



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

LACKNER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Elisabeth Gall, ALS/OHRM

Introduction

1. By application filed on 4 September 2018, the Applicant contests his non-selection for the post of Senior Judicial Affairs Officer (P-5), with the United Nations Assistance Mission in Afghanistan (“UNAMA”), advertised under Job Opening 18-ROL-UNAMA-97210-F-Kabul (M) (“JO 97210”).
2. On the same day, the Tribunal served the application on the Respondent asking him to particularly address in his reply the issue of implementation of the contested decision.
3. The Respondent filed his reply on 6 September 2018, raising *inter alia* the issue of the application’s receivability on the grounds that the contested decision had been implemented.

Facts

4. UNAMA posted JO 97210 from 4 June to 18 June 2018.
5. By email of 10 August 2018, Ms R. S. (“the selected candidate”) was informed of her selection under JO 97210. By email of the following day, she confirmed her continued interest in and availability for the post of Senior Judicial Affairs Officer with UNAMA.
6. On 16 August 2018, the selected candidate signed an offer for a one-year fixed-term appointment with UNAMA. UNAMA acknowledged receipt of it by email of 19 August 2018.
7. By Inspira generated notification dated 22 August 2018, the Applicant was informed that his application for JO 97210 had not been successful.
8. By email dated 29 August 2018, the Management Evaluation Unit advised the Applicant that the Inspira generated notification, together with his request for management evaluation dated 14 July 2018, were sufficient for him to contest his non-selection under JO 97210.

Consideration

Receivability

9. Art. 2.2 of the Tribunal's Statute provides that (emphasis added):

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual *requesting the Dispute Tribunal to suspend*, during the pendency of the management evaluation, *the implementation of a contested administrative decision* that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

10. The above language is also echoed in art. 13.1 of the Tribunal's Rules of Procedure. It follows that one of the premises on which the examination of applications for suspension of action rests is that the contested administrative decision has not yet been implemented.

11. The examination of the implementation of a selection decision requires first to determine whether the selected candidate is an internal or an external one. ST/AI/2010/3 (Staff selection system) provides under its sec. 1(o) that internal applicants are "serving staff members holding an appointment under the Staff Rules, **other than a temporary appointment**, who have been recruited after a competitive process under staff rule 4.15 (review by a central review body) ... or 4.16 (competitive recruitment examination)" (emphasis added). This is reflected in staff rule 4.10 (Internal candidates and Internal vacancies).

12. In his reply, the Respondent pointed out that that "the selected candidate ... holds a temporary appointment ... with the Organization". Furthermore, Annex 7 to the Respondent's reply shows that upon applying for JO 97210, the selected candidate was an "External Applicant".

13. The Tribunal, therefore, concludes that, in the case at hand, the selected candidate was an external candidate and that, consequently, implementation of the contested decision rests on whether or not the Organization has received an unconditional acceptance of the offer of appointment (see *Finniss* Order No. 116 (GVA/2016) at para. 15).

14. The documents before the Tribunal show that the selected candidate was informed on 10 August 2018 of her selection for the advertised position. She accepted the offer of appointment on 16 August 2018, indicating that she would be available to report for duty on 10 October 2018.

15. It follows from the above that the contested decision was implemented on 16 August 2018, the date when the selected candidate expressed her unconditional acceptance of the offer of appointment. The application for suspension of action must be rejected, and it is not necessary for the Tribunal to examine the other requirements for granting a suspension of action.

16. The foregoing is without prejudice to the possibility open to the Applicant to institute proceedings to contest the decision on the merits, should he not be satisfied with the outcome of the management evaluation.

Ex-parte documents

17. The Respondent submitted Annexes 1, 2 and 3 to his reply as *ex parte*. In its consideration of the present application, the Tribunal relied on Annexes 1 and 2, as well as on the first page of Annex 3, which must thus be shared with the Applicant. In this connection, the Tribunal notes that they contain confidential information that must be redacted. The Tribunal therefore decides to redact Annexes 1, 2 and 3 accordingly and to share them with the Applicant on an under seal basis.

Conclusion

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

19. The Applicant shall not disclose, use, show, convey, disseminate, copy, reproduce or in any way communicate the under seal documents without prior authorization by the Tribunal.

(Signed)

Judge Rowan Downing

Dated this 11th day of September 2018

Entered in the Register on this 11th day of September 2018

(Signed)

René M. Vargas M., Registrar, Geneva