations Children’s Emergency Fund (“UNICEF”), filed an application for suspension of action during management evaluation pursuant to art. 13 of the Dispute Tribunal’s Rules of Procedure requesting that the “the decisions of the Administration to abolish her post and then to create and advertise a new and almost identical position at the same level” be suspended during management evaluation.

2. On 23 November 2018, the case was assigned to the undersigned Judge.

3. On 23 November 2018, the Registry acknowledged receipt of the application and transmitted it to the Respondent. The Tribunal instructed the Respondent to submit his reply by 4:00 p.m. on Tuesday, 27 November 2018, appending copies of the Applicant’s current contract, her job description and the decision to reclassify her post.

4. On 27 November 2018, the Respondent filed his reply, together with a copy of the Administrative Instruction, CF/AI/2016-003 Amend. 1 issued on 23 February 2017, stating, *inter alia*, that he “commits that no selection decision will be made prior to the completion of the management evaluation, which will address the abolition and, as such, the (underlying) re-classification [...]”.

5. By email of 27 November 2018, the Tribunal instructed the parties to attend a Case Management Discussion (“CMD”) at 10:30 a.m. on 28 November 2018.

6. At the 28 November 2018 CMD, the Applicant was represented by Ms. Natalie Dyjakon and the Respondent was represented by Mr. Bart Willemsen. The Tribunal noted that the Applicant requested the suspension of the implementation of two contested decisions pending management evaluation, namely (a) the abolition of the Applicant’s post and (b) the creation and advertisement of two newly advertised

posts, “Batch recruitment strategic planning specialist P4, NYHQ”, with a posting period from 8 to 20 November 2018. Counsel for the Applicant clarified and confirmed that, concerning the second contested decision, when contesting the decision to create and advertise two new and almost identical posts at the same level as her current post, the Applicant implicitly also challenged the entire recruitment process for these newly advertised post(s), which had started with the posts being created and advertised. Counsel for the Applicant also confirmed that the Applicant had applied for the relevant posts. At the Tribunal’s inquiry, Counsel for the Respondent reaffirmed and clarified the Respondent’s position(s) that UNICEF would assess all the aspects of the Applicant’s management evaluation request and that the Respondent committed not to take any direct or indirect adverse decisions regarding the Applicant’s contractual status during the management evaluation process. Counsel for the Respondent also indicated that he was informed that the posting period for the new positions had been extended for two additional weeks. The Tribunal expressed its trust that, in order to prevent future litigation, all the legal aspects related to the reclassification of the Applicant’s post, the abolition of her post, and the current recruitment process will be carefully reviewed in the light of the relevant legal provisions and the recent jurisprudence of the Dispute and Appeals Tribunals. In light thereof, the Tribunal commended both Counsel for their input and directed Applicant’s Counsel to seek instructions on whether the Applicant wished to pursue with her application and inform the Tribunal thereabout by 4:00 p.m. the same date (28 November 2018).

7. On 28 November 2018, at 2:37 p.m., the Applicant filed a request for withdrawal of application for suspension of action, stating that,

[1] The Applicant has received certain assurances from the Respondent in his Reply dated 27 November 2018 and during the case management discussion held on 28 November 2018. These include:

- a. that the Respondent will not make a selection decision prior to the completion of the management evaluation, which will address the abolition and the reclassification;

- b. the deadline for submitting applications for the New Post has been extended for an additional two weeks; and
- c. the Respondent will not make any major decision or take any legal steps in the recruitment process that would adversely affect the Applicant.

[2] In light of these assurances from the Respondent, the Applicant hereby seeks to withdraw her Application for a suspension of action pending management evaluation in Court File Number UNDT/NY/2018/071.

Background

8. Solely for the purpose of providing context to the present Order and without making any determination on the facts of the case, the factual background as set out in the application is presented here:

... [The Applicant] is currently serving as an Editor/Communication Specialist at the P-4 level at the United Nations Children’s Fund (UNICEF). The Applicant retains a fixed-term appointment.

... On or about 10 October 2018, [the Applicant] attended a meeting and was informed by the Director, Secretary of the Executive Board, [Ms. HKJ, name redacted] that two Editor posts, including her own, would be reclassified. During that meeting, [Ms. HKJ] also told [the Applicant] that the new post would be advertised.

... [Ms. HKJ] did not encourage [the Applicant] to apply for the position but instead stated words to the following effect, “*I don’t know your age, but you could take early retirement.*” [The Applicant] explained to [Ms. HKJ] that she did not want to take early retirement. [The Applicant] asked [Ms. HKJ] why she and the other Editor, [Ms. AA, name redacted], could not simply perform the new tasks and [Ms. HKJ] responded by stating that the position had changed significantly and that is why it needed to be advertised. [Ms. HKJ] also mentioned that there were “mitigation measures” to assist staff members whose posts were being abolished and she encouraged [the Applicant] to speak with Human Resources regarding this.

- ... That same day, [the Applicant] contacted Human Resources Representative, [Ms. BJ, name redacted] for her advice. A few days later, [Ms. HKJ] also approached [the Applicant] and asked if she had spoken with Human Resources and [the Applicant] confirmed that she had. A few days after that, [Ms. HKJ] approached [the Applicant] and asked if she had started looking for other positions and [the Applicant] confirmed that she had.
- ... Within the first week of the meeting that [the Applicant] had on 10 October 2018, [the Applicant] met with her supervisor, the Deputy Secretary, [Mr. RGV, name redacted]. During this meeting, [Mr. RGV] mentioned that he was of the view that the P-4 staff member in the new post would be doing, “*all the same editorial work that they are doing now.*”
- ... On 5 November 2018, [Ms. HKJ] emailed [the Applicant] and [Ms. AA], an advance version of the reclassified post [reference to annex omitted] from [Ms. HKJ] to [the Applicant] dated 5 November 2018).
- ... On 7 November 2018, [the Applicant] received a letter from [Ms. HKJ] informing her that her post would be abolished effective 7 May 2019 due to a “*change of programme requirements*” in the office [reference to annex omitted]. On this day, [Ms. HKJ] asked [the Applicant] to let her know right away if she found another post so that the office could plan ahead.
- ... On 8 November 2018, [Ms. BJ] sent [the Applicant] a link to the vacancy announcement for the new reclassified post, being a Strategic Planning Specialist at the P-4 level which was advertised that day (New Post) [reference to annex omitted]. She was informed that the job vacancy is open until 29 November 2018 [reference to annex omitted].
- ... After reviewing the requirements for the New Post, [the Applicant] approached [Ms. HKJ] and expressed her concern that the requirement of field experience would appear, on the face of the advertisement, to disqualify her from applying for the New Post considering that she did not have such experience. [Ms. HKJ] responded stating words to the following effect, “*that is just a requirement that is in all UNICEF jobs. I was not involved with that and HR put that in.*” However, [the Applicant] then spoke with [Ms. BJ] and was told that

[Ms. HKJ] insisted on that specific requirement being in the advertisement for the New Post.

... On 23 November 2018, [the Applicant] submitted a Management Evaluation Request challenging the decisions of the Administration to abolish her post and then to create and advertise a new and almost identical position at the same level [reference to annex omitted].

Conclusion

9. Taking into consideration that the Applicant has requested the withdrawal of her application for suspension of action, there is no longer any determination for the Tribunal to make on the application.

10. In light of the foregoing and without prejudice to future proceedings, if any,

IT IS ORDERED THAT:

11. The Applicant's request to withdraw the application for suspension of action is noted by the Tribunal and Case No. UNDT/NY/2018/071 is hereby closed.

(Signed)

Judge Alessandra Greceanu

Dated this 29th day of November 2018