



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Nerea Suero Fontecha

RUSSO-GOT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
UNOPS

Introduction

1. On Wednesday, 5 June 2019, the Applicant, a former Project Manager at the P-3 level with the United Nations Office of Project Services (“UNOPS”), filed an application via email, requesting urgent relief under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure seeking to suspend, pending management evaluation, “the decision of the Administration to change the Terms of References [“ToRs”] for the position of Head of [Information Technology, “IT”] Delivery with UNOPS,” for which the Applicant applied on 17 May 2019.

2. As 5 June 2019 was an official holiday in the United Nations, New York, the Registry only received the application for suspension of action on 6 June 2019 after which the present case was assigned to the undersigned Judge. On an exceptional basis and due to the apparent urgency of the matter, the Registry created the case and uploaded the application into the eFiling portal on behalf of the Applicant.

Background

3. In the Applicant’s application for suspension of action, he presents the factual background as follows:

... [The Applicant] has served as a Project Manager at the P-3 level at the United Nations Office of Project Services (UNOPS). He has worked at UNOPS for approximately 2.5 years and was on a fixed-term appointment.

... On 29 June 2018, [the Applicant] was informed that his post would be abolished.

... On 01 August 2018, [the Applicant] signed with UNOPS an agreement [reference to annex omitted].

... On 25 October 2018, [the Applicant] was informed during a meeting with the Senior Portfolio Manager [name redacted] and the Chief Enterprise Project Management Office [name redacted], about the possibility that the position that he was encumbering will cease to exist on 31 January 2019.

... On 22 January 2019, [the Applicant] received a letter formally informing him that his fixed-term appointment would not be extended beyond 31 January 2019 [reference to annex omitted].

Application for the Head of IT Delivery position with UNOPS:

... On 17 May 2019, [the Applicant] applied for the Head IT Delivery VA/2019/B0009/17950 [reference to annex omitted].

... On 20 May 2019, [the Applicant] received an email informing him that the Head IT Delivery VA/2019/B0009/17950 position was canceled “Due to a small change in the [ToRs], we need to cancel this vacancy post. Therefore[,] I would like to encourage you to re-apply again through the following link: <https://jobs.unops.org/Pages/ViewVacancy/VADetails.aspx?id=17980> [”] [reference to annex omitted].

... On 20 May 2019, the position has been readvised as Head of IT Delivery - VA/2019/B0009/17980 with the same job function responsibilities but at the Education section was added: “Secondary education in combination with additional six years of experience may be accepted in lieu of a master's degree.” [reference to annex omitted].

Applicant’s submissions

4. For judicial efficiency and due to the time constraints inherent with such applications, the Applicant’s principal contentions, although inelegantly stated, are replicated in summary as follows:

Prima facie unlawfulness

a. The decision appears *prima facie* to be unlawful. The change of the selection criteria affects the recruitment process for this position and is not compliant with the rules of the United Nations, the Manual for the Recruiter on the Staff Selection System, and the unified United Nations recruitment system and associated documents.

b. Regarding academic qualifications and relevant work experience, it is highlighted that (the Applicant does not specify the source for the citations):

i. “The minimum academic standard for all recruitments and selections to Professional and higher-level category posts (P, and

National Officer (NO) is normally a completed, advanced university degree (Masters or equivalent, and also inclusive of professional certifications (CPA etc.) and military/police rank equivalents”);

ii. “Additionally, at the Hiring Manager’s discretion, candidates holding a completed Bachelors’ degree with two additional years of relevant work experience may be considered in cases where specialized job requirements do not necessarily call for a Masters’ degree or the local labour market makes the requirement impracticable”. This was not the case with the contested selection process;

iii. “This determination must be made prior to advertising the vacancy announcement. There is no longer any possibility to request a waiver of the minimum academic requirements after the vacancy [same position] has been advertised with the Masters’ degree or equivalent requirement”. The Head of IT Delivery post was already advised with other educations (sic) requests;

iv. “Hiring Managers are accountable for ensuring that similar posts are advertised with similar requirements. It is important to avoid any inconsistencies in the approach to filling posts in order to respect the guiding principles of competition and transparency”. However, similar positions were already advised with other educations requests;

v. “A minimum one certificate is required”. For this position was not required a certificate, although a minimum Prince 2 certificate is required in the industry; and

vi. “Evaluation matrix”. Such matrix is missing;

c. For other similar positions which were advised at the same level, it is not allowed to have a secondary education in combination with an additional six years of experience in lieu of a Master's degree;

d. Taking into consideration that this position was advised into a job category "IT, Leadership", the recommendation of the Secretary-General and the Office of Human Resource is to have higher education, and when reading all the functional responsibilities, the change to the job selection criteria is not compliance with the United Nations recruitment process and the Staff Regulations and Rules;

e. The Administration violated the signed settlement agreement concerning the Applicant's separation and failed to make reasonable efforts to prioritize the Applicant for a new position or an interview;

f. It is well-established that administrative decisions must be made on proper reasons and that the Administration has a duty to act fairly, justly and transparently in dealing with its staff members, including concerning matters of appointment, separation and renewals. In cases relating specifically to appointments, the Tribunal must examine whether the procedures laid down in the Staff Regulations and Rules were followed and whether the staff member was given fair and adequate consideration;

g. The decision to change the selection criteria for the position of Head of IT Delivery was unlawful because it did not follow the relevant rules. The Administration must prioritize the Applicant for any position in order to offer him a job in two months. A normal selection takes more than six months. The Applicant consider that he is retaliated again because he "raised a few actions" with the Dispute Tribunal;

h. Considering the Applicant's circumstances, the Administration should have laterally assigned, in a competitive way, him to the Head of IT Delivery position. By not sufficiently considering him for this or other positions, nor

indeed presenting him with any other suitable alternative positions to date, the Administration failed in its obligation to make good faith efforts to find him a suitable alternative position after it decided to abolish his post;

Urgency

i. The issue before the Tribunal is urgent because: (i) otherwise, the position is to be filled, irreversible, by a non-skilled/educated person; (ii) it would disturb the work market and the values of the United Nations; (iii) respect must be ensured of the rules of the United Nations and of human rights and the right to access to a professional career; and (iv) humiliation by recruiting a lowed educated person to manage staff with higher education must be avoided;

Irreparable damage

j. It must be avoided that the position to be filled irreversibly by a non-skilled/educated person. Also, the family of the Applicant's existence depends on the contested decision.

Consideration

5. The Tribunal notes that parties approaching the Tribunal for a suspension of action order must do so on a genuinely urgent basis, and with sufficient information for the Tribunal to preferably decide the matter on the papers instantly filed before it. An application may well stand or fall on its founding papers. If based on a review of these papers, the Dispute Tribunal finds that it is not necessary to instruct the Respondent to file a reply to an application for suspension of action, this falls within its "wide powers of appreciation in all matters relating to case management" (see paras. 15-17 of *Khambatta* 2012-UNAT-252). In the particular circumstances of this case, the Tribunal saw no need for such reply.

6. In the present case, the Tribunal observes that, according to the Applicant's own information, following the abolishment of his post in July 2018 and a subsequent extension of his fixed term appointment to 31 January 2019, he has not been a staff member of the United Nations since his separation from his previous position with UNOPS on 31 January 2019, pursuant to a settlement agreement. The question of jurisdiction *ratione personae* of the Tribunal therefore immediately arises as a preliminary point.

7. Under art. 3.1 of the Dispute Tribunal's Statute the following persons may file an application to the Tribunal:

- (a) Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;
- (b) Any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;
- (c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes.

8. Furthermore, art. 2.1(a) of the Dispute Tribunal's Statute provides that the Tribunal shall be competent to hear and pass judgment on an application filed by an individual, as provided for in art. 3 of the Statute, to appeal an administrative decision that is "alleged to be in non-compliance with the terms of appointment or the contract of employment".

9. According to the jurisprudence of the Appeals Tribunal, a former staff member's access to the Dispute Tribunal is limited to issues concerning her/his previous employment relationship with the United Nations. For instance, in *Khan 2017-UNAT-727*, para. 28, the Appeals Tribunal found that,

... a former staff member of the Organization who brings an application which does not complain that the contested decision was not in compliance with his terms of appointment or contract of

employment does not have standing as the application has no bearing on the individual's former status as a staff member ...

10. In the present case, the Applicant is contesting a selection process that was initiated after he was separated from the Organization on 31 January 2019—as evident from the job opening, which the Applicant appended to his application, illustrating that the job application period started months later, namely on 16 May 2019, with the Applicant submitting his job application on 17 May 2019.

11. Consequently, as the relevant selection process and his job application have no connection whatsoever to his former status as a staff member, the Applicant therefore has no legal standing to contest any matters in relation to the selection process. The Tribunal finds that his case is clearly distinguishable from the facts in the matter of *Gabaldon* 2011-UNAT-120, a case which dealt with an external candidate seeking employment with the Organization for the first time.

12. In addition, from the Applicant's submissions, it appears that he also contends that he should have been moved to the relevant position laterally before being separated or otherwise have been given a prioritized status for the post.

13. As filing a request for management evaluation would be mandatory for the Applicant regarding this issue pursuant to staff rule 11.2(a) and (b), the Applicant would have to file this request within 60 calendar days from the date on which he received notification of the administrative decision to be contested in accordance with staff rule 11.2(c). As follows from art. 8.3 of the Dispute Tribunal's Statute, the Tribunal has no competence to suspend or waive this deadline, which has been reaffirmed by the Appeals Tribunal (see, for instance, *Trajanovska* 2010-UNAT-074).

14. The Tribunal notes that the Applicant separation was effective 31 January 2019 and that he filed the present application on 5 June 2019. Accordingly, as more than 60 days have passed since the Applicant's separation, the Applicant can no longer appeal any matters in this regard unless he proves that he has previously filed

a timely management evaluation request. In addition, it is clear from the settlement agreement signed by the parties that the Applicant waived all rights in respect to any prior claims relating to his separation in January 2019.

15. Finally, the Tribunal observes that the selection process appears to concern a position as an individual contractor. The Tribunal notes that pursuant to the founding resolutions of the General Assembly, the internal justice system of the United Nations, individual contractors do not have access to the Dispute Tribunal (see General Assembly resolutions 61/261 and 62/228 (Administration of justice at the United Nations)), which has also been reaffirmed by the Appeals Tribunal (see, for instance, *Ben Osmane* 2019-UNAT-871).

Conclusion

16. In light of the above, the application for suspension of action is not receivable and is accordingly rejected.

(Signed)

Judge Ebrahim-Carstens

Dated this 6th day of June 2019