



Before: Judge Joelle Adda
Registry: New York
Registrar: Nerea Suero Fontecha

WEIDMANN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON SUSPENSION OF ACTION
PENDING MANAGEMENT
EVALUATION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Yun Hwa Ko, UNFPA

Introduction

1. On 11 December 2020, the Applicant filed an application requesting urgent relief under art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure seeking to suspend, pending management evaluation the selection decisions for the positions of Human Resources Adviser, Policy and Corporate Staff Relations at the P-5 level ("P-5 Position") and Human Resources Specialist, Workforce Planning and Analytics at the P-4 level ("P-4 Position") within the Division for Human Resources ("DHR"), United Nations Population Fund ("UNFPA") Headquarters.

2. On 15 December 2020, the Respondent filed a reply contending that the application has no merit.

Factual background

3. The Applicant joined DHR, UNFPA Headquarters, in 2012.

4. In 2018, the Applicant assumed the role of Human Resources Policy Specialist at the P-4 level on a fixed-term appointment.

5. In August 2020, DHR began implementing a realignment exercise ("DHR Realignment") to, *inter alia*, resolve existing absences in critical functions as identified in an independent assessment of DHR and to align more closely with UNFPA's strategic plan.

6. On 10 August 2020, a DHR staff meeting was held to announce the DHR Realignment which involved a restructuring exercise consisting of a Phase 1 internal recruitment process and then a Phase 2 external recruitment process.

7. By a letter dated 15 September 2020, the Director of DHR, notified the Applicant that the post he encumbered, Human Resources Policy Specialist, post No. 41117, would be abolished due to the DHR Realignment. The letter advised the

Applicant that he would be retained for service by UNFPA until 14 March 2021, to provide him with time to conduct a job search.

8. The letter drew the Applicant's attention to internal vacancies pursuant to the Phase 1 process of the restructuring exercise.

9. The Applicant applied to the position of Human Resources Specialist, Policy and Complex Case Management, at the P-3 level ("P-3 Position"), the P-4 Position and the P-5 Position.

10. The Applicant was invited to the written exams for the P-3, P-4 and P-5 Positions.

11. On 21 October 2020, following the written exam for the P-4 Position, the Applicant was informed that he did not pass the written exam and that he would therefore not be moving forward in the selection process.

12. On 26 October 2020, following the written exams for the P-5 Positions, the Applicant was informed on that he did not pass the written exam and that he would therefore not be moving forward in the selection process for the P-5 Position.

13. In November 2020, the Director, DHR met with the Applicant and provided him with verbal feedback on the selection processes for the P-4 and P-5 Positions, including feedback from the evaluators of the respective written tests.

14. On 6 November 2020, the P-4 and P-5 Positions were advertised to external candidates pursuant to the Phase 2 process of the restructuring exercise.

15. Following a written assessment and a panel interview, the Applicant was selected for the P-3 Position. By a letter dated 4 November 2020 from the Director, DHR, the Applicant received the selection notice. He accepted it on 30 November 2020.

16. The Applicant assumed the duties of the P-3 Position as of 1 December 2020.

17. On 11 December 2020, the Applicant submitted his request for management evaluation contesting the non-selection decisions for the P-4 and P-5 Positions.

Consideration

18. Under art. 2.2 of the Dispute Tribunal's Statute and art. 13.1 of the Rules of Procedure, the Tribunal 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 case of particular urgency, and where its implementation would cause irreparable damage. The Dispute Tribunal can suspend the contested decision only if all three requirements have been met.

19. Having reviewed the papers, the Tribunal finds that the Applicant has failed to establish a case of irreparable damage or particular urgency for the reasons below.

Irreparable harm

20. The Applicant submits that once other candidates have been selected for the P-4 and P-5 Positions it would be impossible to reverse the contested non-selection decisions, even if the Management Evaluation or a subsequent Tribunal process would find in the Applicant's favour.

21. The Tribunal recalls that irreparable harm is a loss that cannot be adequately compensated through a monetary award (*Khalouta* Order No. 138 (NY/2014)). Depending on the circumstances of the case, harm to professional reputation and career prospects, harm to health, or sudden loss of employment may constitute irreparable damage.

22. The onus is, however, on the Applicant to demonstrate, with specificity, that irreparable damage will occur and must not be speculative (*Nwuke*, UNDT/2011/107). The Applicant has neither articulated nor provided evidence of any such harm. In this regard, the Tribunal notes that the Applicant's current employment is unaffected by the contested decisions. He remains employed with

UNFPA as a fixed-term appointment at the P-3 level. The Tribunal considers that while the Applicant did not pass the written tests for the P-4 and P-5 Positions, he is not estopped from applying for any other P-4 and P-5 level positions that may be advertised in the future.

23. Therefore, the Tribunal finds that the Applicant has not satisfied the requirement of irreparable damage.

Urgency

24. The Applicant submits that the matter is urgent as the selection process for both P-4 and P-5 Positions posts are currently ongoing, and therefore external candidates might be selected at any time soon.

25. The Dispute Tribunal has consistently held that urgency is relative and that each case regarding suspension of action will turn on its own facts, given the exceptional and extraordinary nature of such relief (see, for instance, *Farhadi* Order No. 131 (GVA/2017) and *Montecillo* Order No. 54 (NY/2019)). If an applicant seeks the Tribunal's assistance on an urgent basis, she or he must come to the Tribunal at the first available opportunity, taking the particular circumstances of her or his case into account (see, for instance, *Evangelista* UNDT/2011/212 and *Montecillo* Order No. 54 (NY/2019)). The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions. The requirement of urgency will not be satisfied if the urgency was created or caused by the applicant (*Delsol* Order No 143 (NY/2019)).

26. In the present case, the Organization provided written notice to the Applicant that he was not selected for the P-4 and P-5 Positions on 21 October 2020 and 26 October 2020, respectively. Yet the Applicant waited almost two months to file the application for suspension of action.

27. As an explanation for the delay, the Applicant cited his "good faith attempts to find a compromise solution" with the Director, DHR. The Respondent, however,

submits that the Applicant's discussions with the Director, DHR were unrelated to the non-selection decisions and therefore the explanation provided by the Applicant is not legitimate. In these circumstances, the Tribunal finds no legitimate reason to justify the Applicant's delay in filing the application, and that any alleged urgency at this stage is self-inflicted.

28. The Applicant has therefore not satisfied the requirement of particular urgency.

29. As two of the three elements for the grant of an order for suspension of action are not satisfied, the application fails and there is no need to review the Applicant's claim of *prima facie* to be unlawfulness.

IT IS ORDERED THAT:

30. The application for suspension of action is rejected.

(Signed)

Judge Joelle Adda

Dated this 18th day of December 2020