



**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** René M. Vargas M.

WANG

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON APPLICATION FOR  
SUSPENSION OF ACTION**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Bettina Gerber, UNOG

## **Introduction**

1. On 22 May 2012, the Applicant submitted an application for suspension of action, pending management evaluation, of the decision to select other candidates for two posts of Reviser in the Chinese Translation Section of the Languages Service, within the United Nations Office at Geneva (“UNOG”).

## **Facts**

2. The Applicant joined UNOG in March 2007 as a Translator, at level P-2, under a short-term appointment. On 12 June 2008, he received a probationary appointment and he was granted a permanent appointment at level P-3 on 1 November 2010.

3. On 6 December 2011, two P-4 posts of Reviser in the Chinese Translation Section of the Languages Service, UNOG, were advertised under job opening No. 11-LAN-UNOG-21443-R-GENEVA, with a deadline of 4 February 2012 for the submission of candidatures.

4. Six candidates, including the Applicant, were shortlisted for a written test, which took place on 21 February 2012 and, on 13 and 14 March 2012, the Applicant as well as four other candidates underwent a competency-based interview.

5. On 30 March 2012, the hiring manager referred to the Geneva Central Review Committee the case of the five candidates, including the Applicant, another male candidate, and three female candidates, who had been deemed to meet all the evaluation criteria and whom he recommended.

6. The Central Review Committee considered that the recommended candidates had been evaluated on the basis of the pre-approved evaluation criteria and that the applicable procedures had been followed; it therefore recommended that the Director-General of UNOG proceed with the final selection to fill the advertised positions.

7. By a memorandum dated 17 April 2012, the hiring manager transmitted to the Director-General of UNOG his proposal for the selection of two of the female candidates.

8. By letters of 4 May 2012, these two female candidates were respectively informed that the Director-General of UNOG had selected them for the posts of Reviser. It was stated in the letters that their promotion would be effective on 1 June 2012 and that a Personal Action would be issued “soon”.

9. By an email also dated 4 May 2012, the Applicant was informed that he had not been selected but that he had been placed on the roster of pre-approved candidates for potential consideration for future job openings with similar functions in the Secretariat.

10. On 15 May 2012, the Applicant requested management evaluation of the decision to select other candidates for the posts of Reviser, and he filed his application for suspension of action on 22 May.

11. As per the Tribunal’s instructions, the Respondent submitted his reply together with documents pertaining to the selection process on 24 May 2012. On 24 and 26 May, the Applicant submitted comments on the reply.

### **Parties’ contentions**

12. The Applicant’s primary contentions may be summarized as follows:

#### *Receivability*

a. Though the selection process was completed, the selection decision has not yet been implemented. Accepting the Respondent’s definition of “implementation” would lead to denying justice in promotion cases;

#### *Prima facie unlawfulness*

b. One of the selected candidates did not fulfill the number of years of translation experience required in the vacancy announcement. Her

part-time employment while she was a full-time student should not have been counted as work experience;

c. The selection process is tainted by irregularities and lack of transparency. In view of the fact that candidates could use the Internet and dictionaries and that some candidates share office with others, it cannot be ascertained that the candidates did the written test themselves. Further, it is not clear who chose the texts used for the test, nor has the Respondent explained its scoring method. Additionally, the test was evaluated by UNOG, not external, Revisers. In spite of the confidentiality of the copies, UNOG Revisers could identify the style of each candidate, which raises a concern for potential partiality;

d. It cannot be established that the selected candidates were better qualified for the posts advertised. The Applicant has a total of 14 years of work experience, including in the UN system, as Translator and Interpreter with a recognized specialization. He also has more university education and he is more proficient in French and German than the selected candidates. Additionally, he has better computer skills;

e. The Applicant is a better translator than the selected candidates. The quality of his translation has been acknowledged within the Chinese Translation Section. He works quickly and is frequently entrusted with the most difficult translation tasks;

f. Since he was recruited, the Applicant has been the victim of discrimination. Whereas he was initially given short-term appointments for nearly one year, six translators were directly offered two-year fixed-term contracts upon their recruitment;

g. He has also been subjected to reverse discrimination given that the two selected candidates for the litigious posts are female Translators. Furthermore, while roster membership remains valid for three years for women, it only remains valid for two years for men;

*Urgency*

- h. The contested decision will be implemented on 1 June 2012;

*Irreparable damage*

- i. The selection of younger, less experienced candidates ruins the Applicant's career prospects at UNOG as P-4 positions usually become available when there are retirements and, since no retirement is expected within the next two years, his roster membership will expire before there is any vacancy in the Chinese Translation Section.

13. The Respondent's primary contentions may be summarized as follows:

*Receivability*

- a. An application for suspension of action may only be granted where the contested decision has not yet been implemented. In view of the fact that both successful candidates were informed on 4 May 2012 of their selection for the advertised positions, and they accepted their selection, the selection decision must be considered as implemented and the application must be rejected as "moot";

*Prima facie unlawfulness*

- b. The Applicant has not established a serious and reasonable doubt about the lawfulness of the contested decision;
- c. The Secretary-General has broad discretion in making decisions regarding appointments and the Dispute Tribunal has stressed that it is not in a position to substitute any scores with those of a panel that tested and interviewed candidates;
- d. As to the Applicant's allegation that one of the selected candidates did not fulfill the number of years of work experience, it is unfounded;

e. The proper procedures were followed. All the candidates were informed that during the test they could search the Internet or use dictionaries and other reference material, and the fact that this possibility was given to them does not render the process flawed. Further, the candidates were informed that they were not allowed to seek help from anyone. The fact that internal revisers corrected the test does not prove that they were biased, especially since the tests were evaluated anonymously. The Applicant did not suffer any prejudice as a result of the written test since he passed it;

f. There is no evidence of bias or discrimination on the part of the interview panel as the Applicant was recommended for the advertised positions and placed on the roster. The selected candidates had performed better than the Applicant during the interview and the Director-General of UNOG exercised his discretionary authority in making the final selection decision;

*Urgency*

g. Since both successful candidates were offered and accepted the posts, the decision has been implemented and can no longer be suspended;

*Irreparable damage*

h. The contested decision did not cause any harm to the Applicant's professional reputation or career prospects given that he was recommended and placed on the roster.

**Consideration**

14. Article 2.2 of the Tribunal's Statute provides that 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 cases of particular urgency, and where its implementation would cause irreparable damage.

*Receivability*

15. As a preliminary matter, it is worth recalling that a suspension of action is only possible regarding decisions which have not yet been implemented (see, *inter alia*, *Abdalla* Order No. 4 (GVA/2010), *Neault* Order No. 6 (GVA/2011)).

16. In objecting to the admissibility of the application, the Respondent contends that the successful candidates were informed on 4 May 2012 of their selection for the advertised positions and concludes that the contested decision has been implemented.

17. However, the Tribunal notes that the letters of 4 May 2012 specify that the selected candidates' "promotion will be effective on 1 June 2012". This is in line with the structure of administrative instruction ST/AI/2010/3 (Staff Selection System), which distinguishes between the decision itself on the one hand, and its notification and implementation on the other (see sections 9 and 10 of the administrative instruction). The Tribunal is of the view that, in the present case, the contested decision has not yet been implemented and therefore, the application for suspension of action is receivable.

*Prima facie unlawfulness*

18. The Tribunal has repeatedly held that the prerequisite of *prima facie* unlawfulness does not require more than serious and reasonable doubts about the lawfulness of the contested decision (see *Corna* Order No. 90 (GVA/2010), *Hepworth* UNDT/2009/003, *Corcoran* UNDT/2009/071, *Berger* UNDT/2011/134, *Osmanli* UNDT/2011/190, *Chattopadhyay* UNDT/2011/198). The Tribunal also recalls that, in reviewing decisions regarding appointments and promotions, it examines the following: (1) whether the procedure as laid down in the relevant provisions was followed; and (2) whether the staff member was given fair and adequate consideration (see in particular *Abbassi* 2011-UNAT-110).

19. In alleging that the selection decision is *prima facie* unlawful, the Applicant first challenges the eligibility of one of the successful candidates; he

argues that her part-time employment while being a full-time student should not have been counted as work experience.

20. Job opening No. 11-LAN-UNOG-21443-R-GENEVA specified that candidates should have “[a]t least five years of translation experience in a broad range of subjects dealt with by the United Nations ...”.

21. The documentary evidence produced by the Respondent under seal shows that, at the end of the posting period of job opening No. 11-LAN-UNOG-21443-R-GENEVA, the candidate in question had accrued three years and ten months of work experience as a Translator at UNOG. Two certificates issued by her previous employers in 2008 further show that, during a period of a little over two years prior to joining UNOG, she had accumulated “part-time” work experience as a Translator in the financial area. However, the Respondent has not adduced any evidence to support his assertion that “she [had] gained one year and two months of work experience during th[at] time” and accordingly that she met the requirement of five years of translation experience. The factual basis for this assumption remains completely unclear and it is not possible for the Tribunal to determine whether or not the certificates in question support the conclusions drawn by the Respondent. Therefore, there are reasonable doubts as to whether one of the selected candidates was eligible for the advertised posts and the selection decision appears *prima facie* to be unlawful.

22. The Applicant submits that the selection process is tainted with further irregularities. He claims that since the candidates could use the Internet and dictionaries during the written test, it cannot be ascertained that they did the test themselves, and that it is not clear who chose the texts used for the test and what the scoring method was.

23. The Tribunal observes that ST/AI/2010/3 does not impose any particular method to assess technical requirements and competencies, still less any specific condition(s) in which these evaluations should be performed. Moreover, the Applicant has not alleged that he had to perform the test under conditions which were different from those set for the other candidates.

24. In view of the fact that the written tests were evaluated anonymously, his claim that the manner in which the tests were evaluated raises a concern for potential partiality cannot be entertained.

25. As to his claim that he was better qualified and that he was a better translator than the selected candidates, it is sufficient to note that all of the five candidates who undertook the written test and were subsequently invited for a competency-based interview were deemed to have successfully met all the requirements of the positions advertised and, in the case of the two successful candidates, to have exceeded one of them, that the Applicant received the lowest mark on the written test and that he had the lowest average daily productivity in the 22 months that preceded the interview.

26. Lastly, the Applicant submits that he has been subjected to discrimination because he was initially given temporary appointments for nearly one year, whereas other translators were directly offered fixed-term contracts upon their recruitment and because roster membership remains valid for three years for women and only for two years for men. These allegations, assuming that they have merit, have no bearing on the lawfulness of the contested decision.

*Urgency*

27. In view of the fact that the decision will be implemented on 1 June 2012, the requirement of particular urgency is satisfied.

*Irreparable damage*

28. In *Karl* Order No. 110 (NBI/2010), the Tribunal found that the applicant had failed to show that the implementation of the contested decision would cause him irreparable damage as he was not the only recommended candidate and, therefore, it could not be concluded that he would have been selected for the litigious post.

29. Likewise, in the instant case, the Tribunal notes that in addition to the two selected female candidates, three more candidates, including the Applicant and a

third female candidate, were recommended by the hiring manager as meeting the requirements of the posts and subsequently endorsed by the Geneva Central Review Committee. Further, as noted in paragraph 25 above, the Applicant received the lowest mark on the written test and he had the lowest average daily productivity. Therefore, even assuming that one of the selected candidates did not have the required work experience and was thus ineligible for the advertised posts, it cannot be concluded that the Applicant would have been selected, especially since administrative instruction ST/AI/1999/9 (Special measures for the achievement of gender equality) provides:

1.8 (a) Vacancies in the Professional category and above shall be filled, when there are one or more women candidates, by one of those candidates provided that:

- (i) Her qualifications meet the requirements for the vacant post;
- (ii) Her qualifications are substantially equal or superior to those of competing male candidates...

**Conclusion**

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

*(Signed)*

Judge Thomas Laker

Dated this 31<sup>st</sup> day of May 2012

Entered in the Register on this 31<sup>st</sup> day of May 2012

*(Signed)*

René M. Vargas M., Registrar, Geneva