



Case No.: UNDT/NBI/2021/091
Order No.: 241 (NBI/2021)
Date: 28 October 2021

Introduction

1. The Applicant is a staff member of the United Nations Support Office in Somalia (“UNSOS”). He filed an application on 20 October 2021 seeking suspension of the decision to not select him for the position of Chief of Service, Supply Chain Management, D-1, UNSOS (Job Opening 152801). He amended his application on 21 October 2021.
2. The Respondent filed a reply on 25 October 2021.
3. Without seeking leave and/or receiving permission from the Tribunal, the Applicant filed additional submissions on 25 October 2021 and a response to the Respondent’s reply on 26 October 2021.

Facts

4. On 26 and 27 August 2021, the Applicant requested management evaluation and filed an application for suspension of action with the Tribunal to suspend implementation of the decision not to shortlist him for the Competency Based Interview (“CBI”) for Job Opening 152801.
5. On 3 September 2021, the Tribunal granted the Applicant’s application for suspension of action pending management evaluation.¹ On 8 September 2021, the Management Evaluation Unit (“MEU”) informed the Applicant that his 26 August 2021 request for management evaluation was moot because UNSOS had decided to:

11. Although the selection decision has not yet been implemented nor has any announcement been made yet, it is urgent that any further action of onboarding of the selected candidate be suspended immediately. He has not created the urgency.

12. He would suffer irreparable harm if the administrative decision is implemented because he will be deprived of the opportunity to be placed on the roster.

Respondent's submissions

13. The application is not receivable because the Applicant failed to request management evaluation of the non-selection decision. In his application, the Applicant contests his non-selection for Job Opening 152801; whereas his management evaluation request ("MER") contests the decision not to include him in the roster for Job Opening 152801. The decision not to roster the Applicant for Job Opening 152801 is separate and distinct from the decision not to select him for the position.

14. The Respondent submits further that the Dispute Tribunal lacks jurisdiction

become effective shall be the first day of the month following the decision.

17. It follows from this provision that the implementation of the contested selection decision, which was taken on 2 June 2016, cannot be implemented before 1 July 2016. Therefore, the contested decision has not yet been implemented, and the application for suspension of action is receivable.

18. Based on the jurisprudence, the Tribunal finds the Respondent's assertion that the selection decision has been implemented to be unfounded. The Respondent's Annex R/3 indicates that the selected candidate is an external candidate subject to interagency movement. Thus, a contractual relationship between the Organization and an external candidate does not exist before the offer has been accepted by the selected external candidate. In the present case, while the selected candidate has confirmed her continued interest and availability to assume the functions of Job Opening 152801 and an offer has been initiated in *Inspira*, the Respondent has not placed any evidence before the Tribunal that an offer of appointment has, in fact, been accepted by the selected candidate.

Merits

19. Article 2.2 of the Statute of the Dispute Tribunal (Statute) and art. 13 of the Rules of Procedure (Rules) empower the Tribunal to grant an interim relief by way of a suspension of action in relation to an administrative decision that impacts on the contract or terms of employment of an individual provided the criteria of *prima facie* unlawfulness, urgency and irreparable damage are satisfied. Since the test is cumulative, the three elements must be satisfied for the Tribunal to grant this relief.

20. When reviewing administrative decisions regarding appointments and promotions, the Tribunal considers: (a) whether the procedure in the Staff Regulations and Rules was followed; (b) whether the staff member was given fair and adequate consideration; and (c) whether the applicable rules were applied in a fair, transparent

Organization—the whole process must recommence from the beginning, by a newly constituted panel.

24. Stability of the panel is all the more important where the sole basis for the selection decision is an interview.

