



Before: Judge Joelle Adda

Registry: New York

Registrar: Morten Michelsen, Officer-in-Charge

ALLIEU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICATION FOR SUSPENSION
OF ACTION**

Counsel for Applicant:
Sètondji Roland Adjovi

Counsel for Respondent:
Jérôme Blanchard, LPAS/UNOG

Introduction

1. On 23 May 2022, the Applicant, a former staff member, filed an application requesting, under art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure, a suspension of action pending management evaluation of the decision "to not continue with the onboarding of the Applicant" following the selection exercise for Temporary Job Opening No. 172518, Humanitarian Affairs Officer, P-3 ("the TJO").

2. The Respondent filed a reply to the application arguing that the application is not receivable *rationae personae* as the Applicant is not a staff member of the Organization. In the alternative, the Respondent contends that the application is without merit as the contested decision was lawful.

Factual background

3. On 2 March 2022, the TJO was published on Inspira (the United Nations online recruitment platform), with a closing date of 16 March 2022. In relation to work experience, the TJO stated that a "minimum of five years of progressively responsible experience in humanitarian affairs, emergency" was required.

4. The Applicant applied for the TJO.

5. On 6 May 2022, the Applicant was notified of his selection for the TJO, and was invited to confirm his continued interest in and availability for the position.

6. On 7 May 2022, the Administration wrote to the Applicant, confirming receipt of his "continued interest" for the position.

7. In the process of preparing an offer for the TJO, during the reference verification process, the Administration found that the work experience listed in the Applicant's application did not meet the minimum criteria "of five years of progressively responsible experience in humanitarian affairs, emergency".

8. On 18 May 2022, the Human Resources Section (“HRS/OCHA”) informed the Applicant that the review revealed that he does not meet the requirement of a minimum of five years of progressively responsible experience in the required field, and that accordingly the Administration would “not be able to proceed further”.

9. On 19 May 2022, the Applicant wrote to HRS/OCHA enquiring about the reasons for the decision.

10. On 23 May 2022, the Applicant filed the present application.

11. On 24 May 2022, HRS/OCHA informed the Applicant about the reasons for the decision. The Applicant was informed that, “in line with the [United Nations’s] staff selection policy, work experience acquired at the GS-5 level and below is not counted as qualifying experience for positions in the Professional and higher categories.” As such, “unfortunately, the above-mentioned period cannot be taken into consideration for this position, thereby reducing your professional experience by almost 5 years and leaving you with 3 years 5 months which may be considered towards your eligibility to compete for the position of [Humanitarian Affairs Officer].”

12. On 25 May 2022, the Respondent filed the reply to the suspension of action application.

13. On 25 May 2022, the Applicant filed the motion for leave to respond to the Respondent’s reply.

Consideration

The Applicant’s 25 May 2022 motion

14. As a preliminary matter, having reviewed the Applicant’s submission of 25 May 2022, the Tribunal decided to grant his motion for leave to respond to the Respondent’s reply.

The legal framework for granting suspension of action during management evaluation

15. 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.

16. As this case involves a challenge on receivability, the Tribunal will address receivability as a preliminary matter.

Receivability *ratione personae*

17. In the present case the Applicant seeks to suspend the decision to not continue with the onboarding of the Applicant following the 6 May 2022 selection notification for the position of Humanitarian Affairs Officer 172518, “which had unconditionally been accepted by the Applicant on 7 May 2022”.

Parties’ contentions

18. The Applicant asserts that, although he is not a current staff member, he has standing to make an application to the Dispute Tribunal as he unconditionally had confirmed his acceptance of the offer of a contract for the TJO. The Applicant relies on *Gabaldon* 2011-UNAT-120, where the Appeals Tribunal recognised that in very limited circumstances, persons who, despite not formally acquiring the status of staff member, may nevertheless have standing in the interests of justice. This may be the case for persons who begin to exercise their functions based on the acceptance of an offer of employment, or persons who fulfil all the conditions of and have unconditionally accepted an offer of employment, despite not being a current staff member.

19. The Respondent objects to the receivability of the application stating that it is not receivable, *ratione personae*, as the Applicant is not a staff member and is not covered by exceptions that would provide him access to the jurisdiction of the Dispute

Tribunal. In this regard, the Respondent submits that the Applicant did not receive—and thus did not unconditionally accept—a letter of offer outlining the conditions of the appointment, such as the proposed step, salary and entitlements. The Applicant has thus no standing pursuant to art. 3.1 of the Statute of the Dispute Tribunal and pursuant to the jurisprudence of the Appeals Tribunal. Only an unconditional acceptance of a letter of offer, outlining the conditions of the appointment, may create rights for an external candidate, and obligations for the Organization. The communications generated by Inspira inviting him to confirm his continued interest for the post, and confirming receipt of his continued interest, do not constitute a quasi-contract which would allow the Applicant to access the United Nations internal justice system under the exception established in *Gabaldon*.

Legal framework

20. Art. 3.1 of the Dispute Tribunal’s Statute provides that access to the Tribunal is limited to staff members and, under certain conditions, former staff members and persons making claims in the name of an incapacitated or deceased staff member.

21. Staff regulation 4.1 provides that a person only becomes a United Nations staff member after they are issued a Letter of Appointment (“LoA”). However, it is jurisprudentially established that, under certain circumstances, a person who has not yet been issued a letter of appointment is entitled to seek recourse within the internal justice system, provided that he/she has accepted unconditionally the terms and conditions of an offer of appointment (*Gabaldon*).

22. Concerning the legal effects of an offer letter, the Appeals Tribunal in *Gabaldon* states as follows (emphasis added):

... However, this does not mean that an offer of employment never produces any legal effects. *Unconditional acceptance by a candidate of the conditions of an offer of employment before the issuance of the letter of appointment can form a valid contract, provided the candidate has satisfied all of the conditions.* The conditions of an offer are understood as those mentioned in the offer itself, those arising from the relevant rules of law for the

appointment of staff members of the Organization, as recalled in article 2, paragraph 2 (a) of the UNDT Statute, and those necessarily associated with constraints in the implementation of public policies entrusted to the Organization.

...

28. On the other hand, a contract concluded following the issuance of an offer of employment whose conditions have been fulfilled and which has been accepted unconditionally, while not constituting a valid employment contract before the issuance of a letter of appointment under the internal laws of the United Nations, does create obligations for the Organization and rights for the other party, if acting in good faith. *Having undertaken, even still imperfectly, to conclude a contract for the recruitment of a person as a staff member, the Organization should be regarded as intending for this person to benefit from the protection of the laws of the United Nations* and, thus, from its system of administration of justice and, for this purpose only, the person in question should be regarded as a staff member.

29. Finding otherwise would mean denying the right to an effective remedy in respect of acts of the Organization that may ignore rights arising from a contract, which was ongoing for the appointment of a staff member.

30. However, in accordance with the aforementioned provisions of the [Dispute Tribunal] Statute, *this opportunity must be understood in a restrictive sense*. Access to the new system of administration of justice for persons who formally are not staff members must be limited to persons who are legitimately entitled to similar rights to those of staff members. This may be the case where a person has begun to exercise his or her functions based on acceptance of the offer of employment. Having expressly treated this person as a staff member, the Organization must be regarded as having extended to him or her, the protection of its administration of justice system. *This may also be the case where the contracting party proves that he or she has fulfilled all the conditions of the offer and that his or her acceptance is unconditional, i.e. no issue of importance remains to be discussed between the parties*.

23. Applying the above to the instant case, the Tribunal finds that the Applicant does not meet the criteria, set out in *Gabaldon*, which would entitle him to seek recourse within the internal justice system.

24. The Applicant was sent a notification of his selection for the TJO on 6 May 2022. The Applicant was requested to confirm his continued interest and availability for the position, which the Applicant did on 7 May 2022.

25. On 18 May 2022, the HRS/OCHA informed the Applicant that the review revealed that he does not meet the requirement of a minimum five years of progressively responsible experience in the required field, and that accordingly the Administration would “not be able to proceed further”.

26. The Applicant attempts to argue that the 6 May 2022 selection notification from the Administration and the Applicant’s reply confirming his interest and availability together creates a legal obligation on part of the Organization, which would entitle him to seek recourse within the internal justice system under *Gabaldon*.

27. The Tribunals finds no merit in this contention for two reasons. First, exchanges between the parties on expression of interest and availability of a selected candidate, before the verification checks, do not constitute offer and acceptance of a binding contract. Second, the 6 May 2022 selection notification sent to the Applicant stated that (emphasis added) “[u]pon confirmation of your continued interest and availability for this position, you will be asked to provide updates to your personal profile and to your [Personal History Profile] and to upload copies of your national passport/national ID and, if applicable, permanent residency *so that an offer can be prepared* using the most up to date information”. The wording of the notification email leaves no room for ambiguity. The notification was not an offer of employment. The offer had not yet been drafted and would only be drafted once further verifications and information had been collected.

28. In this case, as the Applicant is not a staff member and no offer of employment had been issued and no other conditions for the appointment had been addressed and agreed on, no valid contract was concluded between the Administration and the Applicant. The Administration did not undertake to conclude a contract for the recruitment of the Applicant as a staff member and can thus not be regarded as having extended to him the protection of its administration of justice system.

29. Thus, the Tribunal finds the application is not receivable *ratione personae*.

30. Since the application is not receivable it is not necessary to address the three cumulative conditions to grant a suspension of action.

IT IS ORDERED THAT:

31. In light of the above, the Tribunal orders that:

a. The Applicant's motion for leave to respond to the Respondent's reply is granted;

b. The application for suspension of action is rejected.

(Signed)

Judge Joelle Adda

Dated this 26th day of May 2022