



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2020/046

Order No.: 201 (NY/2020)

Date: 22 December 2020

Original: English

**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

WHITE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON SUSPENSION OF ACTION  
PENDING MANAGEMENT  
EVALUATION**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
UNFPA

## **Introduction**

1. On 19 December 2020, the Applicant, a Human Resources Specialist at the P-4 level with the United Nations Population Fund (“UNFPA”), filed an application requesting, under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure, suspension of action pending management evaluation of the selection decisions for the positions of Human Resources Adviser, Talent Acquisition at the P-5 level and Chief, Career Development and Talent Mobility at the P-5 level within the Division for Human Resources (“DHR”), UNFPA.

## **Factual background**

2. In August 2020, the Director of DHR announced a new structure for the Division.

3. On 15 September 2020, the Applicant was notified that the post she encumbered would be abolished and that she would be retained for service by UNFPA until 14 March 2021, unless she were to be selected for one of the positions available in the new DHR structure.

4. Consequently, in October 2020, she submitted three applications for the posts in the new structure as follows: Human Resources Adviser, Talent Acquisitions at the P-5 level; Chief, Career Development and Talent Mobility at the P-5 level; and Human Resources Specialist, Career Development and Rotation at the P-4 level.

5. The Applicant was invited to the written exams for the above-mentioned three positions and took the written tests for these posts on 14, 15 and 16 October 2020, respectively.

6. On 21 and 23 October 2020, respectively, the Applicant was notified that she did not pass the written exams for the two P-5 positions.

7. The Applicant submits that from April 2017 until 1 December 2020, she has maintained a personal grade of P-5, while being budgeted against a P-4 position. She requested UNFPA to maintain this arrangement but she has not received any response.

8. On 18 December 2020, the Applicant submitted her request for management evaluation contesting the non-selection decisions for the P-5 positions.

### **Consideration**

9. 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.

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

### *Irreparable harm*

11. The Applicant presents three arguments in relation to irreparable harm requirement: (1) there will be reputational risk to UNFPA should one of its units fails to follow proper restructure policies and procedures; (2) once other candidates have been selected for the 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; and (3) her career development and future livelihood within the organization are directly affected as she will experience a reduction in pay and no opportunity for future growth in compensation at the current level.

12. 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. 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).

13. At the outset, the Tribunal notes that the Applicant does not contest the selection decision in relation to the above-mentioned P-4 position and that she does not submit that she faces loss of employment. Based on that, it can be inferred that she is not at imminent risk of losing her employment.

14. The Applicant has neither articulated nor provided evidence of any irreparable harm. In the event that the contested non-selection decisions are found unlawful, they can be rescinded, and compensation can be awarded. Therefore, it is not true that the contested decisions are irreversible and therefore will lead to irreparable harm. Further, the Applicant does not articulate how the finding of unlawfulness of the contested decision may cause her irreparable harm.

15. Moreover, the Applicant states that she will suffer a reduction in pay, but such alleged potential loss appears to be rather related to the Administration's decision on whether she can maintain a personal P-5 level, which is outside the scope of this case.

16. The Applicant claims that there will be no opportunity for future growth, but she is not estopped from applying for any other P-5 level positions that may be advertised in the future.

17. Therefore, the Tribunal finds that the Applicant has not satisfied the requirement of irreparable harm.

*Prima facie unlawfulness and urgency*

18. As the Applicant has not satisfied the requirement of irreparable harm, the application fails and there is no need to examine the other two conditions, namely *prima facie* unlawfulness and urgency.

IT IS ORDERED THAT:

19. The application for suspension of action is rejected.

*(Signed)*

Judge Joelle Adda

Dated this 22<sup>nd</sup> day of December 2020