



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

HUSSEIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**RULING ON AN APPLICATION FOR
STAY OF PROCEEDINGS PURSUANT
TO
ARTICLE 19 OF THE RULES OF
PROCEDURE**

Counsel for Applicant:

Katya Melliush, OSLA

Counsel for Respondent:

Joerg Weich, HRMS/UNON

1.0 FACTS

1.1. The Applicant is a staff member of the United Nations Office at Nairobi (UNON) in the Procurement Travel and Shipping Section. On 28 April 2009 she filed an appeal before the Nairobi Joint Appeals Board (JAB) contesting the administrative decision made by Ms. Diana Mills-Aryee (Chief Procurement Officer) and communicated to the Applicant on 6 October 2008 through Annex 1(b) to the Applicant's Statement of Appeal.

1.2. The contested administrative decision had discontinued the Applicant's Special Post Allowance (SPA), cancelled the recruitment process that was underway in respect of vacancy announcement no. 8-PRO-UNON-417625-R-NAIROBI on post no. UNA028G03400EL-L0017 and re-launched the vacancy announcement for the post. The cancellation was done at a time when the Applicant had been interviewed for the post and the Programme Case Officer was to forward a recommendation in which the Applicant was rated first to the Central Review Panel (CRP).

1.3. The Applicant's appeal was transferred on 1 July 2009 from the Nairobi JAB to the United Nations Dispute Tribunal which then became her case before this Tribunal. The Respondent filed his Reply to the Applicant's case on 4 August 2009. In that reply, the Respondent stated that the Applicant's Special Post Allowance was reinstated after a review by the Respondent leaving the issues in contention in the case to only the cancellation and re-launch of the vacancy announcement in respect of post number UNA028G03400EL-L0017. The vacancy announcement for the position had been re-launched as vacancy announcement number 09-ADM-UNON-419783-R-NAIROBI for Procurement Assistant-G7. The Applicant had also applied for the re-advertised position.

1.4. On 18 August 2009, the Applicant filed a motion praying for an extension of time within which to file her observations to the Respondent's Reply to her case. The Tribunal, by an Order dated 24 August 2009, extended the time for submission of the Applicant's observations to 11 September 2009.

1.5. On 20 August 2009, the Applicant was invited to attend an interview scheduled to take place on 26 August 2009 but later rescheduled for 31 August 2009 in respect of the re-launched vacancy announcement to which she had applied.

1.6. The Applicant has now brought this application pursuant to article 19 of the Rules of Procedure of the United Nations Dispute Tribunal praying the Tribunal to stay proceedings in her case pending the outcome of the on-going recruitment process to the vacant post.

2.0. APPLICANT'S SUBMISSIONS

2.1. The Applicant in support of her application for stay of proceedings submits that:

- (1) *"....Since the filing of the original appeal, the Applicant's request for review of the decision regarding her SPA has been rendered moot; thus the outstanding issues before the Tribunal are solely in regard to the vacant post."*
- (2) *" The post was re-advertised on 28 January 2009. The Applicant submitted her candidacy for the re-advertised post and the recruitment process currently underway. The outcome of this current recruitment process will inevitably affect the nature of the Applicant's case and/or the necessity to proceed. Any observations filled on 11 September 2009 will be overtaken by events."*
- (3) *"In the circumstances, and in the interest of the economy of the Tribunal's time and that of the parties, the Applicant requests the Tribunal to stay proceedings pending the outcome of the recruitment process to the vacant post."*

2.2. The Applicant then prayed that:

- (a) Proceedings be stayed in the matter before the Tribunal pending the outcome of the ongoing recruitment process; and

(b) Leave be granted her to have the matter reinstated at a later date through filing her observations to the Respondent's Reply and/or amending her application within 21 days of her being notified of the outcome of the recruitment process for the post No. UNA028GO3400EL-L0017.

3.0. RESPONDENT'S REPLY

3.1. The respondent did not object to this application

4.0. RULING

The only issue before the Tribunal in the case filed by Applicant is the complaint that an advertised position to which she had applied and for which she had attended an interview and had a reasonable expectation of being selected was cancelled. Her Special Post Allowance (SPA) which originally formed part of her claim had been restored and she had withdrawn that aspect of her case. The Applicant now brings this motion and moves the Tribunal to stay proceedings pending the outcome of a new recruitment process in which she has presented herself as a candidate. She also seeks the leave of the Tribunal to continue, amend or terminate her case as appropriate depending on whether or not the said on-going recruitment process work out in her favour.

Article 19 of the Rules of Procedure provides:

“The Tribunal may, at any time, either on an application of a party or of its own initiative make an order or give any direction which appears to the judge to be appropriate for a fair and expeditious disposal of the case and to do justice to the parties.”

It goes without saying that the essence of any proceedings before any judicial tribunal is the search for justice. Justice must be done to all the parties in the matter. Both the Applicant and Respondent are entitled to a fair and expeditious disposal of this case. Are the circumstances of this application such that it ought to be granted by the Tribunal? In other words, is there merit in this application? In arriving at an answer, I observe first of all that the Applicant has not complied

with an earlier order of the Tribunal dated 24 August 2009 granting her an extension of time up till 11 September to respond to the Respondent's reply to her case. Persons bringing matters before the Tribunal must at all times do so with every amount of sincerity and seriousness. The Tribunal does not make an order in vain and will not allow parties to come before her in a game of cards. The Applicant has not only been disrespectful by failing to comply with orders made on her application, she has come to ask the Tribunal to stop her case and to allow her to decide whether to continue with it or terminate it when she is in a position to determine whether the new recruitment process to which she has subscribed goes in her favour or not.

Put differently, the Applicant is inviting the Tribunal to act "Big Brother" and constitute some kind of sword of Damocles over the head of the Respondent by keeping her case alive while the recruitment process is on and to possibly invoke it if she is not happy with the outcome of the exercise. This, simply put, is an abuse of process of the Tribunal.

In accepting to become part of the cancellation of the vacancy announcement and a re-launch of the same process over which she had brought a case to the Tribunal by presenting herself as a candidate, the Applicant acquiesces in the process and effectively extinguishes her claims. She cannot approbate and reprobate at the same time. This Tribunal frowns at such antics.

While the Applicant is perfectly entitled to become a candidate in the re-launched advertisement for the new position she seeks, it is only fair that she does so without abusing the process of this Tribunal. I find the motion before me without any merits and accordingly refuse the application. The matter filed by the Applicant before the Joint Appeals Board and transferred to this Tribunal is also hereby struck out. The Applicant is at liberty to bring a new matter before the Tribunal at a later date.

ORDERS

(a) Application is refused.

(b) Case No. UNDT/NBI/2009/10 is struck out.

(Signed)

Judge Nkemdilim Izuako

Dated this 17th day of September 2009

Entered in the Register on this 17th day of September 2009

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi