
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/081
Order No.: 245 (NY/2018)
Date: 12 December 2018
Original: English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Nerea Suero Fontecha

GORBYLEV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

Introduction

1. On 7 December 2018, the Applicant, a G-4 Legal Assistant working for the Office of Legal Affairs in New York, filed an application for suspension of action during management evaluation pursuant to art. 13 of the Dispute Tribunal's Rules of Procedure, requesting that the decision of the Administration that he did not pass the first part of the 2018 Young Professional Programme ("YPP") written examination in Legal Affairs, and to exclude him from the second stage of which is scheduled to take place on 13 December 2018, be suspended pending management evaluation. With the application, the Applicant filed a motion pursuant to arts. 19 and 36 of the Dispute Tribunal's Rules of Procedure requesting the Tribunal to suspend the implementation of the contested decision pending the consideration of the application for suspension of action under art. 2.2 of the Dispute Tribunal's Statute.

2. On 7 December 2018, the case was assigned to the undersigned Judge.

3. On the same day, the Registry acknowledged receipt of the application and transmitted it to the Respondent. The Tribunal instructed the Respondent to submit his reply by 12:00 p.m. on 11 December 2018, together with all documentation related to the written test, including the job opening, the content of the written test, the marking guide for each element of the written test ibunOffi

5. On 10 December 2018, by Order No. 242 (NY/2018), the Tribunal confirmed that the contested decision was suspended pending its consideration of the application for suspension of action, or until further order.

6. On 11 December 2018, the Respondent filed his reply in which he contends that the application is moot as following the Dispute Tribunal's instructions on 7 December 2018, the Organization notified the Applicant that

was located in New York. The Applicant understands that other colleagues who had

conducted written test can be challenged as an administrative decision that may impact a candidate's career if the unfairness of the initial step is established.

b. In this instance, the Applicant seeks to challenge the conduct of the written assessment. As enunciated by Appeals Tribunal in the case of *Riecan* 2017-UNAT-802, there is a presumption of regularity in which any staff member challenging a non-selection must establish at the *prima facie* level that there were serious and reasonable

e. In this case, the Applicant submits that he would have had a significant chance of being selected for a professional post through the YPP roster were it not for the irregularities in the written examination exercise as highlighted above. The Applicant did not take this exercise lightly as such an opportunity for General Staff members to

Professional grade by 13 December 2018, the Applicant will suffer the harm described above.

Irreparable damage

j. It is established law that a loss of a career opportunity with the United Nations is considered irreparable harm for the affected individual. It is submitted that the implementation of the selection decision at this stage would damage the Applicant's career prospects in a way that could not be compensated through financial means.

23. The Respondent submits that the application is moot because the contested decision will not be implemented pending management evaluation. The Respondent states that following the Dispute Tribunal's instructions on 7 December 2018, the Organization notified the Applicant that he will be allowed to sit the second stage of the examination on 13 December 2018, pending management evaluation. The Applicant has been provided with the relief he is seeking, and there is therefore no matter for the Dispute Tribunal to adjudicate.

Consideration

The mandatory and cumulative conditions for suspending an administrative decision

24. Article 2.2 of the Dispute Tribunal's Statute states:

... The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual 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, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such

