



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

CHAWLA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON AN APPLICATION
FOR SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Steven Dietrich, Nairobi Appeals Unit, ALS/OHRM

Introduction

1. On 11 April 2011, the Applicant, a staff member of the United Nations Mission in Liberia (“UNMIL”), requested management evaluation of the decision not to place him on the roster upon the conclusion of the recruitment exercise for the post of Chief Supply Officer at the P-5 level under vacancy announcement (VA) 424630. On 14 April 2011, he filed an application for suspension of action in relation to the same decision with the United Nations Dispute Tribunal (“the Tribunal”).

2. On 14 April, the application was served on the Respondent and he was given the opportunity to file comments, if any, by 15 April 2011. On 15 April 2011, the Applicant submitted an amended application for suspension of action and requested that his application of 14 April 2011 be disregarded. The amended application was served on the Respondent on 15 April 2011. He submitted his reply and relevant documentary evidence on the same day.

3. After a careful review of the submissions of the parties, the Tribunal did not deem an oral hearing to be necessary in this matter.

Relevant facts

4. The Applicant joined the Organization in 2001 as a Contracts Management Officer at the P-3 level in the United Nations Organization Mission in the Democratic Republic of the Congo (“MONUC”). In September 2004, he was selected for the post of Chief, Fuel Unit at the P-4 level in MONUC. On 21 November 2007, he was reassigned from MONUC to the United Nations Mission in the Central African Republic and Chad (“MINURCAT”) as the Chief Supply Officer at the P-4 level. On 31 October 2010, he was provisionally reassigned from MINURCAT to the United Nations Mission in Liberia (“UNMIL”) as a Supply Officer at the P-4 level.

5. On 13 August 2010, generic vacancy announcement 424630 (“GVA 424630”) was issued for the post of Chief Supply Officer at the P-5 level. The purpose of this

GVA was to create a roster of qualified candidates for anticipated and immediate job openings within various field missions administered by the Department of Peacekeeping Operations (“DPKO”). The Applicant applied for GVA 424630 on 20 August 2010 and was interviewed on 19 November 2010 by an Interview Panel.

6. The Interview Panel was comprised of the Chief of Integrated Services Section of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), the Chief Supply Officer of the United Nations Interim Force in Lebanon (“UNIFIL”) and the Chief of Contracts Management of the African Union - United Nations Hybrid Operation in Darfur (“UNAMID”). The Chief, Supply Operations, Logistics Support Division (“LSD”), Department of Field Support (“DFS”), was also present during the interview as an observer on behalf of DFS.

7. Subsequent to the competency-based interviews, the Interview Panel prepared a list of qualified candidates for inclusion on the roster for GVA 424630. The Applicant was not included on this list, which was then transmitted to the Field Central Review Board (“FCRB”) for review. On 5 April 2011, the FCRB endorsed the list of recommended candidates and they were placed on the roster for the post of Chief Supply Officer at the P-5 level.

8. On 8 April 2011, the Applicant received an email from the Recruitment Unit of the Field Personnel Division (“FPD”), DFS, informing him that his candidacy for VA 424630 was not successful. He wrote to FPD/DFS the same day to request a reason for his unsuccessful candidacy.

Preliminary issue

9. The Tribunal notes that there is an issue as to what decision the Applicant is seeking a suspension of action of. When asked to provide details of the contested decision in his application, he states generally that he “was not successful in the roster exercise for the post of Chief Supply Officer, P5 against Vacancy Announcement 424630”. He indicates that the decision was made on 6 April 2011 by

the FCRB and that he was notified on 8 April 2011. He then goes on to describe his interview and what he deemed to be due process violations within the interview process. He expressed his concern that UNMIL and other peacekeeping missions with vacant Chief Supply Officer posts would select candidates from the roster list that was circulated on 8 April 2011 and consequently requested that the Tribunal put “further selection process of VA 424630 on hold” pending management evaluation of the decision not to place him on the roster. He explains that if the candidates from the 8 April 2011 roster are selected to fill available positions in field missions, he will be deprived of the opportunity to be selected for a Chief Supply Officer post at the P-5 level.

10. In his reply, the Respondent submits that the Applicant is seeking suspension of the decision not to recommend him for the roster of qualified candidates to serve as Chief Supply Officer at the P-5 level in DPKO field missions.

11. The Applicant submitted comments on the Respondent’s reply on 17 April 2011 in which he challenges the Respondent’s statement of his request for suspension of action. He clarifies that:

“as of date, only roster has been developed which includes 13 successful candidates. The decision of final selection and placement of candidates to fill the existing vacant positions in different missions out of the roster is yet to be implemented. **My application to UNDT is to suspend further action of selection and placement of candidates in the missions where there are existing vacant positions, until the evaluation of my request to include my name in the roster is completed.**” (emphasis in original)

12. The Tribunal considers that while the Applicant started off his application with a somewhat general statement as to the decision he was seeking suspension of, he clearly stated, in subsequent explanatory paragraphs and in his comments to the reply, that he is seeking suspension of any further action in relation to the 8 April 2011 list of roster candidates. The Respondent’s reply narrows down the issue

without taking into consideration the whole context of the recruitment exercise, which is not to place candidates on a roster just for the sake of placing them on a roster but to eventually place these roster candidates in available/vacant posts in field missions.

13. Thus, the Tribunal finds that the scope of the current application is not limited to the decision not to place the Applicant on the roster of qualified candidates for GVA 424630. The Tribunal finds therefore that the Applicant is seeking to suspend any further action on GVA 424630, which would include the selection of candidates for vacant Chief Supply Officer posts in field missions, pending management evaluation of the decision not to recommend him for the roster of qualified candidates.

Considerations

14. Applications for suspension of action are governed by article 2 of the Statute of the United Nations Dispute Tribunal (“the Tribunal”) and article 13 of the Tribunal’s Rules of Procedure. The three statutory prerequisites contained in art. 2.2 of the Statute, i.e. *prima facie* unlawfulness, urgency and irreparable damage, must all be satisfied for an application for suspension of action to be granted.

Prima facie unlawfulness

15. When considering an application for suspension of action, the Tribunal is only required to determine, based on a review of the evidence presented, whether the contested decision **appears** to be *prima facie* unlawful. In light of the fact that the decision the Applicant is seeking suspension of relies on whether or not he was wrongfully excluded from the recommended list of candidates by the Interview Panel, the selection process must be examined for the flaws alleged by the Applicant.

16. According to the Applicant, the LSD representative challenged one of his answers. This led to the Interview Panel asking the Applicant for further clarification, which he provided. Following the interview, he sent an email to the Interview Panel

members telling them that he was willing to send them documents in support of his answer. He did not receive any reply to his email.

17. The Applicant avers in his application that the contested decision is unlawful because he was unable to find any guidelines that state that an observer, such as the LSD representative, should be present during an interview and should be allowed to interrupt the interview. He asserts that the LSD representative was supposed to be a “silent observer” and that his interruption of the interview was a violation of due process. He further alleges that the LSD representative influenced the Interview Panel as a result of his challenge. Additionally, he asserts that the LSD representative is a P-4 level staff member who should not have been present during the interview process for a P-5 level post.

18. The Respondent asserts that the application for suspension of action should be dismissed on the grounds that the Applicant failed to satisfy the requirements of Article 13 of the Tribunal’s Rules of Procedure for the grant of a suspension of action. In this respect, the Respondent submits that Applicant has made no *prima facie* showing that the contested decision is unlawful in that his candidacy was accorded full and fair consideration and that the rostering process was conducted in accordance with ST/AI/2010/3 (Staff selection system). The Respondent asserts that the Applicant has not provided any evidence to show the existence of any material procedural irregularity during the interview process and that the evaluation report indicates that the Applicant failed to demonstrate that he possessed all the requisite competencies in order to perform the functions set out in GVA 424630.

19. The Respondent avers that the Chief, Supply Operations (“the DFS representative”), who was present during all interviews in an *ex officio* capacity, acted properly when he clarified the Applicant’s response to one of the questions by the Interview Panel. The Respondent submits that the DFS representative was not required to vote or make any decisions regarding the recommendations of candidates and that there is no evidence that he unduly influenced the outcome of the rostering process.

20. Pursuant to Section 6 of ST/SGB/2009/5 (Field central review bodies), pending the promulgation of an administrative instruction on the selection system for posts in peacekeeping operations and special political missions, the field central review bodies shall be guided by the Standard Operating Procedures¹ promulgated by DFS.

21. Paragraph 4.2.2 of the DFS Standard Operating Procedures provides, in relevant part, that interviews shall be conducted by a panel of at least three (3) persons and paragraph 4.2.4 provides that the Panel members must be equal or senior in grade to the post being filled.

22. In the present case, the Tribunal notes that the three actual members of the Interview Panel were either equal to or senior in grade to the post that was being filled. The Chairperson of the panel was the Chief of Integrated Services Section of MONUSCO, who is a D-1. The other members, the Chief Supply Officer of UNIFIL and the Chief of Contracts Management of UNAMID are both at the P-5 level.

23. Paragraph 4.2.4 further provides that:

“[...] staff members at levels below that of the post in question may occasionally also join the panel for expert advice, in a non-voting capacity. This could occur, for example, if technical aspects of the position merit their presence, or when acting as secretary of the panel.”

24. According to the Applicant, the Chief, Supply Operations from LSD, who was representing DFS in an *ex officio* capacity during the interviews, is at the P-4 level. This is obviously not a violation of the Standard Operating Procedures. The Tribunal notes that the Applicant is not alleging that the DFS representative was a member of the Interview Panel or that he asked any questions during the interview. He is alleging that the DFS representative wrongly interrupted the interview to provide clarification to an answer that he had provided.

¹ Standard Operating Procedure on staff selection in UN peace operations, dated 16 April 2008.

25. Paragraph 4.2.4 does not refer to a “silent” observer(s). The staff member who joins an Interview Panel in a non-voting capacity is supposed to provide the panel with expert advice. The provision does not provide guidance as to when it is appropriate for any such advice to be given. Thus, the Tribunal cannot categorically state that it was wrong for the DFS representative to provide clarification to the Interview Panel during the course of the interview. In terms of transparency, it was probably better that the DFS representative spoke up during the interview as the Applicant was then provided an opportunity by the Interview Panel to provide further clarification. Thus, the Applicant’s assertion that the DFS representative, who was supposed to be a silent observer, violated his due process rights by interrupting his interview is without merit.

26. Lastly, the Applicant failed to substantiate the allegation in his amended application that DFS representative influenced the Interview Panel negatively against him.

27. Based on the available evidence, the Tribunal finds that the decision not to place the Applicant on the recommended list of candidates and subsequently the roster was not *prima facie* unlawful. Consequently, any further action that stems from the decision not to place the Applicant on the roster is not *prima facie* unlawful.

Particular urgency

28. The Applicant asserts that the matter is urgent because mission support of UNMIL and other peacekeeping missions where the post of Chief Supply Officer, P-5, is currently vacant may select candidates from the roster that was circulated on 8 April 2011 in relation to VA 424630.

29. The Respondent asserts that the Applicant has failed to satisfy this element as the decision not to place him on the roster has been implemented.

30. In light of the finding at paragraph 13 above, the Tribunal is of the considered view that the decision has not as yet been implemented as none of the candidates

rostered for GVA 424630 have been selected for the Chief Supply Officer post at UNMIL or any other field mission. This, however, is an event that could occur at any point in time since the roster is now available for the use of programme managers. The Tribunal finds therefore that the test of particular urgency in this case has been met.

Irreparable damage

31. The Applicant submits that he would suffer irreparable harm if other candidates are selected from the 8 April 2011 roster to fill the available vacant positions of Chief Supply Officer because he will miss out on the opportunity of being selected, especially for the post of Chief of Supply Officer, UNMIL, which is currently vacant. The Applicant avers that this would be unjust as he has been performing the duties of Chief Supply Officer, UNMIL, at the P-5 level since 1 November 2010 even though he is currently a P-4.

32. The Respondent submits that since the contested decision has already been implemented, the Applicant has failed to satisfy the test of irreparable damage. The Respondent also avers that the Applicant will not suffer any irreparable harm as he has not submitted that there would be any harm to his career prospects or reputation.

33. Based on the circumstances of this case, the Tribunal is of the view that the Applicant would not suffer irreparable damage if other candidates are selected from the 8 April 2011 roster to fill available vacant positions of Chief Supply Officer, P-5.

Conclusion

34. The Applicant has not raised a prima facie case that the decision was arguably unlawful or that he will suffer irreparable damage from its implementation.

Decision

35. In view of the foregoing, the application for suspension of action is rejected.

(Signed)

Judge Vinod Boolell

Dated this 18th day of April 2011

Entered in the Register on this 18th day of April 2011

(Signed)

Jean-Pelé Fomété, Registrar, Nairobi