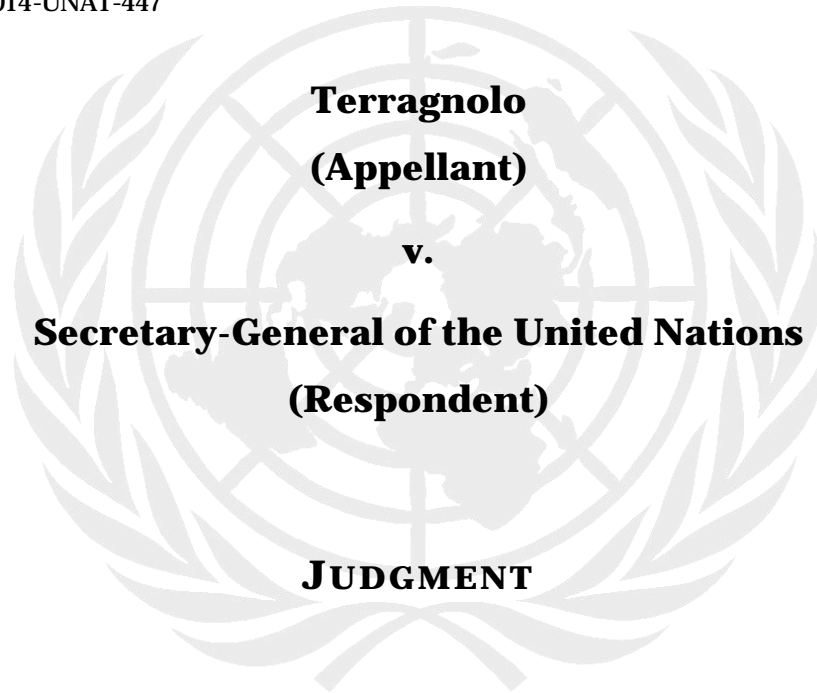




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2014-UNAT-447



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Before:	Judge Rosalyn Chapman, Presiding Judge Mary Faherty Judge Sophia Adinyira
Case No.:	2013-516
Date:	27 June 2014
Registrar:	Weicheng Lin

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Counsel for Mr. Terragnolo:	Self-represented
Counsel for Secretary-General:	Simon Thomas

**JUDGE ROSALYN CHAPMAN, PRESIDING.**

1. On 10 July 2013, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York issued Judgment No. UNDT/2013/098 in the case of *Terragnolo v. Secretary-General of the United Nations*. On 15 August 2013, Mr. Julien Terragnolo appealed the Judgment to the United Nations Appeals Tribunal (Appeals Tribunal), and on 21 October 2013, the Secretary-General filed his answer.

**Facts and Procedure**

2. On 26 August 2010, Vacancy Announcement 10-ADM-unjspf-eceo-15697-R-New York (O) was posted on Inspira for the position of Investment Assistant at the G-7 level (Post) with the United Nations Joint Staff Pension Fund (UNJSPF or Pension Fund) for the open period of 26 August through 25 September 2010.

3. Vacancy Announcement 10-ADM-unjspf-eceo-15697-R-New York (O) listed the following education and work experience requirements:

High school diploma or equivalent. Supplementary courses/training in finance or equivalent, preferably in economics, business administration, or related subjects are desirable.

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Ten years of experience in the financial markets. Exposure to capital markets and international work experience is desirable. Prior experience in investment management is also desirable.

4. Mr. Terragnolo applied for the Post on 15 September 2010, at which time he was “rejected” as “Ineligible- Req. Work Exper”.

5. At the time he applied for the Post, Mr. Terragnolo was employed by the French Text Processing Unit, Department for General Assembly and Conference Management (DGACM), as a Desktop Editorial and Publishing Assistant at the G-4 level, step 6. He was initially hired on 27 June 2009, as an Editorial and Desktop Publishing Assistant at the G-3 level, step 6, and he was promoted to the G-4 level, step 6, on 27 June 2010.

6. According to his Personal History Profile (PHP) and curriculum vitae, Mr. Terragnolo was born in 1982 and he graduated from high school in June 1998. From September 2002 to June 2006, he attended Essec Business School in France and he obtained a Master’s degree

in Business Administration (M.B.A.) upon completion. While he was attending business school and shortly afterward, Mr. Terragnolo participated in internships at various firms, including PricewaterhouseCoopers, Valeo and Arcelor. From April 2007 through October 2008, he was employed by Société Générale as Relationship Manager Assistant. According to his PHP, Mr. Terragnolo was also enrolled in the Chartered Financial Analyst (CFA) Program.

7. On 23 November 2010, Mr. Terragnolo sent an e-mail to the Office of Human Resources Management (OHRM) “bring[ing] an exception to the rules of the Secretariat in staffing matters [to OHRM’s] attention”. In particular, Mr. Terragnolo challenged reliance upon ST/AI/2010/3 (Staff selection system), which limited a staff member to applying for a position above the next grade. He explained in detail the Pension Fund’s need for specialized expertise and emphasized that the Pension Fund expressed explicit interest in candidates enrolled in the CFA Program.

8. On 26 November 2010, OHRM advised Mr. Terragnolo that:

[his] application ha[d] been rejected on the basis of required experience. ... According to [his] PHP, [he] ha[d] attained just short of 3 years experience which includes 1 year 5 months as an Editorial Desktop and Publishing Assistant in DGACM. For information, internships are not considered for the purpose of establishing work experience.

...

Apart from the above, applicants (without exception) who hold contracts subject to the staff rules are not eligible to apply to positions at more than one level above their personal grade. In this regard, there are no exceptions for persons applying to positions in UNJSPF. OHRM is guided by the Staff Rules and Regulations, administrative instructions, policy documents. Application of HR [Human Resources] practices according to statements made in UNJSPF reports may be applied when promulgated in the aforementioned documents.

9. On 29 November 2010, Mr. Terragnolo requested management evaluation of the decision that he was not eligible to be considered for the Post.

10. On 31 January 2011, the Management Evaluation Unit (MEU) informed Mr. Terragnolo that it had “found no basis to conclude that the Administration abused its discretion in its determination that [he was] ineligible for consideration for the Post”.

11. On 10 March 2011, Mr. Terragnolo filed an application before the Dispute Tribunal challenging the decision that he was not eligible to be considered for the Post. On 14 April 2011, the Secretary-General filed his reply.

12. On 10 July 2013, the Dispute Tribunal issued Judgment No. UNDT/2013/098, rejecting Mr. Terragnolo's application. In its Judgment, the UNDT determined, *inter alia*, that ST/AI/2010/3 applies to the Pension Fund, pursuant to the "Memorandum of Understanding With Respect to United Nations Personnel Procedures Application to the UN Joint Staff Pension Fund" (MOU) entered into in 2000. Under Section 6.1 of ST/AI/2010/3, a staff member holding a fixed-term appointment (like Mr. Terragnolo) is not eligible to apply for a post more than one level higher than his current post. Since Mr. Terragnolo was at the G-4 level at the time he applied for the G-7 Post with the Pension Fund, he was not eligible for the Post. Moreover, the UNDT found that Mr. Terragnolo did not formally request an exception to Section 6.1 of ST/AI/2010/3 in advance of applying for the Post.

### **Submissions**

#### **Mr. Terragnolo's Appeal**

13. The UNDT made an error of fact when it determined that he had not applied for an exception to Section 6.1 of ST/AI/2010/3. Rather, like staff members in other cases, i.e. the *Hastings* case,<sup>1</sup> Mr. Terragnolo made a clear request for an exception in his e-mail of 23 November 2010 to OHRM.

14. The UNDT made errors of fact and law when it determined that the Pension Fund had expressly accepted ST/AI/2010/3 to govern its staff selection. The MOU, upon which the UNDT relied, does not identify in specific terms those administrative issuances that would apply to the Pension Fund, as it must. Moreover, the term "normal UN A&P procedures" is not defined in the MOU and, thus, cannot be considered express acceptance by the Pension Fund of ST/AI/2010/3. Similarly, the use of the term "corresponding" in paragraph 25 of the MOU does not show the Pension Fund's acceptance of OHRM's identical services under its rules.

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<sup>1</sup> *Hastings v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-109.

15. The UNDT made an error of law in applying ST/AI/2010/3, which was not properly promulgated due to “the lack of a proper consultative process” with the staff unions under Staff Regulations, Staff Rules and ST/SGB/2002/15 (Staff-Management Coordination Committee).

16. The UNDT made an error of law in applying ST/AI/2010/3, since it conflicts with Articles 8 and 101.3 of the United Nations Charter, both of which take precedence over an administrative issuance. Under Article 8 of the Charter, restrictions on eligibility for employment are prohibited and under Article 101.3, suitability for employment should be the primary concern in staff selection.

17. The UNDT erred in law in applying ST/AI/2010/3, since it conflicts with the Universal Declaration of Human Rights, which the General Assembly adopted. Under the Universal Declaration of Human Rights, all staff members have the right of equal access to service, the right to work, and to free choice of employment and discrimination against these rights is prohibited.

18. The UNDT erred in law in applying ST/AI/2010/3, since it conflicts with “decisions” of the United Nations Joint Staff Pension Board (Pension Board). In its 2010 Report to the General Assembly, the Pension Board noted its autonomy from the Secretariat’s issuances and its needs for specialized professional expertise, career development, and flexibility in human resources management, among other things. The application of ST/AI/2010/3 to selection of Pension Fund staff conflicts with the Pension Fund’s needs.

**The Secretary-General’s Answer**

19. The UNDT correctly found that ST/AI/2010/3 applied to the Pension Fund and precluded Mr. Terragnolo from being considered for the Post. Since the Pension Fund is not part of the Secretariat and is an inter-agency body administered and managed by a Chief Executive Officer, who is directly responsible to the Pension Board and the General Assembly, the Organization’s administrative procedures and directives are not automatically applicable to the Pension Fund. For this reason, the Pension Fund entered into the MOU with the United Nations in 2000, to clarify the procedures applicable to the Pension Fund’s staff. As the UNDT held, paragraph 14 of the MOU requires that the

Pension Fund staff “shall be appointed and promoted through the normal UN A&P [appointment and promotion] procedures”.

20. There is no merit to Mr. Terragnolo’s argument that the Pension Fund must specifically and expressly adopt an administrative issuance for that Administrative Instruction to apply to Pension Fund staff. If Mr. Terragnolo’s argument was correct, the Pension Fund would be required to continuously update the MOU whenever a new administrative issuance is promulgated, and that would not be practical.

21. The UNDT correctly found that Section 6.1 of ST/AI/2010/3 precluded Mr. Terragnolo from consideration for the G-7 Post. In *Marshall* and *Hastings*,<sup>2</sup> the Appeals Tribunal has upheld similar provisions in administrative issuances without finding such provisions conflict with the United Nations Charter.

22. Mr. Terragnolo is not correct in claiming that ST/AI/2010/3 was not properly promulgated since it does not require an agreement with staff unions under Staff Rule 8.1(h).

23. The UNDT correctly determined that Mr. Terragnolo did not request an exception to Section 6.1 of ST/AI/2010/3. First, Mr. Terragnolo did not contact OHRM until 23 November 2010 -- after he had applied for the Post and the deadline for the vacancy had expired. Second, his e-mail to OHRM did not request an exception in clear language; to the contrary, he argued that ST/AI/2010/3 did not apply to him.

24. Even apart from the application of Section 6.1 of ST/AI/2010/3, Mr. Terragnolo did not meet the substantive requirements of the Post since he did not have ten years of progressively responsible and related work experience, as required. Although the UNDT did not address this issue, the Appeals Tribunal may do so since the record includes Mr. Terragnolo’s PHP and curriculum vitae, which show that he did not meet the work experience requirement. The internships listed in his work experience were overlapping, not full-time and did not represent “progressively responsible” work experience.

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<sup>2</sup> *Marshall v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-270; *Hastings v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-109.

### Considerations

*Did The UNDT err in applying ST/AI/2010/3 to the selection of staff for the G-7 post?*

25. The penultimate issue before the Appeals Tribunal is whether Mr. Terragnolo was eligible to be considered for the G-7 Post with the Pension Fund when he applied for it in 2010. Subsumed within this issue, we must determine whether the UNDT was correct in concluding that the MOU required the application of ST/AI/2010/3 to the selection of a staff member for the G-7 Post and Section 6.1 of ST/AI/2010/3 precluded Mr. Terragnolo from being eligible for the G-7 Post. We must also determine whether the UNDT was correct in finding that Mr. Terragnolo did not seek an exception to Section 6.1 of ST/AI/2010/3.

26. On 21 April 2010, the Under-Secretary-General for Management promulgated ST/AI/2010/3, an administrative instruction regarding staff selection, to be effective the next day. Section 6 generally sets forth eligibility requirements for staff, and Section 6.1 specifically provides that:

Staff members holding a permanent, continuing, probationary or fixed-term appointment shall not be eligible to apply for positions more than one level higher than their personal grade. Staff members in the General Service and related categories holding a permanent, continuing or fixed-term appointment may apply for positions in the Field Service category at any level, irrespective of the grade held in the General Service and related categories, provided they meet the requirements of the post.<sup>[3]</sup>

27. An understanding of the relationship between the United Nations Secretariat and the Pension Fund is essential to our resolution of the appeal. Effective 30 June 2000, the Assistant Secretary-General for Human Resources Management and the Chief Executive Officer of the Pension Fund entered into the MOU, which still is in effect. Paragraphs 1 and 3 of the MOU explain the relationship between the Pension Fund and the Secretariat:

The UN Joint Staff Pension Fund (UNJSPF) is not part of the UN Secretariat. It was established by the UN General Assembly as an inter-agency body, administered and managed not by the Secretary-General but by the Chief Executive Officer (CEO) of the UNJSPF, who in turn is directly responsible to the United Nations Joint Staff Pension Board (UNJSPB) and ultimately to the United Nations General Assembly. ... Neither the Secretary-General, nor the executive head of any other member organization, has

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<sup>3</sup> Footnote omitted.

authority over the management of the [Pension] Fund or the independence of the CEO of the [Pension] Fund in the administration of its staff. ...

\* \* \*

The CEO and Deputy CEO of the [Pension] Fund are appointed by the UN Secretary-General, upon the recommendation of the Pension Board (Article 7(a) of the UNJSPF Regulations). Article 7(b) of the UNJSPF Regulations provides that the “Secretary-General shall appoint such further staff as may be required by the Board” (emphasis in original). The staff of the UNJSPF are thus appointed by the Secretary-General and, holding UN appointments, are entitled to all UN benefits and entitlements and are subject to the UN Staff Rules. However, the UN’s administrative procedures and directives are not automatically applicable to the [Pension] Fund staff, since the requirements of the Board take precedence.

28. Paragraph 14 of the MOU applies to General Service staff with the Pension Fund, providing in relevant part:

The General Service staff of the Fund secretariat shall be appointed and promoted through the normal UN A&P [appointment and promotion] procedures, according to the policies applicable at the duty stations in which the UNJSPF staff serve, presently New York and Geneva. The same conditions as those outlined above shall apply with regard to applicants for posts from member organizations serving at the same duty station, i.e. such applicants shall be considered as internal candidates provided that they have been appointed through the normal appointment and promotion procedures of their member organizations, as applicable in that duty station. The UNJSPF shall have its own “Departmental” Panels, for purposes of submissions to the UN A&P bodies.

And conditions of service for the staff of the Pension Fund are set forth in paragraphs 17 through 20 of the MOU.<sup>4</sup>

29. Mr. Terragnolo claims that the Dispute Tribunal made an error of law when it concluded that ST/AI/2010/3 applied to the selection of staff for the G-7 Post and precluded him from being eligible for that Post. Initially, he contends that the MOU is not the basis for

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<sup>4</sup> These provisions require that the United Nations Staff Regulations and Rules apply to Pension Fund staff; changes in the post structure of the Pension Fund “will be on the basis of recommendations by the Pension Board and approvals thereof by the General Assembly”; “classification and performance evaluation procedures utilized by the United Nations shall be applied” to Pension Fund posts; and “the United Nations’ vacancy announcement machinery” shall be utilized for the advertising of all vacant Pension Fund posts. Additionally, paragraph 16 of the MOU provides that “[t]he formal contractual arrangements will be the same as those offered by the UN, i.e. short term, fixed term and eventually permanent appointments”.



applying ST/AI/2010/3 to the Pension Fund. There is no merit to this argument. To the contrary, the language of paragraph 14 of the MOU requires that “[t]he General Service staff of the [Pension] Fund secretariat shall be appointed and promoted through the normal [United Nations appointment and promotion] procedures, according to the policies applicable at the duty stations in which the UNJSPF staff serve”. This is a mandatory requirement. And Mr. Terragnolo does not dispute that ST/AI/2010/3 sets forth the “normal” United Nations appointment and promotion procedures in effect in 2010.

30. Mr. Terragnolo also contends that the UNDT made an error of law when it applied ST/AI/2010/3 since the administrative instruction was not properly promulgated due to the lack of a consultative process with the staff unions. This is not so. As the Secretary-General notes, under Staff Rule 8.1(h), consultation with staff is not required for an administrative issuance on staff selection.<sup>5</sup>

31. Mr. Terragnolo further contends that the UNDT made an error of law when it applied ST/AI/2010/3 because the administrative instruction conflicts with higher legal authority, such as Articles 8 and 101.3 of the United Nations Charter, the Universal Declaration of Human Rights (adopted by the General Assembly), and statements in the Pension Board’s reports to the General Assembly. There is no merit to any of these contentions. In fact, to hold that the United Nations Charter and the Universal Declaration of Human Rights prevent the Administration from attaching minimum requirements for education and work experience to posts would conflict with the Charter’s paramount goal of having an efficient and competent work force -- and would lead to dangerous situations in which unskilled and inexperienced individuals could fill posts for which they do not have the proper expertise. Moreover, as the Secretary-General notes, the Appeals Tribunal has previously upheld the

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<sup>5</sup> Staff Rule 8.1(h) provides:

General administrative instructions ... on questions within the scope of paragraph (f) above shall be transmitted in advance, unless emergency situations make it impracticable, to the executive committees of the staff representative bodies concerned for consideration and comment before being placed in effect.

In turn, paragraph (f) provides:

The staff representative bodies shall be entitled to effective participation, through their duly elected executive committees, in identifying, examining and resolving issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies, and shall be entitled to make proposals to the Secretary-General on behalf of the staff.

requirements of the predecessor administrative issuance to ST/AI/2010/3, which contained a provision identical to Section 6.1.<sup>6</sup>

32. Lastly, this Tribunal cannot conclude, as Mr. Terragnolo asserts, that the application of Section 6.1 of ST/AI/2010/3 prevented the best qualified person (him) from being eligible for the Post, thus conflicting with broad policy statements by the Pension Board to the effect that the Pension Fund needs flexibility to hire “the best and the brightest”. As the MEU determined, Mr. Terragnolo does not have the requisite ten years work experience for the Post; he simply is not qualified.

33. For all these reasons, the Appeals Tribunal determines that the UNDT did not make any errors of law when it determined that Mr. Terragnolo was not eligible to be considered for the G-7 Post.

*Did the UNDT err in finding Mr. Terragnolo did not seek an exception to Section 6.1?*

34. Mr. Terragnolo asserts that the Dispute Tribunal made a factual error when it concluded that he “did not formally request that, in accordance with staff rule 12.3, an exception be made to sec. 6.1 of ST/AI/2010/3”.<sup>7</sup> For the reasons discussed below, this assertion does not assist Mr. Terragnolo since his request for an exception was not timely. Rather than being made before he applied for the Post, as it should have been, the request was, in fact, made long after the vacancy announcement for the Post had closed. The e-mail in which Mr. Terragnolo requested an exception to Section 6.1 was sent to OHRM on 23 November 2010 -- months after the vacancy announcement closing date. Although it may broadly be read as a request for an “exception” to Section 6.1, it may also be read as a lengthy and detailed explanation of why Section 6.1 should not apply to Mr. Terragnolo and why he should be considered eligible for the Post. The OHRM, in responding to the e-mail, did not expressly address Mr. Terragnolo’s request for an “exception”; rather, it merely explained why he was not eligible for the Post.

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<sup>6</sup> *Hastings v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-109.

<sup>7</sup> *Terragnolo v. Secretary-General of the United Nations*, Judgment No. UNDT/2013/098, para. 39. Staff Rule 12.3(b) provides: Exceptions to the Staff Rules may be made by the Secretary-General, provided that such exception is not inconsistent with any Staff Regulation or other decision of the General Assembly and provided further that it is agreed to by the staff member directly affected and is, in the opinion of the Secretary-General, not prejudicial to the interests of any other staff member or group of staff members.

35. Article 2(1)(e) of the Appeals Tribunal Statute confers jurisdiction on this Tribunal to hear and pass judgment on an appeal in which the Dispute Tribunal “[e]rrred on a question of fact, resulting in a manifestly unreasonable decision”.

36. The Appeals Tribunal finds that the Dispute Tribunal did not make a factual error resulting in a manifestly unreasonable decision. Even assuming *arguendo* that the UNDT erred in finding Mr. Terragnolo did not make a request for an exception, it is clear that there were no grounds for OHRM to grant such a request. First, the request for an exception was not made *before* Mr. Terragnolo applied for the Post -- or even before the end of the application period. It was not timely. Second, Mr. Terragnolo does not otherwise meet the eligibility requirements for the G-7 Post since he does not have the requisite ten years work experience. As set forth in his PHP, Mr. Terragnolo obtained his M.B.A. in 2006 and had less than three years’ work experience when he applied for the Post. (Even counting his internships, he did not have ten years’ work experience.) Third, Staff Rule 12.3(b) allows for an exception only when it is “not prejudicial to the interests of any other staff member or group of staff members”. Clearly, the interests of other staff members applying for the Post would have been prejudiced if an exception had been made for Mr. Terragnolo. Thus, this ground for appeal also fails.

### **Judgment**

37. The appeal is dismissed and Judgment No. UNDT/2013/098 is affirmed.

Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of June 2014 in Vienna, Austria.

*(Signed)*

Judge Chapman, Presiding

*(Signed)*

Judge Faherty

*(Signed)*

Judge Adinyira

Entered in the Register on 29<sup>th</sup> day of August 2014 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar