



## **Introduction**

1. On 15 January 2016, the Applicant, a Chief of Operations at the P-5 level with the United Nations Support Office in Somalia , currently on special leave

screen shot of an incomplete text of an email inviting the Applicant to complete a 2 hours and 30 minutes online written test for the Post as well as providing him with some instructions on how to do so. The Respondent submits that return the written assessment within the time specified for completion

that the Administration cannot provide additional time to any candidate to complete

However, in his response, the Respondent failed to provide full information and documentation on what was the time limit for the candidates, including the Applicant, to complete and return the online written test.

5. In Order No. 4 (NY/2016) dated 22 January 2016, the Tribunal instructed the Respondent to file and serve, by 12:00 p.m. (noon), Monday, 25 January 2016, a copy of the full message sent private email on 23 September 2015 at 9:05:39 a.m., including the time limit for completing and returning the online written test for the Post.

6.

he provided some additional submissions.

7. On 25 January 2015, the Respondent requested an extension of the time limit provided in Order No. 4 (NY/2016) till 12:00 p.m. (noon), Wednesday, 27 January 2016, as it had not been possible to retrieve the requested email message. By Order No. 16 (NY/2016) dated 16 February 2016, the Tribunal granted the request in part, extending the time limit till 9:00 a.m., Wednesday, 27 January 2016 for the Respondent to file all relevant information and documentation on what the time limit was for the candidates, including the Applicant, to complete and return the online written test for the Post, including a copy of the full email message sent to the Applicant's personal email on 23 September 2015 at 9:05:39 a.m.

8. By Order No. 17 (NY/2016) dated 27 January 2016, the Tribunal further ordered the Respondent to file all relevant information and documentation on the

current stage of the relevant selection process for the Post by 9:00 a.m., Wednesday, 27 January 2016.

9. As per Orders No. 16 and 17 (NY/2016), on 27 November 2016, the Respondent filed a submission in which he stated that he had not been able to retrieve further documentation but provided the requested information as follows:

Order 16:

submission of 25 January 2015, the written assessment for the position was administered by the Exam and Test Section (ETS) in OHRM. The ETS used Verint/Vovici platform (through: assessments@un.org) to administer the written assessment exercise. The documentation produced at R/5 to the

Submission, is the full record retained by ETS verifying that the test was sent to the Hotmail address. Accordingly, the best evidence available to the Respondent has been produced to the Tribunal.

In addition, ETS has requested the Office for Information and Communications Technology (OICT) and the Verint Support System (VSS) to obtain additional evidence tracking the E-Mail. Currently, VSS is seeking to retrieve data from the internal servers that support the system to track the E-Mail. They have been advised of the urgency of the matter and the Respondent has been assured that they are making their best endeavours to retrieve the information as soon as possible. Despite these efforts, to date, VSS has been unable to obtain the data. As soon as this information is accessed, it will be provided to the Tribunal.

The Respondent confirms that the E-Mail was sent to the Applicant on 23 September 2015 and he was informed that the assessment link was active and he could take the assessment until Friday 25 September 2015 at 11 A.M. (New York Time). These instructions are verified by the E-Mail, which will be produced as soon as it is available to the Respondent.

Order 17:

has been submitted to the Central Review Body (CRB) for review and endorsement. The CRB is currently conducting its review.

10. Later the same date, at 12:27 p.m., the Respondent filed an additional submission in which he informed that:

On 27 January 2016, in response to Order No. 17 (NY/2016), the Respondent informed the Tribunal that the list of recommended applicants for the position of Chief, ATS, D1, had been submitted to the Central Review Body CRB for review and endorsement. Subsequent to this filing, at around 10am this morning, the Executive Office of the Departments of Peacekeeping Operations and Field Support received notification that the CRB had endorsed the selection process.

On 29 November 2015, the Under-Secretary-General for Field Support (USG/DFS) made a conditional selection decision of one of the candidates for the position subject to the CRB endorsing the selection exercise. Upon endorsement by the CRB, this conditional selection decision became final. Accordingly, the selection exercise is completed and a selection decision has been made.

The Respondent will not implement the selection decision prior to receiving the ruling of the Tribunal in this matter.

11. At 4:08 p.m. on the same date, the Respondent filed a further submission with the following content:

On 27 January 2016, in response to Order No. 16 (NY/2016), the Respondent informed the Tribunal that the Verint Support System (VSS) located in Valencia, Spain, was seeking to obtain additional evidence tracking the e-mail sent to the Applicant on 23 September 2015 (E-Mail). Appended a

## **Background**

12.

the documentation on file.

13. On 19 June 2015, the Applicant applied for the Post, Job Opening No. 42096, Chief of Air Transport Section at the D-1 level, through Inspira (the online United Nations jobsite)

application, the Applicant noted his email address as his United Nations address and also indicated his personnel email account, which is listed as an alternative account in his Inspira profile.

14. At an unknown time, before 23 September 2015, the Exam and Test Section in the Office of Human Resources Management ( ETS , which was

United Nations email address. The Respondent further submits that:

In response, ETS/OHRM received a delivery failure notification. Despite the terms of the Manual for Applicants, ETS/OHRM proactively undertook steps to identify an alternative email address for the Applicant. Specifically, ETS/OHRM reviewed the Applicant's data and identified the Applicant's alternative Hotmail Address , then contacted the office of the Hiring Manager to verify that this Hotmail Address was active and in use. The office of the Hiring Manager confirmed that the Applicant had recently communicated with them using the Hotmail Address.

Albeit that the instructions to candidates indicate that circulation of the test will be limited to the email address nominated as

September 2015 at 9:05:39 a.m., the written test was sent email address along with an invitation to complete it. According to the submissions of the Respondent, the deadline for completing the test was on 25 September 2015.

16. In his 24 January 2016 submission, the Applicant contends that,

While a Respondent has produced a screen shot of the test campaign status and the details written in the email, there is no evidence of a delivery receipt and or read receipt. With evidence of either the Applicant would immediately withdraw the case. The Respondent clearly states the Administration had received a delivery failure to the [United Nations] email address; therefore, a delivery receipt should also be available for the email sent to the Hotmail account. While the screen shots show an input, as with many emails, there are occasions

Additionally, I notice on the screen shot of the actual drafted email there are options for another 4 reminder emails. If there was not an used?

17. On 29 November 2015, the Under-Secretary-General for Field Support made

20. On 15 December 2015, the Applicant responded via email to the DPKO/DFS staff member, stating that,

Re [the Post] I never received an invite for the test. My Inspira application clearly stated that my contact was my hotmail account. If the invite was sent mistakenly to my UN lotus account it was deactivated in UNSOA and my new OUTLOOK account has only been recently re-opened.

21. On the same date, the DPKO/DFS staff member responded the Applicant by email the recruitment, tests etc were done by the hiring manager, and unfortunately it is too late

22. On 28 December 2015, of relevance to the present case, the Applicant emailed a number of United Nations staff members as follows:

Lastly, and more importantly, referring to the email below concerning the D1 Chief of Air



indicates that he submitted the request on 15 January 2016, which the Respondent does not contest in his submissions.

24. On 27 January 2016, the Executive Office of the Departments of Peacekeeping Operations and Field Support received notification that the CRB had endorsed the selection process. According to the Respondent, the selection decision will not be implemented prior to receiving the ruling of the Tribunal in the present case.

### **Consideration**

#### *The competence of the Dispute Tribunal*

25. The United Nations Appeals Tribunal ruled in *O'Neill* 2011-UNAT-182 that the UNDT is competent to review its own decisions. The Tribunal is therefore mandated to review its competence.

26. Pursuant to art. 2.2 of its Statute, the Dispute Tribunal:

filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of the appeal.

27. Article 8.1(1) of the Statute is applicable and receivable if:

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required;

28. Staff rule 11.2 (Management evaluation) of ST/SGB/2013/3 (Staff Rules and Staff Regulations of the United Nations) provides that:

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment;

employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

29.

The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

30. The Tribunal considers that, for an application for suspension of action to be successful, it must satisfy the following cumulative conditions:

a. The Applicant requested management evaluation of the contested decision







Transport LSD, you were short listed and invited to take the written test, and the system sho

43. The present application for suspension of action was filed on 15 January 2016, a month after the date when the Applicant was first informed about the status of his candidacy for the Post. The Applicant has provided no reasons as to why he waited nearly four weeks to file the management evaluation request and the application for suspension of action. The Tribunal further notes that the Applicant indicated in his email from 28 December 2015 that he is planning to submit a case to the MEU for a suspension of action against the recruitment, but that this filing was only made two weeks later.

44. The Tribunal concludes that, also in the light of relevant jurisprudence, the urgency in the present case is self-created and the application therefore fails to meet the test of urgency.

45. Since one of the cumulative conditions required for ordering temporary relief Rules of Procedure has not been met, the Tribunal does not need to examine the remaining conditions, including the implementation of the decision, *prima facie* unlawfulness and irreparable damage.

### **Conclusion**

46. In the light of the foregoing, the Tribunal ORDERS:

The application for suspension of action is rejected.