



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

BASALY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat
Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. On 28 October 2014, the Applicant, an Assistant Supervisor at the G-6 level in the Arabic Text Processing Unit (“ATPU”), the Department for General Assembly and Conference Management (“DGACM”), filed an application for suspension of action pending management evaluation, pursuant to art. 2.2 of the Statute of the Dispute Tribunal and art. 13 of its Rules of Procedure, of the decision “not to select [him] for the post of Senior Editorial Desktop Publishing Assistant (Arabic)” at the G-7 Level in ATPU (“the Pos”.v

5. The Applicant has served with the Organization since 1985 and has encumbered his current position since 2007.

11. On 28 October 2014, the Applicant filed a request for management evaluation by which he requests that the contested administrative decision be assessed by the Management Evaluation Unit (“MEU”).

Consideration

- b. The Applicant has submitted a request for management evaluation of the contested decision, which evaluation is currently pending;
- c. The contested decision has not yet been implemented;
- d. The impugned administrative decision appears *prima facie* to be unlawful;
- e. The case is of particular urgency; and
- f. Its implementation would cause irreparable damage.

16. In his request for management evaluation and his application to the Tribunal for suspension of action, the Applicant contests a decision not to select him for the Post. The first requirement is therefore satisfied.

17. It follows from the standard form for request for management evaluation which the Applicant submitted to MEU on 28 October 2014 that he has requested that the contested decision undergo management evaluation. In lack of any contradictory information, the Tribunal therefore finds that management evaluation is currently ongoing and that the second requirement is satisfied.

Implementation of the decision

18. Following an application for suspension of action pursuant to art. 2.2 of the Statute of the Dispute Tribunal, the Tribunal may “*suspend*, during the pendency of the management evaluation, *the implementation* of a contested administrative decision” (emphasis added). This means that if the contested administrative decision has already been “implemented” there no longer is a decision that the Tribunal can suspend.

19. The present case concerns a non-selection decision and the question to be determined here is therefore when such a decision is implemented. In the online

Oxford dictionary (english.oxforddictionaries.com) the word “implementation” is defined as “the process of putting a decision or plan into effect; execution”.

20. The Tribunal considers that, if part of the same selection process, the selection of a successful candidate and the non-selection of other recommended candidate(s) produce legal effects simultaneously. Therefore, the non-selection decision of a recommended candidate is to be considered implemented at the same time as the selection of the successful candidate.

21. In the present case, on 27 October 2014, the selected candidate was informed through Inspira that she had been selected for the Post. The selected candidate was also asked to confirm her continued interest and availability for the position within five business days of receiving the notification. On this date, the Administration thereby presented the selected candidate with an offer for employment for the Post. On the same date, the selected candidate responded that she was confirming her interest in and availability for the Post, thereby notifying the Administration of her unconditional acceptance of the conditions of the offer within the given time limit.

22. An employment contract is an agreement, which is established by an offer and a subsequent acceptance by the contracting parties. Regarding the timing of the formation of an employment contract, the Appeals Tribunal in *Sprauten* 2011-UNAT-111 determined that “a contract is formed, before issuance of the letter of appointment, by an unconditional agreement between the parties on the conditions for the appointment of a staff member, if all the conditions of the offer are met by the candidate”.

23. The Tribunal finds that the moment the process of implementing the selection decision comes to an end and is to be considered final is when the employment contract is formed (this is also the employment contract to which art. 2.1 of the Statute of the Dispute Tribunal refers). The selection decision is therefore implemented at the juncture at which the Administration and the staff member formally establish an employment relationship by reaching an agreement under which

each one of them derives legal rights and obligations. Consequently, the critical moment for the implementation of the selection decision is the time when the Administration receives the staff member's unconditional acceptance of the offer.

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27. The Tribunal therefore finds that, since the contested decision was already implemented before a judgment on suspension of action could be rendered, the third condition for it to hear and pass such judgment under art. 2.2 of the Statute of the Dispute Tribunal is not fulfilled. It is th