



Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

DE LUCA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Tamar Gongadze, AS/ALD/OHR/UN Secretariat

Introduction

1. On 31 October 2024, the Applicant, a Chief Supply Chain Officer with the United Nations Verification Mission in Colombia (“UNVMC”) filed an application under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure for the Tribunal to suspend, pending management evaluation, the decision not to select her for the position of Chief of Mission Support in UNVMC under Job Opening no. 216407.

2. On the same date (31 October 2024), the Registry acknowledged receipt of the application and served it on the Respondent, indicating that the Tribunal had set the deadline for submitting his reply on 5 November 2024. The Tribunal further ordered that, in accordance with the Appeals Tribunal in *Villamorán* 2011-UNAT-160, the contested should not be implemented during pendency of the present proceedings and before it has adjudicated all matters of the present case.

3. On 1 November 2024, the Applicant filed some additional written documentation.

4. On 5 November 2024, the Respondent filed his reply. He contends that the application for suspension of action is not receivable as the contested selection decision had already been implemented before the filing of the application and that, in any event, none of the criteria for granting the application are fulfilled.

5. Later the same date (5 November 2024), the Applicant filed some further written documentation.

Background

6. After the Applicant had applied for Job Opening no. 216407 on 28 August 2023, she completed the written test, but as she, according to the Respondent, “scored below the passing mark”, she was not subsequently invited to the interview.

7. On 23 October 2024, the successful candidate for Job Opening no. 216407 was informed of his selection for the post through Inspira (the online jobsite of the United Nations). He was further requested to confirm by 30 October 2024 his “continued interest in and availability for his position”.

8. On 24 October 2024, the Applicant received a notification from Inspira informing her that she had not been selected for Job Opening no. 216407.

9. On the same date, the successful candidate was notified through Inspira that his “offer of appointment” was “available” for his “review and signature” in his “My Onboarding portal” on Inspira.

10. On 25 October 2024, the successful candidate was notified through Inspira that “we are pleased to confirm receipt of your acceptance of the offer of appointment”.

11. On 30 October 2024, the Applicant filed (a) her request for management evaluation with the Management Advice and Evaluation Section, and (b) the present application for suspension of action during management evaluation.

Legal framework

12. 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 cases of particular urgency, and where its implementation would cause irreparable damage.

13. The Dispute Tribunal can therefore only suspend the contested decision if it has not already been implemented. Otherwise, the Tribunal has no jurisdiction to do so, and the application would therefore not be receivable.

Has the contested decision already been implemented?

14. The Applicant contends that “[w]hile the Inspira selection took place on 24 October 2024, the promotion decision has not been implemented according to the current staff selection system, which says that such promotion [shall] become effective [on] the first day of the month following the decision, subject to the availability of the job and the assumption of higher-level functions”. She therefore claims that “the date of implementation might be 1 November 2024”.

15. The Respondent, on the other hand, submits that the contested decision “has already been implemented”, as on 23 October 2024, “UNVMC notified the selected candidate of his selection”. Under section 10.2 of ST/AI/2010/3 (Staff selection system), “the selection decision was implemented by operation of law with a formal notification of the selection”.

16. The Tribunal notes that in *Passarelli* Order No. 57 (NY/2020), the undersigned Judge provided her interpretation of sec. 10.2 of ST/AI/2010/3 and how to determine the time of implementation of a selection decision made under this Administrative Instruction. The Tribunal fully confirms the findings made in *Passarelli* Order No. 57 (NY/2020), which it will therefore restate below.

17. ST/AI/2010/3, which the parties agree governs the contested selection decision, stipulates that “[t]he decision to select a candidate shall be implemented upon its official communication to the individual concerned” (see sec. 10.2, first sentence). As a point of departure, the deciding moment for implementation of a selection decision is therefore “its official communication to the individual concerned”. Section 10.2, second sentence, then adds that “[w]hen the selection entails promotion to a higher level, the earliest possible date on which such promotion may become effective shall be the first day of the month following the decision, subject to the availability of the position and the assumption of higher-level functions”.

18. The Tribunal notes the different approaches that the Dispute Tribunal has taken in the past regarding the interpretation of sec. 10.2 and the meaning of the word

“effective” in the second sentence (see, for instance, *Finniss* Order No. 116 (GVA/2016) and *Wilson* Order No. 241 (NY/2016)). At the same time, the Tribunal notes the Appeals Tribunal’s jurisprudence on the formation of the employment contract according to which the determinative action is the issuance of the letter of appointment and that until then only a “quasi-contract” exists (see, *Al Hallaj* 2018-UNAT-810, paras. 38 and 39).

19. As this Tribunal interprets sec. 10.2, the implementation of the contested selection decision and the timing of when the resultant promotion becomes effective are two different matters. The implementation of a selection decision is when the successful candidate receives the “official communication” concerning her/his selection and can reasonably rely on it (see, for instance, *Sina* 2010-UNAT-094, which affirms the liability definition of *Sina* UNDT/2010/060, and *Cranfield* 2013-UNAT-367). The effectiveness of a promotion is instead a question of when the relevant staff member can actually benefit from this promotion in terms of, for instance, salary increase and other prerogatives associated with the post.

20. Regarding the formation of the employment contract, under the general principles of contract law, such contract would be formed upon the successful candidate’s unconditional acceptance of the job offer (similarly, see *Wilson*, paras. 22-32 and the Appeals Tribunal’s case-law referred to therein: *Sprauten* 2011-UNAT-111, *Iskandar* 2012-UNAT-248 and *Cranfield* 2013-UNAT-367). In the present case, the Applicant unconditionally accepted the job offer on 25 October 2024.

21. The Appeals Tribunal has, however, also held that “the employment contract of a staff member subject to the internal law of the United Nations is not the same as a contract between private parties” (see *Sprauten*, para. 24). In the present case, by an Inspira notification of 23 October 2024, which has all the characteristics of an official communication, the successful candidate was notified that he had been selected for the relevant position.

22. In this context, the Tribunal finds that the issuance of a letter of appointment is not important. In line with sec. 10.2 of ST/AI/2010/3, nowhere in the correspondence between UNVMC and the successful candidate is any reference made to the implementation of the selection decision being conditioned upon the issuance of such a letter of appointment. There is therefore no statutory or contractual basis for the Tribunal to make any other finding than that at the very latest, the selection was implemented on 23 October 2024.

23. As the Applicant filed the application to the Dispute Tribunal on 31 October 2024 and the selection had already been implemented at that time, the application for suspension of action is therefore not receivable.

Conclusion

24. The application for suspension of action is rejected as not receivable.

(Signed)

Judge Joelle Adda

Dated this 6th day of November 2024

Entered in the Register on this 6th day of November 2024

(Signed)

Isaac Endeley, Registrar, New York