

Case No.: UNDT/NBI/2024/039
Order No.: 71 (NBI/2024)

Introduction

1. The Applicant serves as the Chief of Office of the Director General, United Nations Office in Nairobi (“UNON”). He holds a continuing appointment at the D-1 level and is based in Nairobi, Kenya.

Procedural History

2. On 11 June 2024, the Applicant filed an application for suspension of action before the United Nations Dispute Tribunal sitting in Nairobi challenging the selection decision for Job Opening No. 222830 (“JO 222830”), for the position of Head of Office (D-2 level), Political Affairs, with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”).

3. The Respondent filed his reply on 14 June 2024. The Respondent moved the Tribunal to dismiss the application as not receivable because the impugned decision was implemented on 6 June 2024.

4. On the same day, the Applicant filed a motion for leave to respond to the Respondent’s reply, which included his arguments in response to the reply. The Tribunal considered these arguments below.

Consideration

5. Articles 2.2 of the Dispute Tribunal’s Statute and 13 of its Rules of Procedure govern the Tribunal’s jurisdiction in deciding on applications for suspension of action. An applicant must satisfy the Tribunal that the contested decision is *prima facie* unlawful, that the case is of particular urgency and that implementation of the decision would cause irreparable damage.

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12. The Applicant, relying on art. 10.2 of administrative instruction ST/AI/2010/3/rev.3 (Staff selection system) (“AI”), contends that since the contested decision was made on 6 June 2024, the selected candidate is internal and his selection will be treated as a promotion, the contested decision cannot be implemented until 1 July 2024. In the Applicant’s view, the application is receivable because the contested decision has not yet been implemented.

13. The Tribunal, notes that the Applicant is confusing implementation of the decision and the effective date of assuming office. Section 10.2 of the AI clearly states that a selection decision is “implemented upon its official communication to the individual concerned”. The AI then sets forth that if the “selection entails promotion to a higher level, the earliest possible date on which such promotion may become effective shall be the first day of the month following the decision”.

14. When properly read in context, the AI makes it clear that the decision was implemented the day the selected candidate was notified, i.e., 6 June 2024. Therefore, the court cannot provide effective and meaningful injunctive relief on a process that has already been concluded.

Conclusion

15. In view of the foregoing, it is ORDERED that the application for suspension of action pending management evaluation is Denied.

(Signed)

Judge Sean Wallace

Dated this 18th day of June 2024

Entered in the Register on this 18th day of June 2024

(Signed)

René M. Vargas M., Officer-in-Charge, Nairobi