



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NY/2019/051  
Order No.: 111 (NY/2019)  
Date: 22 July 2019  
Original: English

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**Before:** Judge Joelle Adda  
**Registry:** New York  
**Registrar:** Nerea Suero Fontecha

FAYEK-REZK

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON SUSPENSION OF ACTION  
PENDING MANAGEMENT  
EVALUATION**

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**Counsel for Applicant:**  
Joseph Grinblat

**Counsel for Respondent:**  
Elizabeth Gall, ALD/OHR, UN Secretariat

## **Introduction**

1. On 15 July 2019, the Applicant, a Public Information Officer at the P-3 level, with the Department of Global Communications (“DGC”) in New York, filed an application for suspension of action pending management evaluation under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure, seeking to suspend the decision to appoint another staff member to the post of Chief of the French Unit of the Social Media Section, starting 1 August 2019.

2. On 18 July 2019, the Respondent filed a reply contending that the application is not receivable because the Applicant has no standing to challenge a selection decision for a position for which she did not apply. The Respondent further submits that should the Dispute Tribunal find the application receivable, it has no merit as the Applicant failed to meet her burden of proving the three statutory prerequisites under art. 2.2 of the Dispute Tribunal’s Statute.

3. On the same day, the Applicant filed her comments in response to the Respondent’s reply, submitting that she did not apply for the temporary post because her request was to be transferred to the French Unit of the Social Media Section with her regular post. The Applicant further requested an oral hearing.

## **Factual background**

4. On 1 March 2019, the temporary job opening for the position of Public Information Officer (French) in the Social Media Section of DGC was advertised. The Applicant did not apply for this position.

5. On 8 July 2019, the Applicant wrote an email to the Director of the News and Media Division, DGC, requesting to “resume [her] duties” at the P-3 level in charge of the French social media accounts.

6. On 12 July 2019, the Applicant received an email from DGC management informing her that she was to continue her work concerning social media research

and projects and another staff member would join the team managing the content of social media accounts in French from 1 August 2019. The Tribunal notes that this appointment is a result of the selection process for the above-referenced temporary job opening.

7. On 15 July 2019, the Applicant requested a management evaluation of the decision to appoint another staff member as Chief of the French Unit of the Social Media Section.

### **Consideration**

#### *Oral hearing*

8. After filing the application for suspension of action, the Applicant requested that an oral hearing be held, but provided no arguments as to why such hearing would be necessary. As the Tribunal considers that the documents on file are adequate for a fair and just determination of the present case, it finds no reason to hold an oral hearing. Therefore, the Applicant's request is denied.

9. The Tribunal further notes that a suspension of action procedure is an urgent matter that, pursuant to art. 13 of Dispute Tribunal's Rules of Procedure, shall be considered by the Tribunal within five days of serving the application on the Respondent—an application for suspension of action is therefore generally determined on its founding papers and, possibly, also the Respondent's reply.

#### *Receivability of the application for suspension of action*

10. Under art. 2.2 of the Dispute Tribunal's Statute and art. 13.1 of the Rules of Procedure, 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 case of particular urgency, and where its implementation would cause irreparable damage. The Dispute Tribunal can suspend the contested decision only if all three requirements have been met.

11. In the present case, the Respondent submits that the application is not receivable on the grounds that the Applicant did not apply for the contested position and therefore has no standing to challenge the administrative decision in question. The Applicant responds that she did not apply for the post because her request was to be transferred to the position “with her [regular] post”.

12. The Appeals Tribunal stated in *Luvai* 2010-UNAT-014, at para. 29, that “someone who did not even apply for a position has a heavy burden to contest the result of the process”. Subsequently, the Dispute Tribunal held in several judgments that an applicant who did not apply to the contested job opening had no standing to challenge the disputed decision (see *Li* UNDT/2014/056, *Rockliffe* UNDT/2015/086, *Auda* UNDT/2018/098).

13. In the present case, the Applicant did not apply for the position in question and, on this basis, has no standing to challenge the selection decision for this position.

14. However, the Applicant submits that she did not apply for the contested position because she had requested to be transferred to the position with her regular post. The Tribunal notes that the only evidence of an administrative decision possibly rejecting such request is the email communication dated 12 July 2019 by which the DGC management informed her that she was to continue her work in the social media research and projects, and that another staff member would join the team to manage the content of social media accounts in French from 1 August 2019 as this person had been selected for the position in the above referenced temporary job opening.

15. The Tribunal therefore understands that the Applicant also intends to contest the perceived decision of 12 July 2019 possibly rejecting her request to be transferred to a position which was already filled through a competitive selection process.

16. As held by the Appeals Tribunal in *Lee* 2014-UNAT-481, the key characteristic of an administrative decision subject to judicial review is that the decision must produce direct legal consequences affecting a staff member’s terms and conditions of appointment.

17. Section 2.5 of ST/AI/2010/3 (Staff selection system) provides that “[h]eads of departments/offices retain the authority to transfer staff members within their departments or offices ... to job openings at the same level without advertisement of the job opening” and job opening is defined as vacancy announcement issued for a position. Therefore, the Administration’s authority to transfer a staff member is premised on the fact that the relevant post is vacant. Albeit in a different context, the Appeals Tribunal held that a staff member has no right to be considered against a position encumbered by another staff (*Timothy* 2018-UNAT-847, para. 42). Since the Applicant has no right to be considered against a position already filled through a selection process, the contested decision did not produce any direct legal consequences affecting her terms and conditions of appointment and therefore the disputed decision is not an administrative decision subject to judicial review.

### **Conclusion**

18. In light of the foregoing, the present application for suspension of action is rejected as not receivable.

*(Signed)*

Judge Joelle Adda

Dated this 22<sup>nd</sup> day of July 2019