



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/013

Order No.: 034 (NY/2022)

Date: 29 March 2022

Original: English

---

**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

ANAND

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**ORDER**

**ON AN APPLICATION FOR  
SUSPENSION OF ACTION**

---

**Counsel for Applicant:**

Omar Yousef Shehabi, OSLA

**Counsel for Respondent:**

Clémentine Foizel, ALD/OHR, UN Secretariat

## **Introduction**

1. On 23 March 2022, the Applicant, a staff member of the United Nations Joint Staff Pension Fund (“the Fund”), filed an application under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure for the Tribunal to suspend, pending management evaluation, the decision not to select him for a position in the Fund (“the post”).

2. The Respondent objects that the application is not receivable because the contested selection decision has already been implemented and that, in any event, it is *prima facie* lawful.

## **Background**

3. On 18 January 2022, the Applicant received a notification that, in reference to his application for the post, he had been placed in a roster of pre-approved candidates for potential consideration for future openings at similar functions.

4. The Applicant claims that, upon checking the publicly available “LinkedIn” profile of the selected candidate, he noticed that she had only obtained a certification required by the post after the deadline for the submission of candidatures in the selection process, the tests and the interviews. This shows, according to the Applicant, that the selected candidate was not qualified for the post.

5. The Applicant filed a request for management evaluation of the selection decision on 14 March 2022 followed by the present application on 23 March 2022.

6. On 24 March 2022, the Tribunal served the application onto the Respondent and ordered him not to undertake any further steps regarding the contested recruitment until the determination of this matter.

7. On 28 March 2022, the Respondent filed his response to the application stating, among others, that it was not receivable because the contested decision had been

implemented with the issuance of a letter of appointment to the selected candidate on 27 January 2022, which she accepted on 2 February 2022.

## **Consideration**

### *Legal framework*

8. 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.

9. The Dispute Tribunal can therefore only suspend the contested decision if it has not already been implemented. Otherwise, the Tribunal has no jurisdiction to do so, and the application is therefore not receivable.

### *Has the contested decision already been implemented?*

10. The Tribunal notes that ST/AI/2010/3 (Staff selection system), under which the parties agree that the contested selection decision is governed, stipulates that “[t]he decision to select a candidate shall be implemented upon its official communication to the individual concerned” (see sec. 10.2, first sentence).

11. In *Passarelli*, Order No. 57 (NY/2020) (paras. 16-19), the undersigned Judge noted that in cases of promotion, the Tribunal considered that the employment contract was formed upon the successful candidate’s unconditional acceptance of the job offer.

12. The Tribunal finds that the same principle applies to the present case. Regardless of whether the selected candidate’s appointment constitutes a promotion or an external hire, upon her unconditional acceptance of the offer, she has entered into a contract which generates obligations upon the Organization. The Tribunal is satisfied that the selection decision is considered to have been implemented at that time.

13. As the Applicant filed the application to the Dispute Tribunal on 23 March 2022 and the selection had already been implemented at that time, the application for suspension of action is therefore not receivable.

**Conclusion**

14. The application for suspension of action is rejected as not receivable.

*(Signed)*

Judge Joelle Adda

Dated this 29<sup>th</sup> day of March 2022