

Case No.: UNDT/NBI/2021/098
Order No.: 254 (NBI/2021)
Date: 22 November 2021

Introduction

1. The Applicant is a staff member of the United Nations Support Office in Somalia (“UNSOS”). She filed an application on 21 November 2021 seeking

Receivability

8. A suspension of action is only possible regarding decisions that have not yet been implemented. There is rich jurisprudence of the Dispute Tribunal which stresses that, in order for the suspension of action to be a meaningful relief, implementation must not be seen in a mere notification of the dispositive part of a decision; rather, it is required that the impugned decision has produced irreversible consequences.¹ With regard to selection and promotion processes, it has been accepted that a decision is not implemented until the selected candidate has unconditionally accepted the offer.²

9. In the present case, the selected candidate confirmed her continued interest and availability on 18 November and the case was referred to the United Nations Regional Service Centre Entebbe (“RSCE”) on 19 November 2021, a Friday, for generation of an offer of appointment. There is currently no evidence before the Tribunal indicating that an offer of appointment has been generated by the RSCE and accepted by the selected candidate.

10. The application for suspension of action is therefore receivable.

Merits

11. Article 2.2 of the Statute of the Dispute Tribunal (Statute) and art. 13 of the Rules of Procedure (Rules) empower the Tribunal to grant an interim relief by way of a suspension of action in relation to an administrative decision that impacts on the contract or terms of employment of an individual provided the criteria of *prima facie* unlawfulness, urgency and irreparable damage are satisfied. Since the test is cumulative, the three elements must be satisfied for the Tribunal to grant this relief.

¹ *Harris* Order No. 135 (NBI/2017), *Kandil* Order No. 060 (NBI/2018), *Cox* Order No.150 (NBI/2018), *Gavazzo* Order 165(NBI) 2020.

² *Wang* UNDT/2012/080; *Murnane* UNDT/2012/128 quoting *Tiwathia* UNDT/2012/109; *Quesada-Rafaraso* Order No. 20 (GVA/2013); *Basaly* Order No. 296 (NY/2014); *Samra* Order No. 195 (GVA/2015); *Wilson* Order No. 147 (NY/2016); contrariwise *Nwuke* UNDT/2012/116.

relevant factors be considered and irrelevant not relied upon.⁴ Referring to selection processes, the “fair and adequate consideration” means that criteria which are relevant for the post must be taken into consideration and irrelevant ones must not be.

16. The Comparative Assessment Report’s conclusion that “[t]he panel discerned that the candidate is best left in his current role, key in fulfilling the mission human resource deliverables, especially now when the section is under-staffed” clearly has taken irrelevant criterion into consideration. The Organization’s competitive selection exercises and ensuing comparative assessment reports are about vetting the candidates against the requirements for the advertised position and not deciding pursuant to staffing convenience. Notwithstanding the strictly formal questionability of such criterion for assessment, a mere concept of denying promotion to a candidate because he or she is actually useful on the current job, would be the antithesis of several principles of human resources management in the Organization.

17. Secondly, it is apparent that in the selection process the Applicant was referred to as a male. In the recruitment process, gender is a relevant criterion according to ST/AI/2020/5 as well as a stated recruitment target of UNSOS. The Applicant had informed that, according to the laws of her country, she should, or at a minimum, could, be regarded as female. It is thus obvious that a relevant criterion has not been taken into consideration.

Urgency

18. The Tribunal finds the matter to be urgent because the case was forwarded to the RSCE on 19 November 2021 for generation of an offer of appointment. This means that an offer of appointment may be issued and accepted by the selected candidate imminently.

⁴ *Sanwidi* 2010-UNAT-084.

Irreparable harm

19. The Tribunal is satisfied that implementation of the selection decision at this stage would harm the Applicant's career prospects in a way which could not be compensated financially at a later stage.⁵

ORDER

20. The application for suspension of action is granted pending management evaluation.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 22nd day of November 2021

Entered in the Register on this 22nd day of November 2021

(Signed)