



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

IBENTOUMERTE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Mohamed Abdou, OSLA

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

Introduction

1. On 29 January 2018, the Applicant, a staff member with the Department of Peacekeeping Operations, United Nations Secretariat, filed an application in which she contests the decision not to select her for the temporary position of Administrative Assistant, FS-4, United Nations Integrated Peace Building Office in Guinea-Bissau (“UNIOGBIS”) (“Job Opening (“JO”) 76789”). The Applicant requests the rescission of the contested decision and as an alternative, damages for the loss of opportunity and for the damage to her career progression.

2. On 1 January 2019, this case was re-assigned to the undersigned Judge.

Facts

3. The temporary position of Administrative Assistant, FS-4, JO 76789 was posted on Inspira (the Organization’s online recruitment system) on 24 March 2017.

4. On 13 July 2017 at 11:45 a.m., the Applicant received an automated email from Inspira informing her of her selection for the JO.

5. On the same day, at 12:20 p.m., the Applicant received an e-mail from the Human Resources Assistant, UNIOGBIS, advising the Applicant to disregard the notice of selection “as the recruitment process is not complete yet”.

6. On the same day, the Applicant responded to the automated email from Inspira at 4:42 p.m., expressing her continued interest and availability for the position.

7. On 20 July 2017, the Desk Officer of UNIOGBIS in the Department of Field Support informed the Applicant that on 13 July 2017 they were informed that the staff member who had a lien on the post for the temporary position was to return to

UNIOGBIS because the post she was encumbering in another mission was being abolished due to downsizing.

8. On 4 August 2017, UNOIGBIS recorded the cancellation of JO 76789 in Inspira.

9. On 7 August 2017, the Desk Officer sent another email to the Applicant explaining that UNIOGBIS had confirmed that the incumbent would return on 16 October 2017 as she would complete her assignment on 15 October 2017.

10. On 16 October 2017, the incumbent of the position returned to UNIOGBIS from her temporary assignment.

11. On 8 September 2017, the Applicant submitted a request for management evaluation of the decision to not select her for the JO. On 3 November 2017, the Management Evaluation Unit informed the Applicant that the Secretary-General has decided to uphold the contested decision.

12. On 29 January 2018, the Applicant filed the present application.

Consideration

13. The Applicant's primary issue appears to be with UNIOGBIS's decision to not continue with the selection process and thereby not selecting her for the position.

14. The Respondent states that the notice was sent in error and to correct the error, a Human Recourse Assistant sent an email to the Applicant thirty-five minutes later, which advised the Applicant to disregard the selection notification as the recruitment process was not completed yet. The Tribunal notes that the Applicant does not dispute that she received the notification regarding the error thirty-five minutes after receiving the notification and before she responded to the notification expressing her continued interest and availability for the position.

15. The Respondent submits further that the decision to cancel the selection process was as a result of operational needs of the department, namely that the temporary vacancy arose as the incumbent staff member, who had a lien on the post for JO 76789, was temporarily assigned to another field mission from 10 April 2017.

16. On 13 July 2017 at a staff meeting, UNIOGBIS discussed the return of the incumbent of the position starting on 16 October 2017 because the post she was encumbering at another field mission was being abolished due to downsizing.

17. As a result of this information, UNIOGBIS decided that it was no longer necessary to fill the position on a temporary basis for approximately three months. UNIOGBIS decided that the functions of JO 76789 would be covered by other staff members and proceeding with the recruitment would lead the Mission to bear significant costs associated with both onboarding and then returning the Applicant from New York to Guinea-Bissau within three months.

18. The Secretary-General has broad discretion in the selection and appointment of staff (see *Abbassi* 2011-UNAT-110; *Frohler* 2011 UNAT-141; *Charles* 2013-UNAT-286; art. 101(1) of the Charter of the United Nations and staff regulations 1.2(c) and 4.1).

19. The Appeals Tribunal has found that the Organization has the power to restructure some or all of its units to lend to greater efficiency, which include cancellation or abolition of posts or reassignment due to organizational or budgetary reasons (*Toure* 2016-UNAT-660; *Simmons* 2016-UNAT-425).

20. The Tribunal finds that the reasons given by the Administration to cancel the position are rational, reasonable and supported by the record.

21. The cancellation of JO 76789 was based on organizational and budgetary reasons. The staff member who had a lien on the post for the JO 76789 did return to her post on 16 October 2018.

22. As the Applicant was informed of the above reasons for the cancellation of the selection process by UNIOGBIS, the Tribunal is somewhat perplexed by her cause of action. Although she pleads bad faith and improper motives on part of the Respondent, the Applicant fails to particularize her claim. Her primary contention seems to be that she found some discrepancies in the reasons given to her for the decisions.

23. The Tribunal notes that there may have been some mixed messaging within the UNIOGBIS team such as the Human Resource Assistant advising the Applicant on 13 July 2017 to disregard the notice of selection “as the recruitment process is not complete yet”, and then on 20 July 2017, the Desk Officer of the Department of Field Support informing the Applicant that the recruitment process was going to be canceled.

24. However, these minor discrepancies or misunderstandings within the UNIOGBIS team were resolved promptly, and the Applicant was unequivocally made aware of the status of the recruitment process.

25. The Applicant may disagree and be disappointed by the decision, but disagreements and disappointments alone are not sufficient cause for action before the Dispute Tribunal. The fact is that the selection exercise was canceled for rational organizational and budgetary reasons and these reasons have been verified by the record.

26. The Applicant presents no arguments of substance to call into question the lawfulness of the decision to cancel the position.

27. The Tribunal has reviewed the record, including the internal UNIOGBIS correspondence regarding the JO and finds, contrary to the Applicant’s claims, no indication of improper motives underlying the decision to cancel the JO.

28. The Applicant seems to also suggest that improper motives were established by the fact that UNIOGBIS had initially offered the position to the first recommended candidate prior to her. The Respondent has explained that upon completion of the assessment for the JO, the Applicant was the second on the list of recommended candidates. Consequently, after the first recommended candidate for the JO advised of his unavailability for the position, it was decided that the second recommended candidate would be considered for the position. However, as noted above, UNIOGBIS made the subsequent decision on 13 July 2017 to cancel the JO for valid organizational and budgetary reasons.

29. Finally, the Tribunal finds that no prejudice was caused to the Applicant from the receipt of the automated notification through Inspira on 13 July 2017.

30. The Applicant pleads that the notification caused her prejudice as she had already secured her supervisor's approval to be released for the temporary position that she was holding. It is undisputed that the Applicant received an email from UNIOGBIS thirty-five minutes after the notification advising her to disregard the selection notification. The Tribunal notes therefore that the selection notification was withdrawn before the Applicant even had the chance to accept it and she never received or signed an offer of appointment.

31. It is rather untenable for her to plead that the notification had legal effects, or that she reasonably relied on the notice to her detriment.

32. Based on the above, the Tribunal finds that the Applicant's candidacy was afforded full and fair consideration and it was within the reasonable discretion of the Organization to cancel the temporary position.

Conclusion

33. The application is dismissed.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 17th day of June 2019

Entered in the Register on this 17th day of June 2019

(Signed)

Nerea Suero Fontecha, Registrar, New York