



Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: René M. Vargas M.

PEREIRA GONZALEZ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Bibi Eng, UNEP

Katya Melliush, UNON

Introduction

1. By application filed on 18 June 2013, the Applicant requests the suspension, pending management evaluation, of the “decision to cancel the job opening under Inspira job ID 25219, re-draft the job description without going through a formal reclassification, and to re-advertise it as new temporary job opening, for internal and external candidates”.

2. The application was served on the Respondent on 19 June 2013 and he filed his reply on 20 June 2013.

Facts

3. The Applicant works as a Manager, IT and Conference Services, at the Secretariat of the Basel, Rotterdam and Stockholm Conventions (“the Conventions”), United Nations Environment Programme (“UNEP”), at the P-5 level.

4. The post of Chief, Administrative Services Branch, P-5, UNEP, was initially opened from 12 July 2012 to 10 September 2012, under Job Opening (JO) No. 12-ADM-UNEP-23536-R-GENEVA (X).

5. The above JO was subsequently cancelled before its closing date and the position was re-advertised on 7 September 2012 under JO No. 25219. The Applicant applied and was interviewed for the post.

6. On 16 April 2013, the Secretariat of the Conventions decided to cancel the second JO and to proceed with its revision, for the purpose of re-advertising it. After fulfilling different administrative formalities, the Secretariat of the Conventions cancelled the second JO on 13 June 2013, and sent an email to all interviewed candidates, including the Applicant, informing them about the cancellation.

7. On 14 June 2013, the Deputy Executive Secretary of the Conventions sent an email to the Applicant, informing him of the decision to cancel JO No. 25219 “as a result of a need to revise it in order to reflect the full range of responsibilities of the Branch Chief”.

8. By another email of the same day, the Deputy Executive Secretary of the Conventions informed her colleagues that a temporary job opening had been issued on 14 June 2013 for the post of Chief, Administrative Services Branch, P-5, in the Conventions’ secretariat, to temporarily fill the vacant post “pending the finalization of the regular selection process”.

9. The same day, the Applicant requested management evaluation of the decision to open the temporary recruitment for the post of Chief, Administrative Services Branch (P-5) and of the legality of the cancellation of JO No. 25219 as well as that of the recruitment process under said JO.

Applicant’s contentions

10. The Applicant’s contentions may be summarized as follows:

Prima facie illegality

- a. The Executive Secretary made all efforts to obstruct his candidature, particularly by putting him in a competitive disadvantage, by drafting a tailor-made job description, cancelling the job opening, changing the screening questions to accommodate other candidates and finally cancelling the whole process when the candidate he proposed for selection was not accepted, and without considering other qualified candidates from the list;
- b. The decision constitutes a violation of staff regulation 4.4;
- c. The facts raise serious concerns about the transparency and impartiality of the process, which was clearly not free from bias; some important information may become accessible during the management evaluation;

d. The staff selection system does not provide for the suspension of a selection process and re-advertisement of a vacancy, without completing the selection procedures that have been initiated, particularly if the job description is completely re-drafted without going through a formal reclassification process;

Urgency

e. The urgency lies in the fact that the temporary job opening will be closed on 24 June 2013 and that the successful candidate is expected to take up functions on 1 August 2013. In case a new person is hired on the post, corrective actions will be more difficult in the event that the administrative decision is found to be unlawful;

Irreparable harm

f. If the contested decision were to be implemented, this would impede the Applicant's appointment to the post, even in case the Management Evaluation Unit or the Dispute Tribunal were to rule in his favour, this would cause irreparable harm to the Applicant's rights to have a fair recruitment process in accordance with the UN Regulations and Rules;

g. The implementation of the decision implies the transfer of all his current functions to the newly appointed person, as such making his current post a clear target for abolition;

h. The person selected for the temporary job opening would be his immediate supervisor, with the duplication of functions; in view of him having taken legal action against the decision this might create conflicts in the working environment. Moreover, it would reinforce the existing reporting lines, which are illegal, since he is currently reporting to P-4 junior staff members.

The Respondent's contentions

11. The Respondent's contentions may be summarized as follows:

a. The Secretariat of the Conventions has come to understand that the Applicant is of the view that if he were to apply for the temporary job opening, he would be precluded from applying to the regular job opening, once it is advertised. The Deputy Executive Secretary for the Conventions checked with the Human Resources Department both of the United Nations Office in Nairobi and the United Nations Office at Geneva, to confirm the Secretariat of the Conventions' view that internal candidates on fixed-term and permanent appointments are eligible to apply for a fixed-term post after having been recruited against the same post on a temporary job opening;

Prima facie illegality

b. The decision is not unlawful; the Secretariat has been in consultation with the Human Resources Department and UNEP Headquarters throughout the whole process to ensure an objective and fair recruitment process for the post, in accordance with the Staff Regulations and Rules and applicable administrative issuances;

Irreparable damage

c. Proceedings to fill the temporary job opening, with the Applicant or another candidate who is deemed qualified for the post, will not cause irreparable damage to the consideration of the Applicant for the regular job opening; he failed to show that the implementation of the decision would impede his appointment to the post.

Urgency

d. The Respondent does not question the urgency of the request.

Consideration

12. In accordance with art. 2.2 of its Statute, the Dispute Tribunal may order a suspension of action of an application filed by an individual requesting the Tribunal to suspend the implementation of a contested decision, during the pendency of management evaluation, where the decision appears *prima facie* to be

unlawful, in case of particular urgency and where its implementation would cause irreparable damage. It follows that for an application for suspension of action to be granted, the three conditions have to be fulfilled and it has to be rejected if at least one of the conditions is not met.

13. Moreover, an application for suspension of action can only be granted if the contested decision has not yet been implemented. In the case at hand, the Applicant requests suspension of two decisions: the decision to cancel JO No. 25219 and the decision to re-advertise the post as a new temporary job opening.

14. There is no doubt that the cancellation of JO No. 25219 has already been implemented; it can therefore no longer be suspended.

15. With respect to the decision to re-advertise the post under a temporary job opening with an application deadline of 24 June 2013, the Tribunal notes that if it were to suspend its implementation, the whole selection procedure for the temporary job opening would be stopped pending the management evaluation. Therefore, the Tribunal finds that the decision to re-advertise is one with continuing effect, which is still ongoing, and has not yet been fully implemented.

16. However, in order to suspend the decision to re-advertise the post, the three cumulative conditions of art. 2.2 of the Tribunal's Statute, namely *prima facie* illegality, particular urgency and irreparable damage must be fulfilled.

Irreparable damage

17. In *Fradin de Bellabre* UNDT/2009/004, the Tribunal held that "harm is irreparable if it can be shown that suspension of action is the only way to ensure that the Applicant's rights are observed". While mere financial loss is not enough to satisfy this requirement, the Tribunal held that harm to professional reputation and career prospects may constitute irreparable damage (see *Corcoran*, UNDT/2009/071; *Villamoran* UNDT/2011/126).

18. The Tribunal finds that in the case at hand, the implementation would not cause harm to the Applicant's career prospects since nothing prevents him from applying for the temporary job opening. As a staff member holding a permanent appointment, if he were to be selected for the temporary job opening he would still be eligible to apply once the position is opened under a 'regular' job opening (sec. 3.7 (a), 5.7 of ST/AI/2010/4/Rev.1 (Administration of temporary appointments)).

19. Even if another person were selected for the temporary job opening, the Applicant preserves all his rights to apply to the position once it is opened under a 'regular' job opening.

20. Therefore, in view of all the circumstances of the case, the Tribunal finds that the implementation of the decision would not cause irreparable damage to the Applicant.

21. Since one of the three cumulative conditions required for temporary relief under art. 2.2 of the Statute has not been met, the Tribunal does not need to examine the two remaining conditions, namely *prima facie* illegality and urgency.

IT IS ORDERED THAT:

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

(Signed)

Judge Jean-François Cousin

Dated this 24th day of June 2013

Entered in the Register on this 24th day of June 2013

(Signed)

René M. Vargas M., Registrar, Geneva