



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NY/2017/069  
Order No.: 140 (NY/2017)  
Date: 24 July 2017  
Original: English

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**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

KAMARA-JOYNER

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON SUSPENSION OF ACTION**

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**Counsel for Applicant:**

Natalie Dyjakon, OSLA

**Counsel for Respondent:**

Alister Cumming, ALS/OHRM

## **Introduction**

1. On 14 July 2017, the Applicant, a Conflict Resolution Officer at the P-4, stfTJETBT1 0 0 1 153.5

5. On the same day, the Tribunal requested that the Respondent file a copy of a document, the Human Resources Action ( HRAR ) form referred to, but omitted, in Annex requested document on 19 July 2017.

6. that the Applicant wished to file further submissions in support of the application for suspension of action. By Order No. 135 (NY/2017) dated 19 July 2017, the Tribunal ordered the Applicant to :00 p.m. on Wednesday, 19 July 2017.

7. Th July 2017.

8. By Order No. 139 (NY/2017) dated 21 July 2017, the Tribunal ordered the last response, providing further particulars together with relevant documentation, which the Respondent duly filed. On the same day, the Applicant submitted an additional filing responding to the , maintaining that the contested decision has not been implemented.

## **Background**

9. In her application for suspension of action, the Applicant presents the facts as follows:

Conflict Resolution Officer at the Office of the United Nations w York at the P-4 level. She holds a Fixed-Term appointment.

On 1 October 2016, [the Applicant] was temporarily reassigned to serve as an Acting Regional Ombudsman in Vienna for

an initial period of three months which was extended to a period of six  
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- a. This Tribunal may order a suspension of the implementation of an administrative decision pending management evaluation if it is satisfied that: (i) implementation of the impugned decision will cause irreparable harm, (ii) administrative decision is *prima facie* unlawful; and (iii) the matter is urgent.

*Implementation of the impugned decision will cause irreparable harm*

- b. It is trite law that loss which can be adequately compensated through a monetary award will not constitute irreparable damage justifying a suspension of action. Nonetheless, this Tribunal has found that harm to professional reputation and career prospects, or harm, or sudden loss of employment may constitute irreparable damage. In the instant case, if the impugned decision is implemented, the Applicant will suffer harm with respect to career prospects. Specifically, she will lose the opportunity to advance her career as a Regional Ombudsman in Vienna. Such harm cannot be compensated for by a monetary award.

- c. The implementation of the decision, which was made on a discriminatory basis, would adversely affect her personally and she is unlikely to have the confidence to apply for future posts in European duty stations.

- d. The selection process was unfair and not transparent and, as a result,   
tion and in particular   
the Office of the Ombudsman.

*Prima facie unlawfulness*

- e. It is well-established that administrative decisions must be made on proper reasons and the Administration has a duty to act fairly, justly and transparently in dealing with its staff members, including in matters of appointments, separation and renewals.



f.

the post was clearly discriminatory against her, namely for the following three reasons:

- i.

k. Accordingly, there was evidence of bias in the selection process in that she was discriminated against and effectively excluded from the recruitment process. Moreover, she had to provide proof from Inspira that she had applied for the post as she was informed that no application had been received from her. In consequence, there are serious and reasonable doubts about the lawfulness of the decision, specifically the process by which she was excluded on account of her race. Such a decision is *prima facie* unlawful.

*Urgency*

l. Pursuant to

result, believed that the matter would be re

the date that an agreement is reached between the parties establishing an employment relationship.

s. The Dispute Tribunal noted in *Sareva* Order No. 142 (GVA/2017), that an email notification was sent to the selected candidate and found that, reference was made to the terms and conditions of appointment, nor to the expected date of entry on duty. Absent any agreement on these fundamental elements of an offer of appointment, the contested decision cannot be considered as having

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offer of appointment, letter of appointment and email correspondence to the selected candidate;

b. Any communications sent to UNOV regarding the selection of the selected candidate, her travel to Vienna and commencement date; and

c. The Personal History Profile of the selected candidate.

16. In \_\_\_\_\_ applicant contends that no documentation has been filed which would indicate that a formal offer has been made to the selected candidate and that the offer was formally accepted. The Applicant, separate from Counsel, submitted that:

a. In order for a selection decision to be concluded, the Executive Office is required to authorise the selection in UMOJA and this was not done by 17 July 2017;

b. The Executive Office had not signed off on the selection decision by 17 July 2017;

c.

## **Respondent**

17. \_\_\_\_\_ in response to the application, limited to the question of receivability, may be summarized as follows:

a. The contested decision has already been implemented. At a meeting held on 23 May 2017, the selected candidate was notified of her selection which was announced to UNOMS staff on 16 June 2017.





d. The Applicant reliance on section 4 of ST/AI/2010/4/Rev.1 is misplaced. That section applies to new staff members receiving a temporary appointment. As no new letter of appointment was to be issued, medical clearance is not required.

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already on 24 June 2017. UNOV was notified of her arrival on that same day.

t the selected



3.7 The selected candidate shall be offered a temporary appointment unless he/she already holds another type of appointment, in which case the following rules apply:

(a) Candidates holding a permanent or continuing appointment would retain their permanent or continuing appointment and will be assigned to the position to be temporarily encumbered;

(b) Candidates holding a fixed-term appointment will retain their fixed term appointment and will be assigned to the position to be temporarily encumbered for a period not exceeding the duration of their fixed-term appointment.

25. The selected candidate in the instant matter is not a new staff member and holds a permanent appointment and was assigned to the position in Vienna. Section 3.7(a) of ST/AI/2010/4/Rev.1 contemplates the temporary assignment of such a permanent staff member who continues to retain his or her permanent appointment under his or her permanent contract.

26. The implementation of the contested decision was completed when the selected candidate entered into official travel status on 15 July 2017. Consequently, as the contested decision in this case has been implemented, the Tribunal is not in a position to order its suspension.

27. The Tribunal notes that the Applicant highlights a number of procedural irregularities relating to the implementation of the contested decision. In this regard, the Appeals Tribunal held in *Castelli* 2010-UNAT-037 (para. 26) as follows:

. Where the administration commits an irregularity in the recruitment procedure, it falls to it to take such measures as are

grant.

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32. Accordingly, when dealing with interdict proceedings, often there is no time for the Tribunal or parties to entertain extensive production requests as it may delay the proceedings well beyond the statutory five-day period. Therefore, when appearing before the Tribunal parties should bear in mind that an application or reply may well stand or fall on the initial papers filed. It is only in particular cases that the Tribunal will find it necessary to order the parties to make further submissions or document productions in the context of urgent proceedings.

33. Therefore, parties approaching the Tribunal for a suspension of action order must do so on a genuinely urgent basis, and with sufficient information for the Tribunal to preferably decide the matter on the papers before it. In particular, a  
ible in all relevant respects,  
but also bearing in mind that the matter is not at the merits stage at this point of the proceedings.

34.

not file or seek leave to furnish countervailing papers such as to clarify the position and facilitate the conduct of this matter. As a result, much valuable time was spent reviewing a lengthy discernable factual background, and seeking additional submissions of the Respondent in order to properly adjudicate the final outcome.

**Order**

36. The impugned decision having been implemented, the application for suspension of action pending management evaluation is rendered impossible, and the application for suspension of action is rejected.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 24<sup>th</sup> day of July 2017