
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/038

Judgment No.: UNDT/2012/002

Date: 6 January 2012

Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

Introduction

1. On 27 July 2011, the Applicant filed an Application for suspension of action in relation to the decision of Mr. Abdoulie Janneh, the Executive Secretary of the Economic Commission for Africa (ECA), to fill the post of Director,

Applicant filed the present Application on the same date.

Facts

2. The Applicant joined the United Nations in 2001 and is currently serving in Addis Ababa, Ethiopia, as Chief of Section, Office of Strategic Planning and Programme -5 position.

3. In a letter dated 24 June 2009 the Applicant wrote to the Secretary-General

7. On 12 October 2010 the Applicant submitted a request for management evaluation contesting his non-selection for the 2010 Director, RIITD post.

8. On 3 February 2011 the Applicant received a response from the Secretary-General who informed him that the evidence before the Secretary-General did not allow him to conclude that the Applicant was given full and fair consideration for the post and accordingly, the Applicant should be compensated. The Applicant however did not agree to be compensated only, but filed a case before this Tribunal registered as UNDT/NBI/2011/008, which is pending.

9. By memorandum dated 27 May 2011 the Executive Secretary informed the ECA staff that Mr. Joseph Atta-Mensah, who had been appointed to the 2010 Director, RIITD post, had been redeployed as Director, OPM, thus vacating the directorship of RIITD.

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14. The person chosen was Mr. Karingi, who had applied for the job opening

manager may recommend his/her immediate selection to the head of

21. Reference is also made to paragraph 3 of Chap

may immediately recommend the selection of a qualified roster candidate among

22. Relying on section 15.7(3) of the Instruction Manual the Respondent

selection without an interview and before the closing date of the

Section 15.7(3) of the Instruction Manual reads:

Hiring Managers may immediately recommend the selection of a qualified roster candidate from among the released rostered applications. Hiring Managers are not required to interview roster candi

setting in order to establish a sense of the candidate [sic] overall fit within the team/unit. In order to speed up the process, under such circumstances the *Hiring Manager* need not record his/her evaluation of the new non-rostered applications. Selection of a roster candidate is not required to go through a review by a Central Review body. One or preferably several roster candidates found suitable may be recommended for selection at this stage.

Consideration

23. Section 4.1 of ST/AI/2010/3 reads:

Immediate and anticipated job openings for positions of one year or longer shall be advertised through a compendium of job openings.

Whilst imposing an obligation to advertise a job opening, ST/AI/2010/3 at the same time allows in section 9.4 the hiring manager or head of department/office to recommend or select as the case may be, a rostered candidate. That appears to this Tribunal to be rather an odd situation.

24. If a job opening is advertised prospective candidates who meet the requirements of the job have a legitimate expectation, if not of being offered the position, at least of being considered and perhaps interviewed. The situation becomes even odder when we are faced with a situation where the job is filled before the deadline of the vacancy announcement has expired. It seems unfair, to say the least.

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unconditional acceptance by the selected candidate are, at least, required ², the contested decision in the present case was implemented on 13 July 2011, some two weeks prior to the filing of the present Application. It is well established that, where a contested decision has been fully implemented, suspension of action cannot be granted.³ In the present case, however, the Applicant could not have known of the implementation of the decision until after it took place. Such a situation raises the issue of the justification of having in the Statute of the Dispute Tribunal article 2.2 which provides for an interim injunction. If a staff member is notified of the decision not to appoint him after the selected candidate has been offered the position and accepted it, the staff member who has not been selected is powerless under article 2.2. His only remedy is to seek reparation by way of a substantive case.

Conclusion

30. The Application is dismissed.

(Signed)

Judge Vinod Boolell

Dated this 6th day of January 2012

Entered in the Register on this 6th day of January 2012

(Signed)

Jean-Pelé Fomété, Registrar, Nairobi

² UNDT/2011/190, paragraph 16.

³ See for example, *Tadonki* UNDT/2009/016; *Applicant* UNDT/2011/158; *Kweka* UNDT/2011/122.