



Introduction

1.

6. On 13 October 2021, the Applicant was interviewed for JO 163168 and was identified amongst the recommended candidates as male.⁴
7. On 18 November 2021, the Applicant was copied on an automated email from Inspira confirming that another candidate had been selected and had indicated continued interest and availability for the position.⁵
8. On 21 November 2021, the Applicant requested management evaluation of the decision to select another candidate for JO 163168 as well as suspension of action.⁶
9. On 22 November 2021, the United Nations Dispute Tribunal granted the request for suspension of action via Order No. 254 (NBI/2021).
10. By letter dated on 07 December 2021, the Management Evaluation Unit (“MEU”) replied to the Applicant and informed him that the recruitment process for the position was cancelled *and re-advertised as a recruit-from roster with oversight by a different hiring manager*.⁷ Therefore, MEU decided that the Applicant’s request for management evaluation was moot and closed his file.⁸

Considerations

11. The Tribunal finds that this application is not merited for the reason outlined below.
12. For the application to be receivable, the impugned decision must fall under the Tribunal’s jurisdiction *rationae materiae*, that is, it must produce direct consequences for the terms of appointment in “a precise individual case”.⁹

⁴ Application, annex 2.

⁵ Application, annex 1.

⁶ Reply, page 10.

⁷ Application, annex 7.

⁸ *Ibid.*

⁹ See former Unitriv157

13. In connection with recruitment, the Tribunal recalls occasional jurisprudence according to which, arguably, a cancellation of a job opening might be challenged by a candidate who had been found suitable and thus would have earned his place on a roster¹⁰, or *a minori ad maius*, by a candidate recommended for appointment.¹¹

The position of the Appeals Tribunal as to whether and in what circumstances the cancellation of a job opening affects the terms of a staff member's appointment has been, however, inconclusive.¹²

14. On the other hand, an argument might be made that, the Administration is competent to cancel a job opening akin to cancellation of an auction, or bidding process, no matter the frustration for the participants and waste of resources that it entails, and it is only the question of good practice to avoid it.¹³

15. Absent a positive rule regulating this question, it seems most appropriate from the perspective of staff member rights, that the administrative discretion in withdrawing from a recruitment exercise should be fettered pursuant to the criterion whether or not the process has produced a binding external relation, that is, one going beyond relations within the administrative apparatus (such as acceptance of an offer of appointment by the selected candidate).

16. It has been noted by this Tribunal, that in the case where a candidate is recommended, but not yet offered an appointment, a candidate's reliance interest is weak and should not prevent a cancellation of the recruitment process where e.g., a serious violation of the applicable rules have taken place.¹⁴ The latter view seems to be endorsed by the Appeals Tribunal, which, more recently, held in *Kinyanjui*:

In the Appeals Tribunal's view, the Administration is not under an obligation to pursue a recruitment procedure once begun, by filling the

¹⁰ *Verschuur* UNDT/2010/153.

¹¹ *Jannoun* Order No. 029 (NBI/2013); *Belsito* Order No. 127 (NBI/2017).

¹² *Verschuur* 2011-UNAT-149, para. 31.

¹³ Manual for the Hiring Manager on the Staff Selection System (Inspira) Version 3.0, United Nations (2012), at page 61, directing not to cancel job openings where at least one candidate has been deemed suitable.

¹⁴ *Ponce-Gonzales* Order No. 036 (NBI/2019).

post which has become vacant. This falls within the discretionary authority of the Administration to terminate a recruitment procedure and/or to initiate a new one. The rule is nonetheless that, in filling the post, the Administration must proceed with the appointment of

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, subject to the availability of the position and the assumption of higher-level functions.

18. The Tribunal posits that only an official communication on selection gives

JUDGMENT

The application is dismissed.

(Signed)

Judge Agnieszka Klonowiecka-Milart
Dated this 30th day of September 2022

Entered in the Register on this 30th day of September 2022

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi