



UNITED NATIONS DISPUTE TRIBUNAL

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: Anne Coutin, Officer-in-Charge

OSMANLI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Introduction

1. The Applicant filed, on 1 November 2011, an application for suspension of action pending management evaluation of the selection decision for the post of Child Protection Officer (National Officer, level B), Azerbaijan Country Office, United Nations Children's Fund ("UNICEF").

Facts

2. The Applicant joined UNICEF in 1998. She currently serves as

[the] job kindly offered to [him]” and stating that he could not yet specify the date on which he would be able to take up his new duties.

7. On 26 October 2011, the Representative verbally informed the Applicant that she had not been selected for the post.

8. On 28 October 2011, the Applicant addressed a request for management evaluation to the Executive Director of UNICEF regarding her non-selection.

9. The present application for suspension of action was filed on 1 November 2011. Following the Tribunal’s directions, the Respondent submitted his reply on 3 November 2011, which stated that “the selected candidate was offered the position of Child Protection Officer on 21 October 2011 and he accepted the offer on 25 October 2011”.

10. By Order No. 191 (GVA/2011), the Respondent was instructed to provide the Tribunal with complete information regarding how and when the said offer of employment had been made and accepted, including any pertinent document in his possession to support his contentions on this point. The Respondent submitted the requested information on 4 November 2011.

Parties’ contentions

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

Prima facie unlawfulness

a. Unlike the other candidates, the Applicant was not asked a single probing question by her supervisor, the Child Protection Specialist, member of the panel in his capacity as supervisor of the post incumbent and subject-matter expert; further, other panel members made inappropriate comments to her during the interview. The majority of the panel had not received training on competency-based interviewing;

b. The written test was not evaluated in the panel’s minutes and the latter made its recommendations on the basis of the interview only;

c. There are rumours and information leaked by the members of the panel pointing to other violations, e.g., inadequate rating applied by the interview panel, inadequate rating applied for the written test, submission of two different documents (panel's minutes and Representative's submission) to the relevant central review body, alteration of the documents sent to the central review body.

Urgency

d. The matter is urgent due to the impending recruitment of the selected candidate;

Irreparable damage

e. The recruitment process being unfair and not transparent, it may damage the Organization's reputation;

f. The Applicant has been exploited by the Organization during two years without any reward as she performed, in addition to her own responsibilities, the duties of Project Officer since September 2009.

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

Prima facie unlawfulness

a. The recruitment process for the post at issue was, *prima facie*,
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Urgency

c. The selected candidate was offered the position and he accepted it. Hence, the contested decision has been implemented and, as previously ruled by the Tribunal, it cannot suspend a decision already implemented;

Irreparable damage

d.

Offer of appointment

3.2 When a candidate has been selected, a *detailed offer letter*

24. Among others, the Applicant contends that during her interview, her immediate supervisor, who sat in the panel as direct supervisor of the post incumbent and subject-matter expert, did not formulate any probing questions unlike with the other interviewed candidates. This, if proven, may raise doubts as to whether Section 6.12 of UNICEF Staff Selection Policy, which establishes that “interviews should be conducted in a competency-based format and follow the same structure for each candidate”, has been complied with. The Applicant further claims that the selection panel made its recommendation based exclusively on the first interview, and that the results of the written test were not even mentioned in its minutes. This course of action does not seem in conformity with Section 6.15 of the Staff Selection Policy, which provides that “[t]he selection panel shall recommend a list of qualified, ranked candidates, based on the applicable evaluation criteria, and taking into account the application documents, interview performance and, where applicable, additional assessments”.

25. It is noteworthy that, while generally stating that the selection process was proper, the Respondent, nevertheless, does not rebut any of the Applicant’s allegations. No explanations, documentary evidence or alternative interpretation of the rules were provided to show that the Applicant’s contentions were unfounded. This is so despite the well-known fact that, in selection procedures, the relevant information and documents rest in the Administration’s hands.

26. In view of foregoing, the Tribunal finds that serious and reasonable doubts exist about the lawfulness of the decision at issue.

Urgency

27. The prerequisite of urgency is satisfied to the extent that the Administration is in the process of completing the necessary steps to appoint the selected candidate as soon as possible. In other words, the decision is likely to be implemented shortly, despite the Applicant’s diligence in filing her request for management evaluation and her application for suspension of action.

Irreparable damage

28. It is well established that a loss which can be adequately compensated through a monetary award does not constitute irreparable damage warranting a suspension of action (see, among others, *Tadonki* 2010-UNAT-005; *Kasmani* 2010-UNAT-011; *Ballestrieri* 2010-UNAT-041; *Kweka* UNDT/2011/122; *Villamorán* UNDT/2011/126; *Stephens* UNDT/2011/167). Nonetheless, the

