



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/N 018/007

Order No.: 012 (NB. 012/007)

Date: 19 January 2008

Original: English

Introduction

1. The Applicant is a staff member at the United Nations Women (UN Women) Country Office in Jordan. She is an Operations Associate, and is employed on a fixed-term appointment at the G7 level. She is based in Amman.

The Application and Procedural History

2. On 18 January 2018, the Applicant filed an application for suspension of action against the Respondent's decision to exclude her from consideration for the post of Operations Manager. The Applicant is also challenging the Respondent's failure to make good faith efforts to identify a suitable position for her given the decision to abolish the Operations Associate post she currently encumbers.

3. The Application was served on the Respondent on 18 January 2018.

Submissions

4. It is the Applicant's case that the Respondent, having abolished her post, should have placed her against the post of Operations Manager, which is currently vacant and the functions of which she had been performing since January 2014.¹ The Applicant also contends that it is unlawful for the Respondent to preclude

13 of the Rules of Procedure, for the Tribunal to await the Respondent's response before the applicant's request is considered.

9. The procedures governing applications for suspension of action should not, as the Tribunal pointed out in *Applicant* UNDT/2011/158 at para. 8(e), be regarded, or used, as a dress rehearsal for a determination of the merits of an application, should a substantive application be made subsequently.

10. As the Tribunal stated in Order No. 006 (NBI/2018):

It is clear that the Statute does not require the Tribunal to make a definitive finding that the decision is in fact unlawful. The test is not particularly onerous since all the Tribunal is required to do at this stage is to examine the material in the application and to form an opinion as to whether it appears that, if not rebutted, the claim will stand proven. This means that the onus is on the Applicant to provide a sufficiency of material in order to satisfy the statutory test. Any such opinion is not a finding by the Tribunal and is certainly not binding should the matter go to trial on the merits. It is merely an indication as to what appears to be the case at the SOA stage. This does not mean that unsupported allegations and/or suspicions will suffice.

11. Article 2.2 of the Statute is intended to provide an uncomplicated and cost-effective procedure for suspending, in appropriate cases, an administrative decision, which may have been wrongly made, so as to give the Management Evaluation Unit sufficient time to consider the matter and to advise management. The process itself should not become unduly complex, time-consuming and costly for the United Nations or its staff members.

12. The Tribunal has previously held in *Wilson*² that:

[A]pplications for suspension of action have to be dealt with on an urgent basis and the decision should, in most cases, be in summary form. There is no requirement to provide, and the parties should not expect to be provided with, an elaborately reasoned decision either on the facts or the law. To do so would defeat the underlying purpose of a speedy and cost-effective mechanism. Moreover, the time,

² Order No. 327 (NY/2014).

effort and costs thereby saved by all those involved in the formal system of internal justice could be utilised to facilitate the disposal of other cases.

13. The Applicant is required to satisfy the Tribunal that the impugned decision appears *prima facie* to be unlawful, is urgent and will cause him/her irreparable harm if implemented. *All* three elements of the test must be satisfied before the impugned decision can be stayed.

Prima Facie Unlawfulness

14. The Applicant must satisfy the test that the decision appears *prima facie* to be unlawful. In other words, does it appear to the Tribunal that, unless it is satisfactorily rebutted by evidence, the claim of unlawfulness will succeed?³

15. It appears, on the basis of the information provided, that the impugned decision was made in accordance with the UNIFEM Human Resources Selection Guidelines. As UNAT observed in *Villamorán* guidelines are not law.⁴ Any decision that is not, or appears not to be, in full accord with the terms and/or underlying purpose of the principal instrument is, or will appear, *prima facie* to be unlawful.

16. The Tribunal concludes on the facts presented, accompanied by the relevant documents, that the Applicant has satisfied the test that the impugned decision appears *prima facie* to be unlawful.

17. As the Tribunal stated in *Khalouta*:

Whether this will be the final decision after a full exploration of the evidence and consideration of submissions, if an application on the merits is filed, does not affect the Tribunal's decision at this stage. Should the matter go to trial, the Respondent will have a full

³ *Wilson* Order No. 327 (NY/2014).

⁴ 2011-UNAT-160 affirming UNDT/2011/126. *See also Verschuur* 2011-UNAT-149; *Contreras* 2011-UNAT-150 and *Gueddes* 2014-UNAT-418.

opportunity to challenge any application on the merits, and it may well be necessary to conduct an oral hearing on the matter.⁵

Urgency

18. The Applicant applied for the re-advertised Operations Manager position on 12 November 2017. On 15 D

22. In the circumstances presented by the Applicant in this case, the Tribunal finds that the requirement of irreparable damage is satisfied.

23. All three elements for the grant of an Order for Suspension of Action are satisfied.

24. In the event that the Management Evaluation Unit upholds the impugned decision, and the Applicant files a substantive challenge before the Tribunal, the Tribunal will use its best endeavours to schedule the matter for an expedited consideration and disposal.

ORDER

25. The application for suspension of action is **GRANTED**.

26. The recruitment process for the post of “Operations Manager at the National Officer (Level C) NOC level funded by IB” is hereby suspended pending management evaluation.

(Signed)

Judge Goolam Meeran

Dated this 19th day of January 2018

Entered in the Register on this 19th day of January 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

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