



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2021/103

Order No.: 258 (NBI/2021)

Date: 7 December 2021

Original: English

Before:

Introduction

1. The Applicant serves with the United Nations Support Office in Somalia (“UNSOS”), based in Mogadishu, Somalia.¹
2. On 3 December 2021, the Applicant filed an application for suspension of

7. On 26 November 2021, MINUSCA advertised the post as Job Opening #169256 with a closing date of 9 December 2021.⁵

8. On 28 November 2021, the Applicant requested management evaluation of the contested decision and also requested that the Management Evaluation Unit (“MEU”) suspend the selection process for Job Opening #169256.⁶

9. On 1 December 2021, the MEU acknowledged receipt of the Applicant’s request and informed her that its decision will be issued within 45 calendar-days. Regarding her request for the suspension of the selection process for Job Opening #169256, the MEU informed her that her request may only be reviewed if it pertains to a decision relating to separation from service in accordance with staff rule 11.3(b)(ii).⁷

Submissions

Unlawfulness

10. The Applicant contends that the contested decision is unlawful based on two points, namely (i) relevant factors were ignored; and (ii) the decision is irrational.

11. On the first argument, the Applicant submits that on 25 September 2021, the Organization was notified that she now identifies as a female. This has been certified by her country of origin in the form of a new passport.

taken into consideration when assessing her candidature for applications. Failure to do so leads to *prima facie* unlawfulness of the contested decision.

12. On the irrationality prong, the Applicant submits that MINUSCA is discarding the candidature of a female candidate with the purpose of attracting another female candidate. In the Applicant's view, this is an irrational exercise of discretion; at worst a deliberate act of discrimination in violation of ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) which expressly includes gender identity in its definition of discrimination.

Urgency

13. The Applicant co

Considerations

16. Under art. 2.2 of the Dispute Tribunal's Statute, the Applicant must establish that: (i) the contested decision was *prima facie* unlawful; (ii) there is particular urgency; and (iii) implementation of the decision would cause irreparable harm. All three statutory requirements must be satisfied in order for the implementation of a contested decision to be suspended. The Tribunal, at this stage, does not conduct any profound factual examination.

17. On the prong of legality, the Tribunal recalls that staff selection is an area where the Respondent acts with wide discretion.⁹ In the exercise of this discretion, the Respondent must act reasonably, fairly and transparently toward

20. In conclusion, the impugned decision to not select the Applicant from the roster and to advertise the job opening for broader competition is not unreasonable. It does not violate the Applicant's terms and conditions of service because the Applicant may take part in the current selection exercise. The impugned decision, is therefore, not unlawful. This finding renders unnecessary examining the other prongs of art. 2.2 of the Dispute Tribunal's Statute.

ORDER

21. The application is refused.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 7th day of December 2021

Entered in the Register on this 7th day of December 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi