



**Before:** Judge Goolam Meeran

**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:**  
Alan Gutman, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant, a Procurement Officer serving at the P-3 level in the Procurement Division of the Department of Management in New York, contests the decision, notified to him on 6 November 2012, to place another staff member (Mr. K) against a post in the Regional Procurement Office in Entebbe, Uganda, without advertising a job opening, thereby denying the Applicant an opportunity to compete for it. The Applicant requests “reasonable compensation for the damage caused as a result of the los[s] of opportunity to have [his] application considered”.

2. The Respondent states that Mr. K was selected for this post in April 2011 under vacancy announcement number 10-PRO-DM-OCSS-423429-R-New York (hereinafter referred to as “vacancy no. 423429”). The post was temporarily located in New York for one year of training in line with the vacancy announcement and arrangements put in place for the Regional Procurement Office in Entebbe. In November 2012, following the completion of training, Mr. K and his post were relocated to Entebbe. The Respondent submits that, in the circumstances, there was no post in Entebbe to be advertised.

## **Procedural matters**

3. This application was filed on 14 January 2013. On 11 February 2013, the Applicant filed supplementary pleadings.

4. The Respondent filed his reply on 19 February 2013. On the same day, the Tribunal issued Order No. 47 (NY/2013), directing the Applicant to provide any legal or factual arguments in rebuttal of the Respondent’s contentions.

5. The Applicant’s submission in response to Order No. 47 (NY/2013) was duly filed on 26 February 2013. In his submission, the Applicant requested the Tribunal to order the Respondent to:

- a. produce documentary evidence of the date on which the selection decision was made by the Head Of Office against vacancy no. 423429;
- b. release the names of the three candidates who were initially selected to fill vacancy no. 423429 in accordance with the relevant provisions of ST/AI/2006/3/Rev.1 (Staff selection system); and
- c. produce an unredacted copy of annex R/3 to the Respondent's Reply, containing the letter of appointment of Mr. K.

6. By Order No. 56 (NY/2013), dated 26 February 2013, the Tribunal directed that all judicial case management be stayed pending the assignment of this case to a judge for further consideration, including case management orders with a view to judicial determination on its merits.

7. The case was assigned to the undersigned Judge on 1 October 2013. Having reviewed the papers and having considered the Applicant's request of 26 February 2013, the Tribunal directed the Respondent, by Order No. 242 (NY/2013) dated 9 October 2013, to file and serve, in an unredacted form, contemporaneous records showing that Mr. K and his post were transferred from New York to Entebbe pursuant to the arrangement discussed in the Respondent's reply. The Tribunal did not find it necessary to grant other disclosure requests made by the Applicant on 26 February 2013 as they concerned the original selection exercise under vacancy no. 423429, which is not the subject matter of the present case and in respect of which the Applicant's claims are in any event time-barred (see para. 20 below). The Tribunal ordered that the Applicant "shall keep the documents produced in the course of the proceedings confidential and shall not use or disclose them outside of these proceedings". The Applicant was granted leave to file a response, if any, to the Respondent's submission. The Order further stated that the case thereafter would be decided on the papers, unless either party filed a reasoned request for a hearing.

8. The Respondent's submission was filed on 16 October 2013, and included copies of contemporaneous documents showing the circumstances of Mr. K's employment in Entebbe, including his unredacted offer of appointment. The Applicant's submission was filed on 23 October 2013. Neither party requested a hearing. The Tribunal proceeded to decide the case on the papers before it.

### **Facts**

9. On 5 February 2010, three Procurement Officer posts at the P-4 level were advertised with a deadline of 5 February 2010 under vacancy no. 423429. The deadline for applications was 6 April 2010. One vacancy announcement was issued for three posts, stating:

#### **Procurement Officer (3 Posts), P-4**

...

#### **Duty Station: New York**

...

Staff appointed will be required to work in Entebbe, Uganda, for the term of appointment. Recruitment against these posts for this duty station is subject to finalisation of arrangements for the initiation of a Regional Procurement Office.

10. The Applicant applied for the February 2010 vacancy announcement, but was not successful.

11. Mr. K, one of the successful candidates, received his offer of appointment on 5 April 2011. He signed it on 11 April 2011. The offer letter made it clear that it was for a "one-year fixed-term appointment at step 3 of the P-4 level as Procurement Officer, Procurement Division, Department of Management, New York". The offer further stated:

In the event that your appointment is extended beyond one year, you will be required to work in the Regional Procurement Office in Entebbe, Uganda as, indicated in vacancy [no. 423429], under which you were selected.

12. On 29 August 2011, Mr. K joined the Procurement Division in New York.
13. Approximately one year and one month later, by email dated 12 October 2012, Mr. K was informed by the Executive Office of the Department of Management that in view of the urgent operational requirements at the Regional Procurement Office in Entebbe, he would be reassigned to it with effect from 1 November 2012. The email further stated: “The reassignment will be processed against the same post that you were recruited following selection against vacancy no. 423429 ([support account] P-4 post no. 64970)”.
14. The personnel action form dated 1 November 2012 states that Mr. K was reassigned from New York to the Regional Procurement Office in Entebbe “against [vacancy no.] 423429”, effective 1 November 2012. The post under which Mr. K was transferred was identified as post no. 64970.
15. At a staff meeting held on 24 October 2012, the Director of the Division made an announcement, which was subsequently confirmed by email on 6 November 2010, that Mr. K would be taking up the function of Team Leader (P-4) Logistics, Supply and Services Unit.
16. On 29 November 2012, the Applicant filled a request for management evaluation, identifying the contested administrative decision as an “abuse of discretionary authority and violation of the staff regulations and rules with regard to the filing of the vacant P-4 position of Team Leader, Logistics, Supply and Services Unit at the Regional Procurement Office in Entebbe without having issued an appropriate job opening”.
17. By memorandum dated 23 January 2013, the Under-Secretary-General for Management informed the Applicant that, following review of the matter by the Management Evaluation Unit, the Secretary-General decided to uphold the decision taken by the Administration to place Mr. K in Entebbe.

## **Consideration**

### *Scope of the case*

18. The scope of the present case is identified as the alleged “filling of the vacant position of Team Leader, Logistics, Supply and Services Unit, Regional Procurement Office in Entebbe” in November 2012.

19. With regard to the circumstances of the April 2011 recruitment of Mr. K under vacancy no. 423429, the following procedural history is of relevance. The Applicant filed an application regarding his non-selection for that vacancy on 25 March 2011, which was registered as Case No. UNDT/NY/2011/022. However, he withdrew his application on 13 February 2012. Case No. UNDT/NY/2011/022 regarding the selection exercise under vacancy no. 423429 was therefore closed on 17 February 2012 by Order No. 34 (NY/2012). Approximately eleven months later, on 3 January 2013, the Applicant requested that his application be reinstated. By Order No. 112 (NY/2013), dated 25 April 2013, the Tribunal dismissed the Applicant’s motion.

20. To the extent that, in the context of this case, the Applicant seeks to challenge the 2011 recruitment under vacancy no. 423429 and seeks disclosure of documents concerning that recruitment (see paras. 5 and 7 above), such claims and requests are outside the subject matter of the present application and, in any event, are time-barred, given that the Applicant’s request for management evaluation was filed only on 29 November 2012, well over one year after Mr. K joined the Procurement Division.

### *Whether there was a separate Entebbe post to be advertised*

21. The Applicant submits that the abuse of authority in this case began with the issuance of the vacancy announcement to fill three vacant P-4 positions in 2010 and that the terms of Mr. K’s offer of appointment of 5 April 2011 “do not mirror”

those contained in the vacancy announcement of February 2010, under which he was recruited. The Applicant further submits, in effect, that since the vacancy announcement was for a post in Entebbe, the provision of the offer of appointment stating that initially Mr. K would be placed in New York was unlawful.

22. The records provided by the parties show that the Regional Procurement Office in Entebbe was a pilot project that was staffed with borrowed posts from various missions, including three posts that were allocated from the New York staffing table of the Procurement Division. Notably, the vacancy announcement stated at the top: “Duty Station: New York”. It further stated that selected staff “will be required to work in Entebbe, Uganda, for the term of appointment”, but that “recruitment against these posts for this duty station is subject to finalisation of arrangements for the initiation of a Regional Procurement Office”. According to the Respondent, two of the three posts were transferred to Entebbe immediately, and one post remained in New York for one year for training and liaison purposes. Post no. 64970, along with the incumbent, was thereafter transferred to Entebbe. This explanation is consistent with the papers before the Tribunal.

23. The selection process under which Mr. K was recruited for vacancy no. 423429 against post no. 64970 is not the subject matter of the present case. In his management evaluation request and his application before the Tribunal in this case, the Applicant sought to challenge “the filling of the vacant P-4 position ... in Entebbe”. The P-4 position in question was, in fact, a New York-based post to be assigned to the Entebbe office “subject to finalisation of arrangements for the initiation of a Regional Procurement Office”. The selection exercise for this post (under vacancy no. 423429) was finalized when the offer of appointment was made to Mr. K and accepted by him in April 2011. That selection exercise is outside the scope of this case, as explained above. The subsequent movement of Mr. K, along with his post, to Entebbe—which the Applicant challenges in these proceedings—was not a lateral move or a new recruitment. Rather, it was implementation of Mr. K’s terms of appointment that were consistent with vacancy

no. 423429, which specifically stated: “Duty Station: New York”, and which provided that “[r]ecruitment against these posts for this duty station is subject to finalisation of arrangements for the initiation of a Regional Procurement Office” in Entebbe. Further, the movement of this post and of its incumbent to Entebbe did not affect the Applicant’s rights or conditions of employment and caused no prejudice to him.

*Designation of Mr. K as a Team Leader*

24. The Applicant raised claims regarding the designation of Mr. K as a Team Leader in Entebbe. It is unclear how this could have affected the Applicant’s rights or conditions of employment. In any event, as explained above, the designation of Mr. K as a Team Leader did not constitute movement to a post different from the post against which he was recruited. Further, team leader functions were contemplated in the February 2010 vacancy announcement. Under the heading of “Competencies”, the vacancy announcement referred to the following responsibilities and competencies:

**Responsibilities**

Within limits of delegated authority ... [the selected candidate] will be responsible for the following duties: ... Supervise the work of and provide direction and guidance to junior staff.

**Competencies**

... Managing performance: Delegates the appropriate responsibility”, accountability and decision-making authority”; makes sure that roles, responsibilities and reporting lines are clear to each staff member; accurately judges the amount of time and resources needed to accomplish a task and matches task to skills.

25. Accordingly, even if the Applicant’s claims regarding Mr. K’s designation as a Team Leader were receivable, they are not supported by the evidence.



*Other matters*

26. One of the ancillary claims of the Applicant concerns the delay in receiving a management evaluation response. The Tribunal notes that art. 8.1(d) of the Tribunal's Statute as well as staff rule 11.4(a) state that an applicant may file an appeal before the Dispute Tribunal if he or she has not received a response to his request for management evaluation within the applicable response period. The Applicant's claim that the delayed management evaluation response caused him loss or damage is misconceived and is dismissed.

**Conclusion**

27. The application is dismissed.

*(Signed)*

Judge Goolam Meeran

Dated this 30<sup>th</sup> day of October 2013

Entered in the Register on this this 30<sup>th</sup> day of October 2013

*(Signed)*

Hafida Lahiouel, Registrar, New York