

Case No.: UNDT/NBI/2024/044
Order No.: 85 (NBI/2024)
Date: 8 July 2024

7. On 24 June 2024, Job Opening 24-Transportation-UNIFIL-237477-R-NAQOURA (M) was posted in Inspira.

8. The following day, the Applicant received an alert notifying that the recruitment for which he applied was cancelled and readvertised under a PSJO.

9. On 1 July 2024, the Applicant requested management evaluation of the decision to cancel the RfR job opening and to readvertise the position. On the same day, he filed with the Tribunal an application for suspension of action pending management evaluation.

Consideration

10. The Respondent argues that the application is not receivable because the contested decision has already been implemented and is not a reviewable decision.

11. The Statute of the Dispute Tribunal provides that the Tribunal is competent “to hear and pass judgment on an application ... requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation”. Article 2.2 (emphasis added).

12. Thus, it is axiomatic that the authority to suspend implementation does not apply when the contested decision has already been implemented. (See, e.g.,

UNDT/2011/051, paras. 17-18; UNDT/2011/110, para. 26;
UNDT/2017/023, paras. 19-21).

13. The decision to cancel the RfR recruitment job opening and to readvertise it as a PSJO was implemented on 24 June 2024. Thus, the implementation is no longer pending and subject to suspension.

14. Moreover, the decision to readvertise is merely a preparatory and intermediate step in the recruitment decision. Only a decision taken at the end of the recruitment's process with direct legal consequences for the Applicant would constitute an administrative decision subjected to review.

2020-UNAT-987, para. 39; 2016-UNAT-657, para.30; &
2015-UNAT-509, para. 33; 2014-UNAT-481, paras. 48-49;
2014-UNAT-460, para. 27; I 2011-UNAT-152, para. 29;
2010-UNAT-058, para.17.

15. Thus, the application is not receivable. Even if it were, the application would fail on the merits.

16. Article 2.2 of the Tribunal's Statute provides that the Tribunal shall be competent to suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears

to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. These three requirements are cumulative. In other words, they must all be met in order for a suspension of action to be granted. Furthermore, the burden of proof rests on the Applicant.

17. The Tribunal recalls that the threshold required in assessing this condition is that of "serious and reasonable doubts" about the lawfulness of the impugned decision (

UNDT/2009/003, UNDT/2009/071,
UNDT/2009/076, Order No. 90 (GVA/2010), UNDT/2011/134,
UNDT/2011/198, UNDT/2012/080,
Order No. 77 (NBI/2013), Order No. 99 (GVA/2015).

18. To perform the functions of Chief of Transport Section, none of the roster candidates met the requirements of the RfR. Consequently, the hiring manager requested to readvertise the position through a PSJO, which the Administration lawfully did on 24 June 2024.

19. This appears to be in complete accord with the applicable staff regulations and rules and, in particular, with administrative instruction ST/AI/2010/3/Rev.3, which addresses the Staff Selection System. As such, the Applicant has failed to establish that the decision to cancel the RfR job opening and to readvertise it as a PSJO is unlawful.

20. Given the cumulative nature of the conditions to be met for the granting of a suspension of action, the Tribunal does not find it necessary to consider whether the contested decision is urgent or whether it would cause irreparable damage. UNDT/2011/212; UNDT/2011/133.

Conclusion

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

Judge Sean Wallace
Dated this 8th day of July 2024

Entered in the Register on this 8th day of July 2024

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