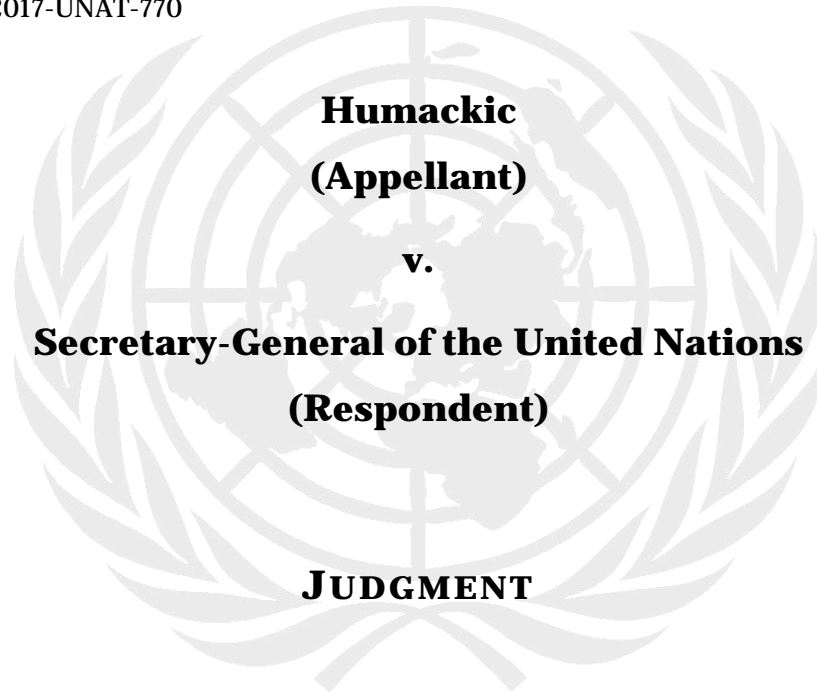




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2017-UNAT-770



Before:	Judge John Murphy, Presiding Judge Sabine Knierim Judge Martha Halfeld
Case No.:	2017-1050
Date:	14 July 2017
Registrar:	Weicheng Lin

Counsel for Ms. Humackic:	Edwin P. Nhliziyo
Counsel for Secretary-General:	Isavella Maria Vasilogiorgi

JUDGE JOHN MURPHY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2016/196, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 26 October 2016, in the case of *Humackic v. Secretary-General of the United Nations*. Ms. Nina Humackic filed the appeal on 9 January 2017, and the Secretary-General filed his answer on 10 March 2017.

Facts and Procedure

2. Ms. Humackic served as an Administrative Assistant at the United Nations Interim Force in Lebanon (UNIFIL) at the FS-5 level.

3. On 21 March 2014, the position of Contracts Management Assistant was advertised as Temporary Job Opening under TJO/2014/011 (the TJO) with a closing date of 28 March 2014. Ms. Humackic applied for the position on 28 March 2014.

4. A two-member interview panel was convened to assess the candidates comprising of the Hiring Manager (a female staff member external to the work unit where the TJO was located) and a staff member from Human Resources (HR) who served as an *ex officio* member of the panel.

5. Ms. Humackic and seven other staff members who applied for the TJO took written tests and undertook competency-based interviews.

6. On 28 April 2014, the Hiring Manager transmitted the selection memorandum to the Chief HR Officer recommending that the staff member who scored the highest on the written test be selected for the position.

7. On 27 June 2014, the selected candidate declined the position. Another candidate was offered the position but, on 18 July 2014, also declined the offer.

8. Following the second candidate's decision to decline the position, UNIFIL management decided that the TJO would be filled from the roster by a staff member appointed on a longer basis and that the recruitment would take place from January 2015. Ms. Humackic was not offered the position.

9. Ms. Humackic requested management evaluation of the decision concerning her non-selection for the position, to assess the transparency of the selection process and to assess if events she had described in her request for management evaluation had affected her opportunity for career development. The Management Evaluation Unit (MEU) addressed a letter to Ms. Humackic in reference to her management evaluation request (MER) on 27 June 2014. The letter advised her on the applicable deadlines for submission of her case to the UNDT. Ms. Humackic filed an application to the UNDT contesting a decision made on 25 April 2014 not to select her for the position. The UNDT subsequently issued Judgment No. UNDT/2015/030 in which it found that the application was receivable.

10. In her application, Ms. Humackic claimed that Administrative Instruction ST/AI/2010/3 (Staff selection system) required that a selection panel be composed of three members and that the selection process be reviewed by a Central Review Body (CRB).¹ She complained that she was not placed on the roster despite going through the selection process and alleged that the irregularities in dealing with her application for the TJO demonstrated that she was not treated fairly. The Secretary-General asserted that the application was without merit because the process was governed not by ST/AI/2010/3 but by Administrative Instruction ST/AI/2010/4/Rev.1 (Administration of temporary appointments) and was in compliance with it as there is no minimum panel composition requirement for a temporary position of less than 12 months, no requirement to refer it to a CRB or for candidates to be placed on a roster.

11. The UNDT held an oral hearing on 26 July 2016 and on 26 October 2016, issued its Judgment dismissing Ms. Humackic's application.² It rejected Ms. Humackic's contention that the applicable law governing the selection for the TJO was ST/AI/2010/3. Since the duration of the TJO was from 1 May 2014 to 31 October 2014, a period of six months, the relevant and applicable law was ST/AI/2010/4/Rev.1 which regulates the selection and appointment of staff members for positions established for less than one year. ST/AI/2010/4/Rev.1 does not require a minimum composition for interview panels for

¹ Central review bodies are joint bodies established under Staff Rule 4.15 which are to ensure that candidates have been evaluated on the basis of approved evaluation criteria and that the applicable procedures have been followed in the process of appointing, selecting and promoting staff up to and including the D-1 level, except for advice on appointment of candidates having successfully passed a competitive examination in accordance with Staff Rule 4.16. Field central review bodies are established for peacekeeping operations and special political missions for the same purpose.

² Impugned Judgment on Liability and Relief, para. 21.

temporary appointments. According to the UNDT, the composition of the interview panel in this case was consistent with both the requirements of ST/AI/2010/4/Rev.1 and Paragraph 4.2.1 of the Standard Operating Procedures (SOPs)³ on staff selection in United Nations peacekeeping operations of the Organisation for the appointment of staff to temporary positions at the FS-5 level, which states that interviews shall be conducted by a panel of at least two persons for posts up to P-3/FS-6 and by a panel of at least three persons for posts at the P-4/FS-7 level and above. The UNDT further held that there was no legal requirement that the selection exercise in this case be reviewed by the CRB or that candidates be placed on a roster.

Submissions

Ms. Humackic's Appeal

12. Ms. Humackic submits that the UNDT erred in fact and in law in determining the legal instrument governing the procedures for setting up recruitment and promotion panels for TJOs. She maintains that paragraph 4.2.1 of the SOPs either does not exist or was superseded by the SOP in force at the time (2014) which is silent on the composition of interview panels for TJO posts. She conceded nonetheless that ST/AI/2010/4/Rev.1 applies.

13. Ms. Humackic asks that the Appeals Tribunal address her other grievances raised before the UNDT. She contends that it is the Organisation's practice to prepare a Personnel Action (PA) form to record changes in the status of staff members. In her case, however, no PA was prepared to record how the TJO recruitment process in her case was concluded. Her supervisor issued a memorandum requesting that she be placed against the post after two staff members had declined offers for the post which she understood to mean that she had been selected for the TJO. She only found out during the hearings that HR had refused the request without any further notification. The lack of a PA in her case, she believes, is "discriminatory and part of a pattern of harassment that was meted out to her after she reported possible contract irregularities involving her two immediate supervisors".

14. Ms. Humackic seeks clarification on whether she "lost her status as a rostered candidate for the function she performed when she was promoted to FS-5 and continues to perform merely because her functions as a contracts manager were switched from the

³ Standard Operating Procedures on staff selection in United Nations peacekeeping operations.

Administration occupational group to the Procurement occupational group”. She maintains that staff members who have been rostered and continue to perform the same functions be “grandfathered” when the function is reclassified under another occupational group.

15. Ms. Humackic requests that the Appeals Tribunal hold an oral hearing and vacate the impugned Judgment.

The Secretary-General’s Answer

16. The Secretary-General submits that the UNDT correctly identified ST/AI/2010/4/Rev.1 as providing the legal framework for the contested decision. ST/AI/2010/4/Rev.1 regulates the selection and appointment of staff members for positions established for less than one year and in the present case, the position in question was for a total duration of six months. The UNDT correctly determined that the selection process for the TJO fully complied with all procedural obligations imposed under Section 3 of ST/AI/2010/4/Rev.1.

17. He submits further that Ms. Humackic has not established any errors warranting a reversal of the UNDT Judgment. She merely reargues matters from her application before the UNDT without identifying any errors by the UNDT in the Judgment. It does not fall to the Appeals Tribunal to conduct a new trial. In accordance with its well-established jurisprudence, the Appeals Tribunal should, on this basis alone, dismiss the appeal. Her other submissions are irrelevant to her appeal.

18. Furthermore, Ms. Humackic provides no substantiation for her claims of unequal treatment and does not identify any error with the UNDT’s finding that there was no discrimination in the selection exercise for the TJO. Finally, as to her claim that the UNDT failed to address the question of compensation for the undue stress suffered by her, as the UNDT rejected her claims, it was correct in not addressing the question of compensation.

19. The Secretary-General asks that the Appeals Tribunal dismiss the appeal and affirm the UNDT Judgment.

Considerations

20. Ms. Humackic requested an oral appeal hearing. We do not find that an oral hearing would assist in the expeditious and fair disposal of the case in accordance with Article 8(3) of the Appeals Tribunal Statute and Article 18(1) of the Appeals Tribunal Rules of Procedure. The factual and legal issues are straightforward and have been fully ventilated on the papers. For those reasons, the request for an oral hearing is denied.

21. ST/AI/2010/3 sets out the procedures generally applicable from the beginning to the end of the staff selection process within the Organisation.⁴ Selection decisions for positions up to and including the D-1 level are made in terms of ST/AI/2010/3 by the head of department/office/mission, under delegated authority, when the relevant CRB is satisfied that the evaluation criteria have been properly applied and that the applicable procedures were followed. Once a list of qualified candidates has been endorsed by the CRB, the head of department, office or mission may select any one of those candidates for the advertised job opening. The other candidates shall be placed on a roster of pre-approved candidates from which they may be considered for future job openings at the same level within an occupational group and/or with similar functions.

22. However, importantly, Section 3.1 of ST/AI/2010/3 provides that the system shall apply to the selection and appointment of all staff members to whom the Organisation has granted or proposes to grant an appointment of one year or longer under the Staff Rules at the G-5 and above levels in the General Service category, TC-4 and above in the Trades and Crafts category, and S-3 and above levels in the Security Service category, as well as to staff in the Professional and above categories and to the Field Service category for positions established for one year or longer, irrespective of the functions or source of funding. It thus does not apply to shorter term appointments. Most relevantly, temporary appointments are expressly excluded by Section 3.2(b) which identifies ST/AI/2010/4/Rev.1 as the relevant governing instrument for such appointments.

⁴ Section 2.1 of ST/AI/2010/3 provides that “the present instruction establishes the staff selection system (the “system”), which integrates the recruitment, placement, promotion and mobility of staff within the Secretariat”.

23. ST/AI/2010/4/Rev.1 was promulgated by the Under-Secretary-General for Management, pursuant to Section 4.2 of Secretary-General's bulletin ST/SGB/2009/4 (Procedures for the promulgation of administrative issuances), and for the purpose of establishing terms and conditions pertaining to the use and administration of temporary appointments in accordance with Staff Regulation 4.5 and Staff Rule 4.12. Section 1.1 of ST/AI/2010/4/Rev.1 provides that the purpose of temporary appointments is to enable the Organisation to effectively and expeditiously manage its short-term staffing needs usually for seasonal or peak workloads and specific short-term requirements for less than one year.⁵ They are typically granted for specific short-term requirements that are expected to last for less than one year to respond to an unexpected and/or temporary emergency or surge demand. A temporary appointment may not be used to fill needs that are expected to last for one year or more.

24. Section 3 of ST/AI/2010/4/Rev.1 regulates the job opening, selection and appointment process for temporary appointments. It provides that when a need for service for more than three months but less than one year is anticipated, a TJO shall be issued by the programme manager. This TJO shall include a description of the qualifications, skills and competencies required and reflect the functions of the post. Each TJO shall indicate the date of posting and specify a deadline by which all applications must be received. TJOs shall be posted for a minimum of one week on the Intranet or be circulated by other means, such as e-mail, in the event that an Intranet is not available at the duty station concerned. A TJO may also be advertised externally if deemed necessary and appropriate.

25. Sections 3.5-3.7 of ST/AI/2010/4/Rev.1 govern the process of evaluation, selection and appointment or assignment in TJOs. The provisions read as follows:

3.5 The department/office will assess the candidates' applications in order to determine whether they are eligible, and whether they meet the minimum requirements, as well as the technical requirements and competencies of the temporary position. Such assessment will be undertaken through a comparative analysis of the applications. The assessment may also include a competency-based interview and/or other appropriate evaluation mechanisms, such as written tests, work sample tests and assessment centres. Following a competitive process, the

⁵ They can be renewed for up to one additional year when warranted by surge requirements and operational needs related to field operations and special projects with finite mandates.

head of department/office shall make the selection decision, up to and including the D-1 level.

3.6 When a candidate has been selected, he/she shall be offered the respective appointment, which for external candidates will be subject to satisfactory reference checks to be completed by the recruiting department/office. Such reference checks shall include, at a minimum, verification of the highest required academic qualification(s) and record with the last employer. Once such reference checks are completed to the satisfaction of the recruiting office, a letter of appointment will be provided upon entry on duty. The letter of appointment shall contain, expressly or by reference, the terms and conditions of employment and details of the candidate's entitlements. In urgent cases, a conditional letter of appointment, initially for a period not exceeding three months, may be offered, subject to completion of reference checks the results of which are deemed satisfactory by the recruiting department/office.

3.7 The selected candidate shall be offered a temporary appointment unless he/she already holds another type of appointment, in which case the following rules apply:

(a) Candidates holding a permanent or continuing appointment will retain their permanent or continuing appointment and will be assigned to the position to be temporarily encumbered;

(b) Candidates holding a fixed-term appointment will retain their fixed-term appointment and will be assigned to the position to be temporarily encumbered for a period not exceeding the duration of their fixed-term appointment.

26. The position in question was for a total duration of six months from 1 May 2014 to 31 October 2014, and was thus a temporary appointment within the scope of ST/AI/2010/4/Rev.1. Section 3 of ST/AI/2010/4/Rev.1 does not require a minimum composition for interview panels and the two person panel in question was accordingly consistent with the requirements of the instrument. Moreover, there is no legal requirement that the selection exercise be reviewed by a CRB, as would be the case under ST/AI/2010/3. The UNDT thus correctly held that there had been compliance with all procedural obligations imposed by Section 3 of ST/AI/2010/4/Rev.1.

27. Unlike under ST/AI/2010/3, there is no duty imposed on the Administration in terms of Section 3 of ST/AI/2010/4/Rev.1 to place other unsuccessful candidates on a roster of pre-approved candidates from which they may be considered for future job openings at the same level within an occupational group and/or with similar functions.

28. Finally, there is no evidence at all of any discrimination or harassment, or any basis for awarding Ms. Humackic any damages for moral injury. The process followed in relation to the TJO was wholly regular and completely consistent with the governing Administrative Instruction ST/AI/2010/4/Rev.1. The UNDT committed no error of law, fact or procedure in correctly reaching that conclusion. The other concerns of Ms. Humackic raised by her subsequent to the filing of her application are not relevant to this appeal.

Judgment

29. The appeal is dismissed and Judgment No. UNDT/2016/196 is affirmed.

Original and Authoritative Version: English

Dated this 14th day of July 2017 in Vienna, Austria.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Knierim

(Signed)

Judge Halfeld

Entered in the Register on this 5th day of September 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar