



**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Hafida Lahiouel

PARISI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

George Irving

**Counsel for Respondent:**

Stephen Margetts, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant contests the 12 May 2011 decision from the Office of Human Resources Management (“OHRM”) that she was not eligible for consideration or conversion from the FS-6 category to the Professional category during the course of a temporary assignment as a Subject Matter Expert (“SME”).
2. The Respondent contends that the decision was taken in accordance with the applicable regulations and rules.

## **Relevant background**

3. In September 2006, the Applicant joined the United Nations Interim Force in Lebanon (“UNIFIL”) on Temporary Duty from the United Nations Mission in Ethiopia and Eritrea and, on 12 December 2006, she took over as Officer-in-Charge of the Property Control and Inventory Unit. Following the war in Lebanon, the Applicant’s post was reclassified first at the P-3 level and later at the FS-6 level.

### *P-3 level post selection*

4. On 4 November 2010, the Applicant received an automated email from the Department of Field Support (“DFS”) announcing a Temporary Vacancy Announcement (“TVA”) for the position of Logistics Operations Officer at the P-3 level (reference No. TVA/2010/37761/37762/1311/LO). The TVA announcement listed that candidates should possess the following qualifications:

**Education:** Advanced university degree (Master’s degree or equivalent) in business administration, supply chain management, logistics operations/management, transport management or other related area. A first level university degree with a combination of relevant academic qualifications and experience may be accepted in lieu of the advanced university degree.

**Work Experience:** At least five years of progressively responsible professional experience planning, coordinating and/or managing multifunctional support Logistics operations in a field environment is

required. Logistics planning experience in a complex environment is required. Experience within the context of a humanitarian relief, military, emergency management, peacekeeping or disaster relief operation is desirable.

5. On 2 December 2010, the Administrative Management Policy Unit, Operation Support Service, Logistics Support Division, DFS, emailed the Applicant and informed her that she had been short-listed for the TVA. The Applicant was asked to confirm her interest and availability to participate in an interview on 8 December 2010.

6. Towards the end of January 2011, the Applicant emailed several staff members to inquire as to the status of her being considered for the TVA. On 31 January 2011, the Applicant emailed Ms. SB, Department of Peacekeeping Operations (“DPKO”) stating

Many thanks for your time today and for providing further clarification on my case.

It is indeed helpful to know that my selection for the [TVA] was rejected by OHRM on the grounds that I do not have 4 years experience after obtaining my degree.

...

In consideration of the above, I would kindly appreciate if the case for selection against the [TVA] could be reconsidered favorably.

7. On 1 February 2011, the Applicant emailed Ms. LK “to seek [her] kind advise on an unclear administrative decision made by [Human Resources] few days ago...”. That same day, the Applicant received an email from Ms. CZ in the United Nations Ombudsman and Mediation Services (“UNOMS”) offering to discuss her inquiry into OHRM’s decision. Over the course of the following week, the Applicant and an officer from UNOMS exchanged emails on the topic of her qualifications and the selection by OHRM for pending TVAs. During the course of February, the Applicant and Ms. CZ discussed the issue of her qualifications and, on 26 February 2011, Ms. CZ provided the Applicant with an update as to her situation

and stated that they were “look[ing] at all avenues to see whether [her] experience as FS-6 is sufficient to fulfil requirements”.

8. On 15 April 2011, the Applicant received three separate emails from the Logistics Unit, informing her she had met the pre-screening requirements for the P-3 level post of Property Disposal Officer, Vacancy Announcement (“VA”) #424970; the P-3 level post of Receiving & Inspection Officer Vacancy Announcement #424972 (“VA2”); and the P-3 level post of Property Control and Inventory Officer, Vacancy Announcement #424978 (“VA3”). The email further requested that the Applicant undertakes a written examination for the VA on 18 April 2011. On 10 May 2011, the Applicant was informed via three separate emails that she had been short-listed for an interview that was to take place on 19 May 2011 with regard to VA3; on 23 May 2011 with regard to the VA; and on 27 May 2011 with regard to VA2.

*Subject-matter expert*

9. In April 2011, a Senior Administrative Officer for Umoja contacted the Applicant and UNIFIL to inform them that she had been selected for a temporary SME post with the Umoja project, Department of Management.

10. On 27 April 2011, UNIFIL agreed to release the Applicant for a six month assignment commencing on 3 May 2011 following a one week temporary duty arrangement (“TDY”). That same day, the Applicant presented herself to the Umoja Personnel Office.

11. On 12 May 2011, an Administrative Officer, Executive Office, Department of Management (“EO/DM”), notified UNIFIL that due to a technicality, OHRM was not in a position to grant the Applicant a temporary grade at the P-3 level and they therefore asked whether UNIFIL would agree to a reimbursable six months TDY.

12. In early June of 2011, Ms. CZ, UMOMS, reached out to the Applicant to enquire as to the status of the other vacancy announcements she had applied for.

Ms. CZ and the Applicant exchanged communications throughout July regarding issues relating to her post with Umoja.

13. On 28 June 2011, the Chief, Integrated Support Services, UNIFIL agreed to the Applicant's temporary assignment to Umoja on an UNIFIL post on the understanding that Umoja would reimburse UNIFIL for all costs related to the Applicant's assignment for the period of 27 April 2011 through 26 July 2011 after which the Applicant was expected to return to UNIFIL. The memorandum summarized the Applicant recent service at the United Nations in New York as follow:

- (a) 16 September through 14 December 2010 – Staff Exchange Program
- (b) 14 December through 16 December 2010 – Participation in the Property Management Conference
- (c) 17 December 2010 through 15 March 2011 – Annual Leave with a short sick leave interruption
- (d) 16 March 2011 through 27 April 2011 – Special Leave Without Pay
- (e) 27 April 2011 till to date – Subject Matter Expert with Umoja

14. On 29 June 2011, the Applicant met with two Administrative Officers for Umoja who informed her “of the outcome of discussions amongst the EO/DM, OHRM and DPKO/DFS about her status as an SME in Umoja”. The 30 June 2011 Note to File memorializing this meeting referred to a 28 June 2010 email from the Acting Senior Administrative Officer in DM, which stated that “OHRM will not revisit the case...staff cannot be considered or converted to P-3 ...”.

*Procedural history*

15. On 5 July 2011, the Applicant requested management evaluation of the denial to consider her eligible for a P-3 post or conversion from the FS-6 level to the professional category and, on 20 July 2011, the Applicant requested management evaluation of the decision that she was not eligible for P-3 level posts. The Applicant

stated that the remedy she was seeking was: (1) “[...] know as to why [she] was denied the temporary conversion and as of when [she] will meet the eligibility criteria to apply for a post at the P-3 or P-4 level as stipulated in the ST/AI”; and (2) “be deemed eligible for P-3 [level] positions”. The Applicant did not receive a response to either of her requests for management evaluation.

16. On 16 November 2011, the Applicant filed the present application whereby she requested “[c]onfirmation of eligibility for P-3 and P-4 posts based on credentials; compensation for violation of contractual rights and due process rights and loss of opportunity”.

17. On 23 December 2011 and 11 January 2012, the Respondent submitted a request for extension of time to file his reply due to the Management Evaluation Unit (“MEU”) having “informed the Respondent that it is currently involved in efforts to resolve the Applicant's claim without recourse to the judicial process”. The Tribunal (Judge Ebrahim-Carstens), by Order No. 303 (NY/2011) granted the Respondent’s initial request for an extension of time to file his reply by 13 January 2012. The Respondent’s second request for an extension of time however was denied and the Respondent duly filed his reply on 13 January 2012.

18. On 8 November 2013, the Tribunal, by Order No. 301 (NY/2013), requested that the Applicant inform the Tribunal of her current professional status. In response to the Tribunal’s Order, on 12 November 2013, the Applicant filed a response stating that:

After being denied the conversion to the P-3 level while in New York, the Applicant was forced to return to UNIFIL in South Lebanon where she was converted to P-3 as a Property Management Officer following an application to a vacant position, interview and competitive selection. The Applicant was promoted to the P-3 level in November 2011. Since July 2012 she has been on temporary assignment in New York in the Property Management Unit, OCSS/Department of Management.

19. On 6 December 2013, the parties filed their closing submissions in response to Order No. 311 (NY/2013) dated 21 November 2013.

### **Applicant's submissions**

20. The Applicant's principal contentions may be summarized as follows:
- a. The Appeals were timely filed as there was no written notification of the decision. Further UNOMS' involvement from January to August 2011 in attempting to resolve the matter would have suspended the time limits;
  - b. OHRM's decision that the relevant professional experience needs to have been acquired post the qualifying degree is the result of a vague, arbitrary and restrictive interpretation of the eligibility requirements. This post was a temporary vacancy and was governed by ST/AI/2010/4 and not ST/AI/2010/3. Further, OHRM cannot rely on a guideline that was neither available to the staff member nor properly promulgated by the Organization. Finally, the Applicant obtained her bachelor's degree in 2010 and possessed the required experience at the time of her application.

### **Respondent's submissions**

21. The Respondent's principal contentions may be summarized as follows:
- a. The appeal of the Applicant's non-selection for the P-3 posts is not receivable as the Applicant did not request management evaluation of the decision within 60 days of the 31 January 2011 notification of the reasons behind her non-selection. The Applicant relies on outdated rules and jurisprudence to justify the receivability of her appeal. There was no need for the Applicant to be notified of the reasons for the decision not to select her, especially after her own acknowledgment that she was informed of the reasons for that decision;
  - b. A review of the facts and applicable rules shows that, at the relevant time, it was not possible to award her a P-3 level post, even on a temporary basis, for her to perform as a SME. The Applicant did not have the relevant

number of years of experience at the professional level and, for her to be appointed as a SME, she would have had to first resign from UNIFIL.

## **Consideration**

### *Applicable law*

22. Staff rule 11.2(c) relating to management evaluation states that:

A request for management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

23. Section 6 of ST/AI/2010/3 (Staff selection system) states:

## **Section 6**

### **Eligibility requirements**

6.1 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.

6.2 As of the posting date of a job opening, the minimum age to be eligible for consideration for a position is 18, with a mandatory retirement age of 60 years for staff members who joined the Organization prior to 1 January 1990 and 62 years for staff members appointed from 1 January 1990 onwards.

6.4 Staff in the Field Service category at the FS-6 level may apply to positions at the P-3 and P-4 levels, provided that they have served for one year at their current level and meet the academic qualifications required for an appointment to the Professional category. Staff in the Field Service category at the FS-7 level may apply to positions at



the P-4 and P-5 levels, provided that they have served for one year at their current level, meet the academic qualifications required for an appointment to the Professional category and, for P-5 positions, satisfy the lateral move requirements for promotion to the P-5 level.

6.5 A staff member holding a permanent, continuing, probationary or fixed-term appointment (with no appointment limitation) assigned from a headquarters location, including regional commissions, to a position one level higher than his/her current grade in a peacekeeping operation or special political mission, where a lien is maintained against a position at the parent duty station, may temporarily be promoted to the level of the position in the peacekeeping operation or special political mission for the duration of the assignment. A staff member temporarily promoted may apply during his/her assignment in a peacekeeping operation or special political mission to job openings one level higher than his/her temporary grade level, provided that he/she has spent more than 12 months continuously in the peacekeeping operation or special political mission. At the end of his/her assignment in the peacekeeping operation or special political mission, the staff member will revert to his/her original level at the former duty station and may henceforth only apply to job openings one level above his/her original level

24. ST/AI/2010/4 (Administration of temporary appointments) states:

5.1 A staff member holding a temporary appointment shall be regarded as an external candidate when applying for other positions, and may apply for other positions at any level, subject to section 5.2 below.

5.2 A staff member holding a temporary appointment who is recruited in the Professional and higher categories on a position authorized for one year or more may not apply for or be reappointed to his/her current position within six months of the end of his/her current service if the position is advertised through the established procedures and will result in a fixed-term appointment following review by the central review bodies. This provision does not apply to staff members holding temporary appointments and serving in positions authorized for one year or more in peacekeeping operations or special political missions.

5.3 Interns, consultants, individual contractors and gratis personnel may not apply for or be appointed to any position in the Professional and higher categories or positions at the FS-6 and FS-7 levels in the Field Service category within six months of the end of their current or most recent service. This restriction does not apply to associate experts (Junior Professional Officers) appointed under the Staff Rules.

25. The Applicant, in her 5 and 20 July 2011 requests for management evaluation, contested three separate non-selection decisions due to OHRM determining that she did not have the required number of years of experience: (1) the TVA for which she had applied in November 2010; (2) the VAs for which she had applied in April 2011; and (3) OHRM's decision that she could not be granted a conversion to P-3 level to perform temporary duties as an SME with Umoja.

*Non-selection for TVA*

26. The record shows that the Applicant sent an email on 31 January 2011 stating that it was "helpful to know that [her] selection for the [TVA] was rejected by OHRM on the grounds that [she did] not have 4 years experience after obtaining [her] degree". She also requested that her non-selection be reconsidered in light of the fact that her professional experience as Chief Property Control Inventory since 2006 meant that she had the requisite experience.

27. On 1 February 2011, the Applicant sought advice from UNOMS regarding OHRM's decision. UNOMS subsequently offered to discuss her inquiries regarding the level of her qualifications and the related decision by OHRM. Following this, the Applicant requested a reconsideration of her non-selection on the grounds that she had held the post of Chief, Property Control Inventory since 2006.

28. As part of her 5 July 2011 request for management evaluation of the decision to deny her temporary conversion from the FS-6 category, the Applicant submitted that

in December 2010 while on staff exchange at [Headquarters] after undergoing a competitive selection process [she] was recommended for a temporary vacancy at the P3 level in the Logistic Support Section in the Department of Field Support (DFS). At that time OHRM had not endorsed [her] temporary conversion as [she] did not have the required one year seniority at the FS6 level. The Ombudsman's Office confirmed then that [she] would meet the eligibility criteria for the temporary conversion as of 1 May 2011. *While I can understand the reason for the rejection for the [TVA] in January this year I do not understand why my case was rejected once again after 1 May 2011*

when I met the eligibility criteria set out in section 6.4 of ST/AI/2010/3 (emphasis added).

29. The Applicant is therefore deemed to have been aware of her non-selection for the TVA, and the initial reasons on which it was based, at the latest by 31 January 2011. The Tribunal considers that based on her own submissions and the evidence before it, the Applicant, following UNOMS February 2011 intervention, received a different explanation as to why she had not been selected for the TVA in January 2011, namely that she did not have one year of seniority at the FS-6 level. The Applicant was aware and accepted the explanation provided to her regarding her non-selection, including the fact that she would only fulfil the condition of one year of seniority set by art. 6.4 of ST/AI/2010/3 in May 2011. Consequently, the Applicant's 31 January 2011 request for reconsideration was resolved by OHRM. The 31 January 2011 non-selection decision was confirmed but for a different reason.

30. The decision to deny the Applicant's request for reconsideration of her non-selection for the TVA due to her not having one year of seniority prior to May 2011 was not identified and expressly mentioned by the Applicant in either the 5 July 2011 or 20 July 2011 requests for management evaluation.

*Non-selection to VAI-VA3*

31. The Applicant applied for three P-3 posts and, on 15 April 2011, she was informed that she meet the pre-screening requirements for these posts. After undergoing the post selection process for each VA, the Applicant was informed, on 13 July 2011, that she had been "identified as a [Field Central Review Body] (FCRB) Candidate for the available post" – VA3 – and was asked to confirm her interest and availability for the post.

32. On 21 July 2011, the Applicant was informed that she had been endorsed by the FCRB for all three VAs (V1 – VA3) and that her profile would be maintained on a roster of selectable candidates for positions in Headquarters and Regional Commissions for the next three years.

33. There is no evidence before the Tribunal that the Applicant contested any part of the selection processes regarding VA1–VA3 before the MEU.

*Denial of consideration to professional category P-3 with Umoja*

34. The Tribunal notes that the application filed before the Tribunal on 16 November 2011 refers exclusively to the administrative decision made by OHRM on 12 May 2011 to exclude her from being considered for a temporary P-3 post with Umoja.

Receivability

35. The Applicant submits that she was improperly denied temporary promotion to the P-3 level. She further submits that taking into consideration that she was later short-listed for other P-3 level posts demonstrates a pattern of arbitrariness against her. The Applicant seeks compensation for her pecuniary and non-pecuniary loss.

36. Regardless of whether the Tribunal considers that the Applicant was notified of the decision on 12 May 2011 or 29 June 2011, by filing her requests for management evaluation on 5 July 2011, the Applicant's request for management evaluation of the contested decision was timely filed.

37. The Tribunal notes that as a staff member stationed in New York, the MEU would have had 30 days to respond to the Applicant's request for management evaluation thereby rendering her subsequent appeal to the Tribunal not receivable as it would have needed to have been filed by 2 November 2011, two weeks prior to the date on which her application was actually filed. However, while the decision was taken in New York, with regard to a New York-based Organization, seeing that the Applicant was being paid by UNIFIL, there is merit to the argument that the Applicant's official duty station at the time was still UNIFIL. Consequently, the MEU would have had 45 days to respond to her request for management evaluation thereby rendering her appeal of the 5 July 2011 management evaluation request receivable. Further, the Applicant duplicated the arguments of her 5 July 2011

request in her 20 July 2011 request for management evaluation. For purposes of efficiency and in fairness to the parties, the Tribunal will consider the merits of her application contesting her non-consideration to a temporary P-3 grade and non-conversion from an FS-6 level to a P-3 level.

38. On 15 April 2011, the Applicant was informed that she had been selected for a temporary post of SME with Umoja. On 21 April 2011, Umoja asked the Applicant's employer, UNIFIL, for a confirmation of her assignment with Umoja for six months. UNIFIL agreed to release the Applicant for a period of six months and insisted on being provided with a confirmation of the period during which the Applicant would be with Umoja in order to issue an internal TVA to "back-fill her position". That same day, UNIFIL received the requested confirmation. On 12 May 2011, UNIFIL was informed by the EO/DM that "due to a technicality, OHRM is not in a position to grant the Applicant a temporary grade at a P3 level" and asked if the office would agree to a reimbursable TDY for six months retroactive to 4 May 2011. UNIFIL responded that the Applicant's release was based on the understanding that she would be on assignment with Umoja for six months "during which she will be placed against an Umoja post" and her UNIFIL post will be used to find a temporary replacement. The TDY arrangement was not accepted by UNIFIL.

39. On 28 June 2011, UNIFIL and the Umoja office agreed that Umoja would reimburse UNIFIL for all costs related to the Applicant's assignment for the period of 27 April 2011 through 26 July 2011 after which the Applicant was expected to return to UNIFIL. The memorandum emphasized that this was considered to be the last and final extension for the Applicant to be at the United Nations Headquarters in New York on a UNIFIL post. On that same day, the Acting Senior Administrative Officer, EO/DM decided that the Applicant's case would not be revisited and that she could not be considered for a P-3 post or converted to the P-3 level, reconfirming the decision of 12 May 2011. On 29 June 2011, the Applicant was informed about these decisions and placed on travel status.

40. The Tribunal finds that on 21 April 2011, UNIFIL initially agreed that the Applicant's would be seconded to Umoja for a six months period so that they could advertise a temporary vacancy announcement for the Applicant's post. A secondment is a movement of a staff member from one organization (releasing organization) to another (receiving organization) in the interest of the receiving organization for a fixed period of time during which the staff member will normally be paid by, and be subject to, the staff regulations and rules of the receiving organization. When a staff member is seconded to another organization his or her contractual relationship with the releasing organization will be suspended until the expiry of the agreed period.

41. However, the problems identified by OHRM resulted in UNIFIL retracting their initial agreement and, per the 28 June 2011 memorandum, establishing that the Applicant's appointment would be limited to a three months loan for the period 27 April 2011 to 26 July 2011. A loan is a movement of a staff member from one organization to another for a limited period, during which he will be subject to the administrative supervision of the receiving organization, but will continue to be subject to the staff regulations and rules of the releasing organization. When a staff member is loaned, he will be under the administrative supervision of the receiving organization, but will have no contractual relationship with it, continuing to be subject to the staff regulations and rules and retaining his contractual rights with the releasing organization.

42. The Tribunal will analyse OHRM's 12 May 2011 decision that the Applicant could not be granted a temporary grade at the P-3 level "due to a technicality", taking into consideration the fact that UNIFIL retracted its agreement for the Applicant's secondment and only agreed to a loan.

43. Pursuant to art. 6.4 of ST/AI/2010/3 "Staff in the Field Service category at the FS-6 level may apply to positions at the P-3 and P-4 levels, provided that they have served for one year at their current level and meet the academic qualifications required for an appointment to the Professional category". Article 6.4 contains two

mandatory and cumulative conditions which must be fulfilled by a staff member at the FS-6 level to apply to P-3 and P-4 positions: the staff member has to serve for one year at his/her current level and meet the academic qualifications required for an appointment to the Professional category. Further, the guidelines for the determination of a staff member's level and step on recruitment to the professional category and above require another mandatory and cumulative condition: five years of professional experience.

44. On 27 April 2011, when her temporary appointment with Umoja started, the Applicant had served for less than one year as at the FS-6 level. It is only on 1 May 2011 that the first condition of art. 6.4 was fulfilled. The Applicant was informed of this requirement in February 2011. She also knew since at least 31 January 2011 that she was required to have five years of professional experience to be eligible to apply for P-3 level posts.

45. With regard to the second and third conditions, the Tribunal observes that in January 2011, based on OHRM's initial interpretation of the Guidelines on the determination of eligibility, the Applicant was not selected for other P-3 posts due to the fact that her experience before obtaining her Masters degree in May 2010 was less than five years. This explanation was not reaffirmed in 12 May 2011 and 28 June 2011.

46. In *Korotina* UNDT/2012/178, the Tribunal reviewed the lawfulness of guidelines with regard to determining a staff member's experience when applying for a post:

*Legal status of the Guidelines*

30. The Guidelines were approved on 30 July 2004, although there is no information in the Guidelines [...] as to who drafted or approved them. The guidelines were revised in 2009 and 2010—again, it is not known from the text of the Guidelines who authored and approved the revisions—to update references to amended administrative instructions (the exact dates when these revisions were made are not apparent from the document).

31. As the Tribunal stated in *Villamorán* UNDT/2011/126, at the top of the hierarchy of the Organization's internal legislation is the Charter of the United Nations, followed by resolutions of the General Assembly, staff regulations, staff rules, Secretary-General's bulletins, and administrative instructions. Information circulars, office guidelines, manuals, memoranda, and other similar documents are at the very bottom of this hierarchy and lack the legal authority vested in properly promulgated administrative issuances.

32. Circulars, guidelines, manuals, and other similar documents may, in appropriate situations, set standards and procedures for the guidance of both management and staff, but only as long as they are consistent with the instruments of higher authority and other general obligations that apply in an employment relationship (*Tolstopiatov* UNDT/2010/147, *Ibrahim* UNDT/2011/115, *Morsy* UNDT/2012/043).

33. Just as a staff rule may not conflict with the staff regulation under which it is made, so a practice, or a statement of practice, must not conflict with the rule or other properly promulgated administrative issuance which it elaborates (Administrative Tribunal of the International Labour Organization, Judgment No. 486, *In re Léger* (486)). It is also important to highlight that a distinction must be made between matters that may be dealt with by way of guidelines, manuals, and other similar documents, and legal provisions that *must* be introduced by properly promulgated administrative issuances (*Villamorán*, *Valimaki-Erk* UNDT/2012/004).

*Whether it was lawful to disregard the Applicant's experience acquired prior to her Master's degree*

34. The Guidelines provide that candidates with a Master's degree who apply for P-3 level positions are to have at least five years of professional experience, but the Guidelines do not explicitly require that the relevant qualifying experience be acquired after the Master's degree. The Respondent submits, however, that it has been OHRM's practice and interpretation of the Guidelines that, in order to be appointed at the P-3 level, a prospective candidate who has a Master's degree must have gained five years' experience *after* receiving this degree. Specifically, para. 30 of the Respondent's reply of 7 July 2010 states that, "in order to be appointed at the P-3 level, a prospective candidate who has a Master[']s degree must have five years' experience post Master[']s degree". (See also para. 8 of the Respondent's submission dated 9 August 2012.) The Respondent submits that this interpretation is "[a]ccording to paragraph 6 [sic. para. 5] of the Guidelines", although it is not included anywhere in the Guidelines, and, in fact, the Respondent acknowledges in the very same paragraph of his reply that "there is no express requirement



under the table in paragraph 6 [sic. para. 5] of the Guidelines that the relevant experience must be post-qualification experience”.

35. The Tribunal observes that while the vacancy announcement required “a minimum of five years of progressively responsible experience in procurement ... and an advanced university degree (Master’s degree or equivalent)”, it did not state that the progressively responsible experience was to be counted only if it *followed* the Master’s degree. Nor is such requirement included in the Guidelines, as is in fact acknowledged by the Respondent.

36. As the Dispute Tribunal stated in *Neault* UNDT/2012/123, the criteria to be used in evaluating candidates must be clearly stated in the vacancy announcement. Not having specified that the five years of experience had to be completed *after* the Master’s degree, in the absence of properly promulgated issuances stating otherwise the Respondent was bound by the terms of the vacancy announcement, which did not include any such requirement (*Id.*).

37. Furthermore, it is a contractual right of every staff member to receive full and fair consideration for job openings to which they apply. Even if the Guidelines contained a provision that only experience obtained after a Master’s degree shall be counted, the lawfulness of such provision would be questionable, as it would appear to be manifestly unreasonable and imposing unwarranted limitations on qualification requirements. Such a provision, if it were added to the Guidelines, may constitute an unfair restriction on eligibility of a group of staff members for appointment and promotion without proper basis in properly promulgated administrative issuances. It may be possible for a staff member to obtain relevant professional experience prior to obtaining a Master’s degree. In the Tribunal’s considered view, the currently unwritten practice of not counting the experience obtained prior to the Master’s degree is not supported by any regulations, rules, or other properly promulgated administrative issuances forming part of the staff member’s contract and lends itself to being arbitrary and manifestly unreasonable.

47. The Applicant stated that she joined UNIFIL in September 2006 in the Property Control and Inventory Unit at the FS-4 level on a temporary basis. On 12 December 2006, she was made Officer-in-Charge and, in January 2007, she received a fixed-term appointment at the FS-5 level. Following a restructuring and reclassification exercise which started in 2006, the Applicant’s post was initially found to be at the P-3/P-4 level, but was finally reclassified at the FS-6 level with effect from 1 January 2008. Due to administrative delays caused by communication

complications between Headquarters and UNIFIL, as well as the time required to allow for technical clearance and a formal interview process, the Applicant's appointment was not completed until May 2010.

48. Consequently, from September 2006, the date on which the Applicant started her functions as officer-in-charge with UNIFIL, until June 2011, when the contested decision was taken, the Applicant's professional experience, prior to and after the obtention of her Master's degree totaled four years and 8 months which is less than the required five years of professional experience required to be considered for a P-3 post.

49. As of 27 April 2011, the Applicant met only one of the required cumulative conditions: a Master's degree obtained in May 2010. The second condition—one year of experience at the FS-6 level was only fulfilled after she was assigned to the Umoja team on 1 May 2011. However, the third cumulative condition regarding the number of years of professional experience required was not satisfied. Since these conditions are cumulative, the Tribunal considers that OHRM correctly decided that the Applicant could not be considered, even on a temporary basis, for a P-3 level post with Umoja.

50. The Applicant returned "to UNIFIL... where she was converted to P3 as Property Manager Officer following an application to a vacant position, interview and results from the Applicant's response to Order No. 301 (NY/2013), competitive selection" and, in November 2011, she was promoted to the P-3 level. It is clear that as soon as she had five year experience she was promoted to a P-3 level post and, unlike in *Korotina*, her experience was recognized long before this judgment was issued.

51. The Applicant only fulfilled one of the conditions – the education level requirement, but not the one regarding the number of years of required professional experience. Since these conditions are cumulative, the Tribunal considers that OHRM correctly decided that the Applicant, who was selected for the posts despite

the mandatory requirement of five years professional experience, did not fulfill the conditions to be considered eligible for a temporary P-3 position.

52. The Tribunal notes that in November 2011, soon after the Applicant accumulated five years of professional experience, she was selected and promoted to a P-3 level post. Further, in June 2013, the Applicant was selected for a temporary assignment at the P-4 level in New York. The initial explanation received by the Applicant, similarly to *Korotina*, that she was not eligible due to the fact that she did not have five years of relevant professional experience after the obtention of her Master's degree in 2010 was no longer sustained by OHRM. Consequently, the Applicant's five years of professional experience calculated as of November 2011, included the entirety of the period prior to, and after, the obtention of her Master's degree—from September 2006 until October 2011. The Respondent, a year prior to the issuance of *Korotina* which clarified the legal standing of Guidelines, correctly applied the Guidelines deeming the Applicant not eligible to a P-3 level post.

53. The Tribunal concludes that despite shortcomings in the process, the Applicant's rights to fair consideration were respected since she was actually selected as a SME. The OHRM decision not to endorse and grant her temporary conversion to the P-3 level while with Umoja was valid and lawful.

*Denial of a conversion from FS-6 to P-3*

54. The Tribunal finds that ST/AI/2010/4, which governs the "Administration of temporary appointments", does not contain any provisions that would render the conversion of a staff member at the FS-6 level to that of a P-3 level possible during a temporary assignment such as a secondment.

55. Following UNIFIL's 12 May 2011 decision that the Applicant would be loaned to Umoja and that her contract would not be suspended, the only existing contractual relationship was between UNIFIL and the Applicant who remained on an FS-6 post.

56. On 28 June 2011, the Organization properly determined that the Applicant could not be converted to the P-3 level because there was no contractual relationship between the Applicant and Umoja seeing that UNIFIL had decided that the Applicant would be loaned to Umoja and that her contract would not be suspended.

**Conclusion**

In the light of the foregoing the Tribunal DECIDES

57. The application is rejected.

*(Signed)*

Judge Alessandra Greceanu

Dated this 13<sup>th</sup> day of June 2014

Entered in the Register on this 13<sup>th</sup> day of June 2014

*(Signed)*

Hafida Lahiouel, Registrar, New York