
Case No.: UNDT/GVA/2014/002
Order No.: 29 (GVA/2014)
Date: 20 February 2014

Introduction

1. On 11 February 2014, the Applicant filed an application for suspension of action, pending management evaluation, of the decision to appoint Mr. A. D. to one of the two posts advertised under Job Opening (“JO”) 13-LAN-UNOG-27767-R-GENEVA (L) Senior Interpreter (English), in the Division of Conference Management (“DCM”), at the United Nations Office at Geneva (“UNOG”) for which the Applicant had also applied.

Facts

2. From 16 April to 15 June 2013, two posts of Senior Interpreters, P-5

(English), were advertised under Job Opening (“JO”) 13-LAN-UNOG-27767-R-GENEVA (L) Senior Interpreter (English), in the Division of Conference Management (“DCM”), at the United Nations Office at Geneva (“UNOG”).

5. According to information provided by the Respondent, the D-1 post of Director, Interpretation Service, DCM, was transferred on loan to the Department for General Assembly and Conference Management (DGACM) upon request of the Under Secretary-General, DGACM, effective 27 September 2013 through 30 June 2014. The post is expected to return to DCM, UNOG, on 1 July 2014. At the moment of the transfer to DGACM, the post was vacant. The post has been advertised three times, a first time under JO ID number 26430, with a closing date

9. On 12 December 2013, the Acting Director-General, UNOG, selected Mr. A. D. and Ms. E. P. for the two posts. Accordingly, on 13 December 2013, the two selected candidates were notified of their selection. The Applicant became aware of this decision when he logged into his INSPIRA account on 17 December 2013.

10. On 20 December 2013, a female rostered candidate who had not been selected for one of the posts advertised under JO 1

15.

d. The Respondent's argument that the urgency was self-created is without merit; the Applicant had been ill and had underwent an emergency operation and subsequent convalescence; he was not in a position to file an application; he concentrated his first efforts into the filing of a request for management evaluation within the statutory time limits;

Irreparable damage

e. He was better qualified than the selected candidate; as such, he was denied a fair chance of progression for promotion from the roster, which causes irreparable harm to his professional reputation and career prospects.

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

- d. The assessment of the rostered candidates by the Hiring Manager was done in accordance with Chapter 2.1, sec. 11.a of the Inspira Manual for the Hiring Manager, based on their respective PHPs;
- e. While the argument that the OIC was not vested with the authority to act as Hiring Manager is not a subject of the present application, since it was not subject to management evaluation, the OIC designation was in line with staff rule 3.10(a); also, the final decision was made by the Acting Director-General, within his delegation of authority;
- f. Since the Applicant failed to prove that the decision was based on extraneous considerations, biased, discriminatory or made mala fides, or procedurally flawed, the presumption of the legality of the selection decision stands and the criteria of prima facie unlawfulness is not met;

Urgency

- g. The criteria of particular urgency, under art. 2.2 of the Tribunal's Statute is not met, since it was self-created by the Applicant, who, although he was informed of the contested decision no later than 17 December 2013, waited for 57 days after the notification to file his application for suspension of action;
- h. The criteria of particular urgency relates not only to the urgency of the matter itself, but also to the question of whether

- i. Therefore, since the urgency was self-created, the test of particular urgency under 2.2 of the Tribunal's Statute must fail;

Irreparable damage

- j. The Applicant failed to show how the implementation of the decision would cause him irreparable harm, since the question whether the Applicant or any of the other rostered candidates would have been selected had Mr. A. D. not been selected is speculative.

Consideration

18. Article 2.2 of the Statute and art. 13 of the Rules of Procedure of the

22. In view of the fact that the MEU responded to the Applicant's request before the determination of the application for suspension of action by the Tribunal, the Applicant's request becomes moot.

23. The Tribunal is nevertheless very concerned that it took the MEU more than two weeks to communicate to the Applicant its response dated 4 February 2014 and, as such, needlessly extended the time during which the Applicant could legitimately submit a request for suspension of action, as he did on 11 February 2014, under the above-quoted statutory provisions. The Tribunal stresses that the MEU failure to timely send its response of 4 February 2014 to the Applicant resulted in the parties, as well as the Tribunal, being brought to focus their limited resources in proceedings that proved to be completely superfluous.

24. Finally, the Tribunal underlines that its decision on the application for suspension of action does not entail any assessment with respect to the lawfulness of the contested decision.

Conclusion

25. In view of the foregoing, it is ORDERED that the application for suspension of action be rejected.

(Signed)

Judge Thomas Laker

Dated this 20th day of February 2014

Entered in the Register on this 20th day of February 2014

(Signed)

René M. Vargas M., Registrar, Geneva