
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/096

Order No.: 224 (NY/2017)

Date: 9 October 2017

Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

NEMETH

Introduction

1. On 2 October 2017, the Applicant, a Security Sergeant at the S-4 level, step 8, with the Security and Safety Service in the Department of Safety and Security (“SSS/DSS”), filed an application under art. 2.2 of the Dispute Tribunal’s Statute as read with art. 13 of the Rules of Procedure, for the suspension, pending management evaluation, of the decision for the “[c]ontinuation of a compromised promotion exercise”.
2. The same date (2 October 2017), the Registry acknowledged receipt and, upon the instruction of the undersigned Judge, requested the Respondent to file a reply by 5:00 p.m., 4 October 2017.
3. On 4 October 2017, the Respondent filed his reply stating that on 3 October 2017, the Management Evaluation Unit (“MEU”) had determined that the Applicant’s request for management evaluation was not receivable as no final selection decision has been made.
4. The Respondent therefore contends in his reply that the Tribunal “does not have jurisdiction to issue an order suspending the contested decision” as the Applicant’s request is no longer pending management evaluation.

Background

5. The Applicant presents the facts as follows:
 - ... On 4th August 2017, applicant sat an Exam for promotion to Lieutenant within the Safety and Security Service, Department of Safety and Security. All applicants were given a Unique assessment letter to identify each candidate for the propose of transparency.
 - ... On Thursday, 28 September 2017 I received an email from [Ms. NK, name redacted] that [Mr. MB, name redacted] Chief

of Service of the Safety and Security service have requested to meet all candidates to the recently written promotion exam on Thursday, 28 September regarding the Lieutenant promotion

6. On 2 October 2017, the Applicant filed her request for management evaluation of the contested decision with the MEU.

7. On 3 October 2017, the MEU rejected the Applicant's request for management evaluation on the basis that it was not receivable, arguing that it is "premature" because the Applicant has "not received a final notification of [her] non-selection".

8. The Applicant's principal contentions may be summarized as follows:

Prima facie unlawfulness

- a. Referring to staff regulation 4.2, the discriminate apportioning of exam papers to names without any bases of identifying who wrote the exam compromises the integrity of the exam and hence renders such application null and void;
- b. To promote efficiency and integrit

that, pursuant to art. 2.2 of its Statute, the Dispute Tribunal may only suspend the implementation of a decision “during the pendency of the management evaluation”, referring to *Igbinedion* 2011-UNAT-159, para. 23.

Conclusion

Legal framework

10. Article 2.2 of the Statute of the Dispute Tribunal provides (emphasis added):

... The Dispute Tribunal shall be competent to hear and pass judgement 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. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

11. Thus, in accordance with art. 2.2, the Tribunal may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The Tribunal can suspend the contested decision only if all three requirements of art. 2.2 of its Statute have been met.

12. It also follows that the suspension of action of a challenged decision under art. 2.2 may only be ordered when management evaluation for that decision has been duly requested and is still ongoing (see, for instance, *Igbinedion*

Generally speaking

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impacted as she is disqualified from the ongoing exercise. Whilst preparatory decisions are not normally reviewable, there are serious allegations regarding the legality of the decision in this instance, allegedly tainting the process thus far reached. Is such decision not reviewable?

23. Nevertheless, the Tribunal wants to make it clear that the above are only observations and since management evaluation has already been rendered, the Tribunal will not entertain this matter further.

Order

24. There being no ongoing management evaluation, the application for suspension of action is dismissed.

(Signed)

Judge Ebrahim-Carstens

Dated this 9th day of October 2017