



**Before:** Judge Coral Shaw

**Registry:** New York

**Registrar:** Hafida Lahiouel

CHARLES

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Marcus Joyce, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant is a staff member at the P-3 level in the Procurement Division (“PD”), Office of Central Support Service (“OCSS”), Department of Management (“DM”) of the United Nations Secretariat in New York. He contests the decision to select a candidate other than him against the P-4 post of Procurement Officer in OCSS, on the principal grounds that: (1) the Administration should not have selected a candidate from the roster for the post because the roster was not valid at the time of the selection process; and (2) the Applicant was not notified of the selection decision within the required time frame.

2. In response to a case management Order No. 258 (NY/2011), the parties agreed that an oral hearing of the case was not necessary. The Tribunal has sufficient evidence from the papers and submissions of the parties to make a decision and finds that this case is suitable for a hearing on the papers.

## **Facts**

3. On 25 January 2011, the Applicant applied for the post of Procurement Officer at the P-4 level advertised in Inspira (the online United Nations jobsite) under the vacancy announcement number 10-PRO-OFC-OCSS-16926-R-NEW YORK on 8 December 2010 with a 6 February 2011 deadline (“the Post” or “the job opening”).

4. An *ad hoc* panel chaired by the hiring manager was established to review and evaluate the candidates on the roster for their suitability for this Post.

5. Once the job opening was closed, the list of the 105 screened applicants for the post was forwarded to the hiring manager for further screening, together with the list of roster candidates. As he was a roster candidate, the Applicant’s name was on both lists.

6. Following a review of the roster candidates, the *ad hoc* panel identified a roster candidate other than the Applicant who was potentially a good match for the post. On 16 February 2011, the panel spoke with the candidate to ascertain whether he was interested in the post since he had not applied for it and to determine whether he would be a suitable candidate. Being satisfied of both matters, the panel recommended the roster candidate for the post.

7. By memorandum dated 10 March 2011, the hiring manager requested approval from the Officer-in-Charge of the Procurement Division of the *ad hoc* panel's recommendation to select the candidate from the roster. The memorandum included the assessment of the recommended roster candidate as well as a copy of his Personal History Profile ("PHP").

8. In April 2011, the hiring manager sought confirmation from the Office of Human Resources Management ("OHRM") that the roster candidate was eligible for recommendation. OHRM confirmed that roster candidates may be considered for posts advertised during the roster term, even if the candidate's term on the roster subsequently expires.

9. After PD approved the recommendation, it was transmitted for further approval to the Assistant Secretary-General for Central Support Services on 14 April 2011. On 30 April 2011, the recommendation was approved for transmittal to OHRM for final approval.

10. The Applicant submits that the roster candidate was selected on 9 May 2011. The Applicant did not provide any specific evidence of this date on file, but since the Respondent failed to object to this, the Tribunal accepts it as an agreed fact.

11. On 27 May 2011, the Applicant saw in Inspira that the post had been filled and, on the same date, he requested a management evaluation of the selection process, claiming that he had been notified of the decision at a late stage.

12. On 21 June 2011, following a query from the Applicant, PD confirmed to him that a roster candidate had been selected. However, on 24 June 2011, the Management Evaluation Unit conveyed to the Applicant that it had no jurisdiction over the matter because no selection decision had been made.

13. The selected candidate accepted the job offer on 11 July 2011.

### **Considerations**

14. The Tribunal sets out the parties' contentions issue by issue.

#### *Selection of a roster candidate*

15. According to the Applicant, the selection process was vitiated because the successful candidate was not on the roster at the time of the selection decision.

16. The applicable administrative instruction at the time the job opening was advertised in Inspira was ST/AI/2010/3 (Staff selection system). There is much confusion in the application regarding what is a roster and what is a selection decision. Both are defined in ST/AI/2010/3 as follows:

*(w) Roster:* a pool of assessed candidates reviewed and endorsed by a central review body and approved by the Head of Department/Office/Mission who are available for selection against a vacant position. Roster candidates may be selected without referral to a central review body;

*(x) Selection decision:* decision by a head of department/office to select a preferred candidate for a particular position up to and including the D-1 level from a list of qualified candidates who have been reviewed by a central review body taking into account the Organization's human resources objectives and targets as reflected in the departmental human resources action plan, especially with regard to geography and gender, and giving the fullest regard to candidates already in the service of the Organization as well as those encumbering posts that are slated for abolition or are serving in secretariat entities undergoing downsizing and/or liquidation. Selection decisions for positions at the D-2 level are

made by the Secretary-General following review by the Senior Review Group.

17. The following two provisions in ST/AI/2010/3, sec. 9 (selection decision), in relevant parts, govern the selection process of a roster candidate:

9.2 The selection decision for positions up to and including at the D-1 level shall be made by the head of department/office on the basis of proposals made by the responsible hiring managers (for position-specific job openings) and occupational group managers (for generic job openings) when the central review body finds that the candidates have been evaluated on the basis of approved evaluation criteria and the applicable procedures have been followed. ...

...

9.4 ... Candidates included in the roster may be selected by the head of department/office for a subsequent job opening, without reference to a central review body.

18. The policy applicable at the time the successful candidate was placed on the roster was the former administrative instruction ST/AI/2006/3/Rev.1 on the staff selection system, which provided in its sec. 9.3 that male candidates were placed on the roster of eligible candidates for a period of one year. Under sec. 9.3 of ST/AI/2006/3/Rev.1, this time period extended to the first day of the month following the expiry of one year. The candidate ultimately selected for the post in this case was informed of the decision to place his name on the roster in mid-February 2010. As such, his placement on the roster pursuant to ST/AI/2006/3/Rev.1 became effective on 1 March 2010.

19. Since the name of the male successful candidate was placed on the roster on 1 March 2010, he remained eligible to be selected from the roster until 1 March 2011. ST/AI/2010/3 is silent about how the eligibility dates of roster candidates should be computed. However, the Tribunal takes note of OHRM's advice to PD in April 2011 that the consistent and accepted practice in respect of this issue is to recognize as eligible roster candidates those whose name is on the roster on, at least, the date of the opening of the vacancy announcement.

20. The Tribunal is satisfied that since the Post was advertised well before the expiry of the roster on which the successful candidate's name was included (i.e., 1 March 2011), the successful candidate was eligible to be selected from the roster and the decision to select him from the roster was, hence, proper.

*Notification of the non-selection decision*

21. The applicant submits that there was a delay in the notification to him of the decision which was in breach of the Rules and which caused him prejudice.

22. Section 10 (notification and implementation of the decision) of ST/AI/2010/3 governs the notification of applicants for posts. It provides, in relevant parts, as follows:

10.1 The executive office at Headquarters, the local human resources offices or the Division of Field Personnel of the Department of Field Support shall inform the selected candidate of the selection decision within 14 days after the decision is made. Candidates endorsed by the central review body and placed on a roster shall be informed of such placement within 14 days after the decision is made by the hiring manager or occupational group manager and be advised that they may be selected from the roster for similar positions that may become available within the stipulated time frame as described in sections 9.3 and 9.4. Other candidates convoked for assessments but not selected or placed on a roster shall be so informed by the hiring manager or the occupational group manager within 14 days after the selection decision is made in writing. Applicants eliminated prior to the assessment exercises shall be informed.

10.2 The decision to select a candidate shall be implemented upon its official communication to the individual concerned. When the 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. ...

23. ST/AI/2010/3 provides a general obligation on the part of the Administration to inform candidates for posts of the outcome of selection processes. These persons include: (1) the successful candidate; (2) those endorsed by the central review body who are being placed on the roster of candidates; (3) other candidates convoked for

assessments and not selected, including roster candidates; and (4) applicants eliminated prior to the assessment exercises.

24. There is a mandatory requirement to inform those in the first three categories within 14 days after the decision has been made by the hiring manager or the occupational group manager. There is no such timeframe for those in the fourth category. Section 10.1 merely states “Applicants eliminated prior to the assessment exercises shall be informed”. The identity of the notifier is also specified in respect of the first and third category: it can be the executive office at Headquarters, the local human resources offices or the Division of Field Personnel of the Department of Field Support in respect of the first category, and it has to be the hiring manager or occupational group manager in respect of the third category. The manner in which other categories of applicants are notified is not specified.

25. According to the Respondent, the Applicant falls into the fourth category of candidates eliminated prior to the assessment exercises, who “shall be informed”. According to the Respondent, there is only an obligation to inform the unsuccessful applicants falling in that category when the selection exercise is complete, i.e., when the selected candidate has accepted an offer of appointment. In the present case, it would be on 11 July 2011, therefore the notification of the Applicant on 21 June 2011 would not constitute undue delay.

26. The meaning of sec. 10.1 of ST/AI/2010/3 and the last category is not clear. It may be assumed, however, that such a category concerns all those applicants who are eliminated almost immediately and who normally constitute the vast majority of applicants for posts.

27. However, in the present case, the Applicant was also on the list of roster candidates transmitted to the hiring manager and therefore fell in the third category of “candidates placed on a roster who shall be so informed by the hiring manager or the occupational group manager within 14 days after the selection decision is made in

writing”. This finding is consistent with the spirit of ST/AI/2010/3 which is to ensure that those found eligible (the third category in sec. 10.1, usually a limited number of applicants) are informed of the outcome of the selection process by the hiring manager.

28. The Tribunal finds that as a roster candidate the Applicant should have been informed by the hiring manager within 14 days after the selection decision was made in writing.

29. The first question is when the time starts for calculating the 14 days commenced. Section 10.1 of ST/AI/2010/3 provides for the affected person to be informed of the “selection decision”. Section 9 speaks of the making of the selection decision “by the head of department/office ... when the central review body finds that the candidates have been evaluated on the basis of approved evaluation criteria and the applicable procedures have been followed”.

30. The Respondent is not correct in stating that the time for informing the candidates is calculated from the date on which the successful candidate accepts the offer of appointment. Notification of the selection decision under sec. 10 is not related to acceptance of the offer of appointment but, as stated in this section, to the date the selection decision is made in writing by the Head of the Department.

31. In the present case, as the selection decision was made on 9 May 2011, the Applicant should have been notified by the hiring manager by 23 May 2011.

32. The Respondent did not make any argument regarding the manner in which a candidate should be notified. However, this issue must be considered in the present case because the Applicant admitted in his request for management evaluation that he became aware of the decision on 27 May 2011 through Inspira and the question is whether a notification through Inspira is sufficient to meet the obligation under sec. 10.1 or if the hiring manager should have personally notified the Applicant.



33. The Tribunal finds that because sec. 10.1 specifically places the burden of notification on the hiring manager for applicants who are in the third category (the candidates eligible for consideration during the selection process), it is fair to conclude that the notification should have been made to the Applicant directly and personally by the hiring manager. Both ST/AI/2006/3 and ST/AI/2006/3/Rev.1 required the programme manager (the equivalent to “hiring manager” in ST/AI/2010/3) to inform all candidates who had been interviewed, but not selected, about the decision. In *Krioutchkov* UNDT/2010/065, the Tribunal found that “[t]o leave these candidates to discover their lack of success by checking a later Galaxy [the former United Nations online jobsite] announcement showing the position as filled does not satisfy this requirement” (see para. 36).

34. The Applicant was not notified of the non-selection decision by the hiring manager until 21 June 2011, some 42 days after the selection decision was made, and only following enquiries on his part.

35. In any event, the separate reference to the fourth group of candidates may not necessarily be interpreted as meaning that there is no timeframe at all for informing that group of the selection decision.

36. The United Nations Appeals Tribunal in *Wu* 2010-UNAT-042, para. 34, ruled that in the absence of a specific timeframe for notification in the policy, the notification ought to be provided within a reasonable amount of time.

34. ... In the absence of a specific timeframe in Administrative Instruction ST/AI/2006/3 for notifying unsuccessful applicants of a selection decision, the notification ought to be provided within a reasonable amount of time. Wu was advised in writing of the outcome of the selection process on 3 July 2008, after the successful candidates were appointed on 1 May 2008 and after he wrote to the Secretary-General on 17 June 2008 seeking administrative review of the decision not to appoint him. In arguing that Wu had constructive knowledge of the decision as from 5 May 2008, the Secretary-General seeks to take advantage of the Organization’s failure to follow its own procedures. Accordingly, there was no error made by the

UNDT in awarding compensation for the delay in notifying Wu of the selection decision.

37. In this paragraph, the Appeals Tribunal accepted that the delay of two months between the selection decision and formal notification was undue and in breach of the Organization's procedures.

38. The Tribunal finds that even in the absence of a clearly stated timeframe for notifying applicants who have been eliminated prior to the assessment process, the Organization is required to notify such applicants within a reasonable time. The reasonableness of the time may be judged in the context of sec. 10 of ST/AI/2010/3. Fourteen days is the norm set in this section for notification and by implication can be taken as an indication of what the Organization regards as a reasonable period of time for that purpose. The fashion in which such notification must be made is unclear but need not be resolved in this case since the Tribunal has found that the Applicant had not been informed within the timeframe set out in the policy.

#### *Compensation*

39. The Applicant claims the delay in notifying him of the outcome of the selection process caused him stress and anxiety.

40. It is well established by the Appeals Tribunal that compensation may only be awarded if it has been established that the staff member actually suffered harm.

41. The Respondent submitted that should the Tribunal find that there was a delay in notifying the Applicant, there is no evidence that he suffered any harm or loss as a result. Inconsequential delays in notification do not warrant compensation. But as established by the Appeals Tribunal's judgment in *Rolland* 2011-UNAT-122 (para. 31), a failure to notify a staff-member of non-selection may cause damage by preventing the staff member's preparation for seeking other positions. The Respondent argues that there is no indication that any delay here prevented the Applicant from applying for other positions and in fact he has applied for a number of P-4 positions in PD.

42. The Tribunal finds that the Applicant has failed to substantiate his claim of harm because of the delay in notification. There is no basis for an award of compensation.

**Conclusion**

43. The Application is rejected in its entirety.

*(Signed)*

Judge Coral Shaw

Dated this 14<sup>th</sup> day of February 2012

Entered in the Register on this 14<sup>th</sup> day of February 2012

*(Signed)*

Hafida Lahiouel, Registrar, New York