	UNITED NATIONS DISPUTE TRIBUNAL	Case No.: UNDT/NY/2016/052
		Order No.: 241 (NY/2016)
		Date: 19 October 2016
		Original: English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

WILSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON AN APPLICATION FOR
SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

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

confirmed that I was applying and being considered as a rostered (RM) applicant. …

urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

7.   Article 8.1(c) of the Tribunal's Statute states that an application shall be receivable if: "… [a]n applicant has previously submitted the contested administrative decision for management evaluation, where required;

8.   Article 13.1 of the Tribunal's Rules of Procedure states:

> 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.

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

a.   The application concerns an administrative decision that may properly be suspended by the Tribunal;

b.   The Applicant requested management evaluation of the contested decision, which evaluation is ongoing;

c.   The contested decision has not yet been implemented;

d.   The impugned administrative decision appears *prima facie* to be unlawful;

e.   Its implementation would cause irreparable damage; and

f.   The case is of particular urgency.

Consideration

Whether the application concerns an admin

14.   The Tribunal concludes that the findings in *Ishak* 2011-UNAT-152 are no longer valid in the light of the latest jurisprudence with regard to promotion cases, according to which every stage of the selection procedure is subject to judicial

contractual relationship between the Organization and an external candidate does not exist before the offer has been accepted by the selected external candidate.

20.   Furthermore, the Applicant submits that as the selected candidate has not accepted the position and the release of applicant has not been negotiated, the decision has not been implemented and the selected candidate is currently employed at the P-5 level for which reason her selection for a post at the D-1 level constitutes a promotion.

21.   In response, the Respondent indicates that the present selection process was governed by ST/AI/2010/3 and that section 10.1, first sentence, provides that "[t] he decision to select a candidate shall be implemented upon its official communication to the individual concerned. The Respondent claims that the selection decision has been implemented and he refers to judgment *Timwathia* UNDT/2012/109, upheld by the Appeals Tribunal on appeal in *Timwathia* 2013-UNAT-327. As for *Finniss and Wilson*, the Respondent submits that the Dispute Tribunal's decisions in these cases are currently under appeal and therefore not persuasive jurisprudence.

22.   The Tribunal notes that it follows from the consistent jurisprudence of the Appeals Tribunal that the principle of *stare decisis* applies to the Dispute Tribunal, which is therefore bound by the case-law of the Appeals Tribunal (see, for instance, *Igbinedion 2014-UNAT-410* and *Hepworth* 2015-UNAT-503). The Tribunal considers that there is no binding legal effect of other Dispute Tribunal's decisions/orders issued in similar cases which are currently under appeal and not yet confirmed by the Appeals Tribunal.

23.   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".

24.   In the present case, the selected candidate, a P-5 level United Nations staff member, was informed by the Office of Information and Communication Technology

on 11 October 2016 that she had been selected for the D-level 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 11 October 2016, the Administration thereby presented the selected candidate with an offer for employment for the relevant post. On 3 October 2016, the selected candidate responded that r tss andi16.9,1.725 TDg c4 Tc .0387 Tw [(and464)8.8(i)-1.r6(te3(n. yitific.2(nis

Conclusion

34.   In the light of the forgoing, the Tribunal ORDERS:

The application for suspension of action is rejected.

(*Signed*)

Judge Alessandra Greceanu

Dated this 19th day of October 2016