



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

PINTO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, a staff member holding a permanent appointment serving at the P-3 level as Procurement Officer in the Department of Management/Office of Central Support Services/Procurement Division/Field Procurement Service/Peacekeeping Procurement Section (“DM/OCSS/PD/FPS/PPS”) in the United Nations Secretariat, contests “the evaluation process [which] led to United Nations Office at Geneva’s (“UNOG”) decision to not even consider [her] for an assessment test and interview [...]” following her application to Job Opening No. 16-PRO-UNOG-57126-R Geneva (“the JO”) regarding three Procurement Officer posts at the P-3 level within the Procurement and Contracts Unit, Central Support Services (“PCU/CSS”) of UNOG. As relief, the Applicant requests the Tribunal to:

- a. Order the Secretary-General to assess the way the vacancies, i.e. temporary [TJOs] and [JOs] are managed and advertised, to avoid wasting resources of applicants (internal and non-United Nations) who believe the vacancies to be genuine; and
- b. [The Applicant] will agree to whatever compensation the Dispute Tribunal considers to be fair and reasonable in this case.

2. The Respondent claims that the application is without merit and submits that the Applicant was fully and fairly considered for the position, and that she is not entitled to compensation since the contested decision was lawful.

Factual and procedural background

3. On 6 April 2016, the JO was issued in Inspira (a United Nations online jobsite) for three posts of Procurement Officer at the P-3 level with the UNOG in the PCU/CSS Section, and the deadline to apply for the JO was 5 May 2016.

4. The JO included the following requirements:

Education

Advanced university degree in Business Administration, Public Administration, Commerce, Law or other relevant disciplines. A first-level university degree in combination with two additional years of qualifying work experience may be accepted in lieu of the advanced university degree.

Work Experience

A minimum of five years of progressively responsible professional experience in procurement, contract management, administration or related area including preferably three years of experience in the [United Nations] common system. Experience with large scale and complex procurement operations is desirable. Proven experience in at least [three] of the following procurement areas is desirable: i. General goods (vehicles, visibility items, security equipment, vaccines, lab[oratory] equipment), ii. General services (hotels, insurance, transportation, relocation, consultancy, utilities), iii. Information Technology (“IT”) (internet, IT equipment and software, web services, telephony), iv. Building (construction, maintenance, leases), and v. Vendor registration ([United Nations Global Marketplace], Business Seminars). Procurement experience for both field missions and headquarters offices as well as experience working with [Enterprise Resource Planning (“ERP”)] systems in the area of purchasing and/or supply chain is also highly desirable.

Languages

Fluency in oral and written English is required. Knowledge of French is desirable. Knowledge of another [United Nations] official language is an advantage.

5. On 26 October 2016, the Applicant was notified by UNOG that her candidature was eliminated before the assessment exercises took place.
6. On 23 December 2016, the Applicant filed a request for management evaluation of the contested decision with the Management Evaluation Unit (“MEU”).
7. As requested on 3 January 2017, the Administration provided its comments to MEU on 12 January 2017, stating the following relevant facts:

... On 6 April 2016, [the JO] was advertised in [Inspira], with a closing date on 5 May 2016.

... 705 candidates applied for this position and 470 candidacies, including [the Applicant's], were released by the Human Resources Management Service (HRMS/UNOG) to the Hiring Manager for further evaluation. As per the established practice at CSS, a draft evaluation matrix of these 470 candidacies was done by [two] staff of the CSS/Operations Support Unit (OSU), independently from the Hiring Manager. The draft matrix was further verified by the Head of the [CSS/OSU] before being transmitted to the Hiring Manager.

... Upon review of the candidacies, 178 candidates were found not suitable, 255 were placed on the long list, including [the Applicant] [...].

... [The Applicant's] candidacy was placed on the long list, as it was determined that, based on [the Applicant's Personal History Profile ("PHP")] attached to her application, she met the mandatory criteria, but did not meet all of the [five] desirable criteria to be shortlisted. The evaluation entered in [I]nspira indicated the following:

- Three years of experience in the [United Nations] common system - (meets criteria)
- Experience with large scale and complex procurement operations - (meets criteria)
- Proven experience in at least [three] procurement areas - (meets criteria)
- Procurement experience for both field missions and headquarters offices - (does not meet [criteria])
- Experience working with ERP systems in the area of purchasing and/or supply chain (does not meet [criteria])

... Only candidates in the matrix that met the mandatory and desirable criteria were considered by the Hiring Manager. Accordingly, [the Applicant] was not considered for further evaluation. The 32 candidates that met the mandatory and desirable criteria were invited for a written test on 4 July 2016 [...], and the written test took place from 11 to 13 July 2016. The candidates who passed the written test were invited for a [c]ompetency-based interview. The interviews took place from 22 to 25 July 2016.

... On 27 September 2016, [six] candidates were endorsed by the Central Review Committee [{"CRC"}]. The selection decisions were made on 25 October 2016 [...], and on 26 October 2016, [the Applicant] was informed that her application was not successful.

8. On 12 January 2017, the Administration provided the following additional comments (emphasis omitted):

... As developed below, the Administration notes that the process at CSS for the preparation of matrices is under the responsibility of a unit working directly under the Chief of Service to ensure not only that trained staff complete this complex process but also to ensure full transparency and independence of the [short-listing] processes. The Administration further notes that the information contained on [the Applicant's] PHP was incomplete and insufficient to determine that she met all the criteria to be shortlisted. It is the responsibility of candidates to provide complete and accurate information as the evaluation of applications is made on the basis of the information submitted in the PHP.

... On a side note, with respect to [the Applicant's] contentions that she had been previously considered for three "P-4 [P]rocurement [O]fficer" in UNOG, the Administration notes the following:

- i. [The Applicant] was "longlisted" for the JO 32305, Procurement Officer, P[-]4 Strategic Heritage Plan (SHP), and all 178 candidates on the longlist were invited to the written test. [The Applicant] failed the written test and was not invited for a competency based interview.
- ii. [The Applicant] was "shortlisted" for the JO 37216, Procurement Officer, P[-]4 (SHP). [The Applicant] was included in the short list based on two desirable criteria (experience in the [United Nations] common system and knowledge of French). She failed the technical assessment.
- iii. [The Applicant] has also applied for a P-4 "Legal and Contracts Officer" (and not a [P]rocurement [O]fficer) (SHP) (JO 33143), but was not shortlisted.

... Therefore, her assertion that she was considered for "three P-4 Procurement Officer Posts" is incorrect.

... Concerning her assertion that three UNOG internal staff were already sitting on the posts, this is factually incorrect and the Administration notes that only two UNOG staff were recruited under the recruitment process in question, with one staff recruited from the United Nations Office at Nairobi.

... Also, contrary to [the Applicant's] assertion, the ST/SGB/2016/2 and the ST/AI/2016/1 on the "staff selection system and managed mobility" do not apply to her case. The contested

selection exercise was made under the provisions of the ST/AI/2010/3 [(Staff selection system)] on the staff selection system.

... Information contained in [the Applicant's] PHP

... Sec[.] 7.4 of the ST/AI/2010/3 on the staff selection system provides that “[t]he hiring or occupational group manager shall further evaluate all applicants released to him/her and shall prepare a shortlist of those who appear most qualified for the [JO] based on a review of their documentation”.

... The Manual for the Applicant on the Staff Selection System (2015) also recalls the candidate's responsibility to submit application containing comprehensive and accurate information, which will serve as the basis for evaluating the eligibility and suitability of a candidate for a [JO]. In particular, the Manual provides that:

In relation to the requirements of the [JO], applicants must provide complete and accurate information pertaining to their qualifications, including their education, work experience, and language skills. Each applicant must bear in mind that submission of incomplete or inaccurate applications may render that applicant ineligible for consideration for the [JO]. Initial screening and evaluation of applications will be conducted on the basis of the information submitted.

... It follows that the Hiring Manager evaluates applicants based on a review of their documentation only, which should be accurate and complete.

... The JO listed as highly desirable work experience “with ERP system in the area of purchasing and/or supply chain”. Upon review of [the Applicant's] PHP, the Administration notes that she did not mention any experience working with Umoja or with any ERP (Enterprise Resource Planning) system. The only reference to Umoja is in the cover letter where she states that she “completed all required courses in Umoja”; and there is no reference to any experience with an ERP system in her entire PHP.

... The Administration further notes that the statement “completed all required courses in Umoja” remains very generic and does not refer to purchasing and/or supply chain specific training in Umoja. It is to be further noted that in the [s]ection called “[United Nations] Training” of [the Applicant's] PHP, the listed courses were all done in 2011 or earlier and none of them relates to Umoja or ERP. The candidate's application did not respond to such criteria and remained incomplete in this regard. The Administration also recalls that Procurement Officers may use the Umoja/ERP system with varying

degree of responsibility in the [United Nations] Secretariat depending on whether the Procurement Officer only establishes the contracts and further delegates the issuance of purchase orders to field offices or establishes both the contracts and related purchase orders.

... While [the Applicant] asserts that it was “common knowledge” that she uses Umoja and that accordingly she should have been shortlisted, the Administration notes that “common knowledge” is subjective, cannot be used as a basis to assess almost 500 candidacies, and, if used, may result in different criteria being applied to evaluation of candidates. The Administration also recalls that the draft matrix was prepared by OSU/CSS, and Hiring Managers rely on this administrative support in selection exercises. At the time, the OSU/CSS staff who prepared the matrix had no personal knowledge of [the Applicant] or the functions performed by her.

... Since [name redacted, Mr. K] was not part of the preparation of the draft matrix, he could not have had the intention to exclude [the Applicant] or any other candidate from the draft matrix. Therefore, the Administration submits that [the Applicant’s] “exclusion” from the selection exercise was not intentional, but was merely due to the fact that the information contained in her PHP was incomplete.

... Lastly, the Administration notes that [the Applicant] is already at the P-3 level and that she has not submitted any evidence of harm or moral damage caused by the contested decision.

9. On 7 February 2017, the Applicant received the MEU’s response upholding the contested decision.
10. On 23 April 2017, the Applicant filed the present appeal against the contested decision.
11. On 24 April 2017, in accordance with art. 8.4 of the Dispute Tribunal’s Rules of Procedure, the Registry transmitted the application to the Respondent, instructing him to file his reply by 24 May 2017.
12. On the same day, the case was assigned to the undersigned Judge.
13. On 24 May 2017, the Respondent filed his reply arguing, *inter alia*, that the application is without merit because the Applicant was fully and fairly considered for the position. The Applicant was not short listed and subjected to further assessment

because, although she met the minimum criteria for the position, she did not indicate in her application that she met the desirable criteria.

14. By Order No. 117 (NY/2017), the Tribunal instructed the Respondent to file by 30 June 2017 “additional written evidence considered relevant, such as the “comments and accompanying documents submitted in respect [of the Applicant’s] request by the Chief, Human Resources Management Services (“HRMS/UNOG”) on 12 January 2017” as referenced in the response of the [MEU] dated 7 February 2017 [...]”. The parties were further instructed to file by 14 July 2017 to file separate statements informing the Tribunal if:

...

- a. The parties are amenable to an informal resolution of the case either through the Office of Ombudsman or through *inter partes* discussions;
- b. Any additional evidence is requested to be produced in the present case and if so, stating its relevance, or if the case can be decided on the papers;

9. In case the parties are not amenable to informal negotiations, they agree that no further evidence is requested, and that the Tribunal may decide the case on the papers before it, they are instructed to file their closing submissions by 5:00 p.m. on [...] 28 July 2017, based only on the evidence already before the Tribunal.

15. On 29 June 2017, the Respondent filed his reply to Order No. 117 (NY/2017), together with the requested documents.

16. On 13 July 2017, the Applicant filed her reply to Order No. 117 (NY/2017) in which she mentioned that she was amenable to an informal resolution of the case and, as additional evidence, she included her observations on the Respondent’s initial reply.

17. On 14 July 2017, the Respondent informed the Tribunal that he did not agree to the informal resolution of the case, that he did not request the production of

additional evidence, and that the Tribunal might decide the case on the papers before it.

18. In the Applicant's response to Order No. 117 (NY/2017) filed on 13 July 2017, responding to the initial reply, she stated as follows (emphasis omitted):

... Paragraphs 2, 7, 14, 19 and 21 [state as follows:] “did not indicate in her job application that she met the desirable criteria” “UNOG reasonably concluded that the Applicant did not meet the desirable criteria” “did not explicitly reference any work with ERP systems in the area of purchasing and/or supply chains” “[t]he Applicant claims that she should have been shortlisted despite her failure to identify her work with ERP” “no requirement under the Staff Selection [Administrative Instruction (“AI”)] to review performance evaluation reports during the initial screening”[.]

This is not true. ST/AI/2016/1 dated 28 [December 20]15, [s]ec[.] 5.2 states [that] “[c]andidates are required to submit their last two performance evaluation reports (PERs) as part of their applications” [...]. The two PERs elaborately describe all aspects of the experience in purchasing and supply chain management. The rationale for making the PER part of the application was to enable Hiring Managers to manually assess a candidate's experience and capabilities. I have had three similar subsequent situations ([United Nations Office in Vienna] (“UNOV/UNODC”) [P-4], [United Nations Office in Nairobi] (“UNON”) [P-3] and [United Nations Procurement Division] [P-3]), details of which I will provide, if requested, to evidence a pattern of lack of accountability in such cases, along with correspondence with the Hiring Manager UNOV/[United Nations Office on Drugs and Crimes (“UNOV/UNODC”)] who repeatedly evaded my question as to which criterion I did not meet, Head of Office (UNOV/UNODC) who chose not to respond at all, and an official at UNON who said it was his understanding that the Organization “does not share further details with unsuccessful candidates”. It is evident that most Hiring Managers do not review applications in their entirety, which is against provisions stipulated in ST/AI/2016/1.

19. The Tribunal notes that the Applicant did not file closing submissions on 28 July 2017 and the application is to be considered based on her previous submissions.

20. On 28 July 2017, the Respondent filed his closing submissions.

Applicant's submissions

21. The Applicant's principal contentions set in her application are as follows:

... [...] UNOG's reason for not short-listing [the Applicant's] candidacy was that [the Applicant] had not met the criterion "of possessing experience working with ERP/Umoja systems in area of purchasing and/or supply chain". The JO stated that such information should be in the "application". As advised in paragraph VII.3 above, UNOG either overlooked or ignored review of [the Applicant's] application in its entirety. The information requested in the JO was in fact in [the Applicant's] "application".

...

... [the Applicant] had merely provided the information, stating that [she] had previously been considered by UNOG on three occasions and assessed for P-4 Procurement Officer positions, while this time UNOG did not even consider [her] for an assessment for a lateral move.

[...]

... If only the Hiring Manager had considered [her] application fairly and objectively, he would have seen that it contained all information that had been requested in the JO.

... UNOG stated that ST/SGB/2016/2 does not apply in [the Applicant's] case, to dismiss [her] assertion about preference to lateral applicants. UNOG states that the selection exercise for the [p]osts was conducted under the provisions of ST/AI/2010/3 – Staff Selection System.

... As a staff member, [the Applicant] does not have the privilege of obtaining or accessing the methodology applied by the Hiring Manager. Even if [she] were to request, [her] request would be denied by the management. The Organization's thrust on mobility, time and again, and 'as wide a geographical basis as possible' can not be denied. But how can one be mobile if most offices want to achieve a pre-determined outcome? Why did a 2010 circular apply, when the ST/SGB [2016/2] was released on 28 [December 20]15 and the JO was posted in April 2016? [The Applicant's] concern in this case is that the action of UNOG in general and the Hiring Manager in particular lacked transparency and integrity.

... If [her] application had been given due consideration, it may have resulted in a lateral move, not a promotion. [...] [T]he Dispute

Tribunal may [...] see [the Applicant's] comments on this vis-a-vis the [Generic] JO:

- (a) “Proven experience in at least [three] procurement areas” [:] This “desirable” requirement for three of five very specific areas with the combination of French knowledge could only result in severely limiting the pool of candidates and thus eliminating the competition.
- (b) “[three] years in the [United Nations] common system” [:] This “desirable” criterion would have rendered it impossible for qualified individuals to apply, who were employed elsewhere outside the [United Nations] system, or had worked in the [United Nations] common system for less than three years.

... The current system of vacancy announcement, evaluation criteria and selection process in most instances lacks integrity. In this case, the vacancies did not exist as the staff members were either already sitting on the posts advertised or the announcement was tailored to select specific individuals. It is not a competitive process in the true sense - where the best qualified and experienced candidates could be tested and selected. It is evident from UNOG's own statements that it did not even care to read my application in its entirety.

... Over the last twelve months, [the Applicant] applied to over 130 [JOs/Temporary JOs] at the P-3/P-4 levels, within/outside [the Procurement Division], for peacekeeping and political [m]issions (including hardship [m]issions), [offices away from United Nations Headquarters] and [United Nations] Agencies and, of late, [United Nations] Entities. [The Applicant] often passed highly challenging assessment tests, and then the process failed [her] at the interview. When [the United Nations] want someone who is on a roster, they select from the roster; when that someone is not on the roster, they issue a [JO], and then somehow make it possible to achieve their desired outcome. While the [United Nations] management demands ethics, transparency, fairness and objectivity from its personnel, it itself routinely either ignores or bluntly violates such requirements. The entire process has become a mockery and a farce. For nine years now, this was the recurring experience of this loyal and dedicated staff member who (i) had good evaluations; (ii) has the right combination of intelligence, education, knowledge, experience, skills and conscientiousness; (iii) ranked [first] out of 130 G-to-P hopefuls in Administration; (iv) was a high school valedic[t]orian; (v) was rostered five times and yet was never selected from the roster for those positions if later advertised (as P-3 Administrative Officer by the

[United Nations] Board of Auditors on 13 [March] 2008, by [the Department of Safety and Security (“DSS”)] on 22 [June] 2009, and by [the Department for General Assembly and Conference Management] on 17 [September] 2009; as P-3 Compensation Officer by [the International Civil Service Commission] on 2 [September] 2008; and as P-3 Ethics Officer by [the] Ethics Office on 14 [August] 2009); (vi) painstakingly studied all [United Nations] official languages (passed [the United Nations Language Proficiency Examination, (“UNLPE”)] in French and Spanish; passed all nine levels in Arabic, level six in Russian, and currently at level [eight] in Chinese); (vii) was willing to move to any location even laterally, yet was unable to because of the manner in which vacancies are managed and candidates selected for posts; (viii) even received a letter from [the] Central Review Panel [United Nations Headquarters] commending her interviewing skills.

... The internal justice system is a pillar in the overall effort to strengthen accountability and ensure responsible decision-making. It is in this spirit that [the Applicant] request[s] the Dispute Tribunal to:

- (a) Order the Secretary-General to assess the way the vacancies, i.e. temporary [JOs] and [JOs] [...] are managed and advertised, to avoid wasting resources of applicants (internal and non-[United Nations]) who believe the vacancies to be genuine; and
- (b) [the Applicant] will agree to whatever compensation the Dispute Tribunal considers to be fair and reasonable in this case.

Respondent’s submissions

22. The Respondent’s principal contentions as set out in the reply as follows (emphasis omitted):

... The Staff Rules relevant to the selection exercise and ST/AI/2010/3 Staff selection system (Staff selection AI) were properly applied. These rules provide that job applications will be reviewed on the basis of information entered by the job applicants. The Applicant does not establish any error in the selection process, or that the selection process was tainted by extraneous considerations.

... The Secretary-General is vested with a wide discretion to select staff members for positions. The Dispute Tribunal does not substitute its own judgment for that of the Secretary-General regarding the outcome of the selection process (*Abassi*). In accordance with

[s]taff [r]egulation 4.3, selection is a competitive process. Staff members have a right to full and fair consideration; however, a staff member has no right to selection to a higher level position (*Andrysek*).

... Only in extremely rare circumstances will the Dispute Tribunal rescind a selection exercise (*Rolland*). There is a presumption that official acts have been regularly performed (*Rolland*). Following a minimal showing by the Organization that the candidacy of a staff member was given full and fair consideration, the burden of proof shifts to the staff member, who must be able to show through clear and convincing evidence that he or she was denied a fair chance of appointment (*Rolland*).

... The Applicant received full and fair consideration.

... The allegations of fact pleaded in the Application are denied, except as expressly admitted in the Reply.

... The Applicant's rights to full and fair consideration have been fully respected. The selection process was conducted in accordance with the relevant rules and [s]taff selection AI. UNOG reasonably concluded that the Applicant did not meet the desirable criteria of the [JO].

... On 6 April 2016, [the JO] was advertised through Inspira with a closing date of 5 May 2016 [...].

... The Inspira system automatically pre-screened 705 job applications received by the closing date, and released 470 job applications to UNOG for further evaluation.

... As per the established recruitment practice at CSS, two administrative staff members of CSS/OSU reviewed the 470 job applications in order to identify the job candidates that met the requirements of the [JO].

... Job applications that met the minimum requirements for [the JO] were placed on the longlist of candidates. The Applicant's application was among the 255 job applications that met the [*sic*] minimum requirements for placement on the longlist.

... In accordance with [sec.] 7.4 of [ST/AI/2010/3], the job applications were further evaluated, and those that met the desirable requirements for [the JO] were placed on the shortlist of those who appear most qualified for the position.

... [The JO] listed five desirable criteria: (1) three years of experience in the [United Nations] common system; (2) experience with large scale and complex procurement operations; (3) proven experience in at least [three] procurement areas; (4) procurement experience for both, field missions and Headquarters offices; and (5)

experience working with ERP [...] systems in the area of purchasing and/or supply chains. The CSS/OSU concluded that 32 job candidates demonstrated in their job applications that they met the five desirable criteria.

... The CSS/OSU did not place the Applicant on the shortlist because she was not among the most qualified job candidates. The Applicant's job application only demonstrated experience in the four of the five desirable criteria [...]. It did not explicitly reference any work with ERP systems in the area of purchasing and/or supply chains.

... The CSS/OSU provided its evaluation to the Hiring Manager, who then reviewed and finalized the shortlisted candidates.

... The shortlisted candidates were invited to participate in a written test in accordance with sec[.] 7.5 of [ST/AI/2010/3].

... Following the written test, eight job candidates were further assessed through a competency based interview. Following the assessment, the Hiring Manager recommended three job candidates for selection. [...]

... At the completion of the selection process, the Inspira system notified the Applicant on 26 October 2016 that she was not selected for the position.

... The Applicant claims that she should have been shortlisted despite her failure to identify her work with ERP systems in the area of purchasing and/or supply chains. This claim has no merit.

... Sec[.] 7.1 of [ST/AI/2010/3] provides that job applicants will be prescreened on the basis of the information provided in their applications. The Inspira system provides job applicants with the opportunity to highlight how their qualifications and experience meet the requirements of [the JO], including the desirable criteria. The burden is on applicants to provide complete and accurate information in their job applications. When the Applicant completed her job application, she certified that she understood that evaluation of her application would be conducted on the basis of the information she submitted within her application.

... There is no requirement under [ST/AI/2010/3] to review performance evaluation reports during the initial screening of job applicants to determine whether they have omitted relevant information from their job application.

... The Applicant fails to meet her burden of demonstrating that she was denied a fair chance of selection.

... The Applicant fails to meet her burden of demonstrating that the decision to not select her was arbitrary, unfair, or was tainted by any procedural flaws.

... The Applicant incorrectly claims that the recruitment exercise was a “jargon exercise to regularize staff members who may have already been occupying the posts [...]”. All three posts advertised under [the JO] were new posts approved in 2016. [...] The posts were vacant prior to this selection exercise.

... The Applicant’s assertion that the selection exercise should have been conducted pursuant to ST/SGB/2016/2 is also incorrect. The job network of the contested position has not been transitioned to the new staff selection and managed mobility system. Accordingly, ST/AI/2010/3 applies to this selection exercise.

Applicable law

23. Article 101.3 of the United Nations Charter provides:

The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

24. Article 8.1(c) of the Dispute Tribunal’s Statute provides:

1. An application shall be receivable if:

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required.

25. Article 7.1(a) of the Dispute Tribunal’s Rules of Procedure provides:

1. Applications shall be submitted to the Dispute Tribunal through the Registrar within:

(a) 90 calendar days of the receipt by the applicant of the management evaluation, as appropriate.

26. ST/SGB/2016/1 (staff regulations) provides, in relevant parts:

Regulation 4.2

The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

Regulation 4.3

In accordance with the principles of the Charter, selection of staff members shall be made without distinction as to race, sex or religion. So far as practicable, selection shall be made on a competitive basis.

27. ST/AI/2010/3 adopted on 21 April 2010 provides, in relevant parts:

Section 1

Definitions

The following definitions apply for the purposes of the present instruction:

...

(m) Hiring manager: the official responsible for the filling of a vacant position. The hiring manager is accountable to his/her head of department/office to ensure the delivery of mandated activities by effectively and efficiently managing staff and resources placed under his or her supervision and for discharging the other functions listed in sec[.] 6 of ST/SGB/1997/5 (as amended by ST/SGB/2002/11);

...

(o) Internal applicants: serving staff members holding an appointment under the Staff Rules, other than a temporary appointment, who have been recruited after a competitive process under staff rule 4.15 (review by a central review body) or staff rule 4.16 (competitive recruitment examination) [...];

(p) [JO]: vacancy announcement issued for one particular position or for a set of [JOs];

(q) Lateral move: movement of a staff member to a different position at the same level for the duration of at least one year. The new position may be in the same or a different department or office, in the same or a different duty station and in the same or a different occupational group. Inter-agency loans or other movements to and from other organizations of the United Nations common system are recognized as “lateral moves”. Within the same department or office, a

lateral move will normally involve a change in functions with or without a change of supervisor. When the supervisor remains the same, there will be a lateral move if the responsibilities are substantially different, for example, if there is a different area of responsibilities or a change in the departments/offices serviced by the staff member. A change in supervisor without a change in functions does not represent a lateral move. Temporary assignments of at least three months but less than one year, with or without special post allowance, shall also qualify as a lateral move when the cumulative duration of such assignments reaches one year;

...

Section 2

General provisions

2.1 The present instruction establishes the staff selection system (the “system”) which integrates the recruitment, placement, promotion and mobility of staff within the Secretariat.

2.2 [...] The system provides for the circulation of [JOs], including anticipated staffing needs in missions through a compendium of [JOs] [footnote omitted] and specifies the lateral mobility requirement applicable for promotion to the P-5 level.

2.3 Selection decisions for positions up to and including the D-1 level are made by the head of department/office/mission, under delegated authority, when the central review body is satisfied that the evaluation criteria have been properly applied and that the applicable procedures were followed. If a list of qualified candidates has been endorsed by the central review body, the head of department/office/mission may select any one of those candidates for the advertised [JO], subject to the provisions contained in sec[s.] 9.2 and 9.5 below. The other candidates shall be placed on a roster of pre-approved candidates from which they may be considered for future [JOs] at the same level within an occupational group and/or with similar functions.

...

2.5 Heads of departments/offices retain the authority to transfer staff members within their departments or offices, including to another unit of the same department in a different location, to [JOs] at the same level without advertisement of the [JO] or further review by a central review body [...].

2.6 This instruction sets out the procedures applicable from the beginning to the end of the staff selection process. Manuals will be

issued that provide guidance on the responsibilities of those concerned focusing on the head of department/office/mission, the hiring manager, the staff member/applicant, the central review body members, the recruiter, namely, the Office of Human Resources Management (OHRM), the Field Personnel Division of the Department of Field Support, executive offices and local human resources offices as well as the occupational group manager and expert panel. Should there be any inconsistency between the manuals and the text of the present instruction, the provisions of the instruction shall prevail.

Section 3

Scope

3.1 The system shall apply to the selection and appointment of all staff members to whom the Organization 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. The process leading to selection and appointment to the D-2 level shall be governed by the provisions of the present instruction. For positions at the D-2 level, the functions normally discharged by a central review body shall be discharged by the Senior Review Group, prior to selection by the Secretary-General.

3.2 The system shall not apply to the following:

...

(1) Lateral movements of staff by heads of department/office/mission in accordance with section 2.5 above.

...

Section 4

Job Openings

4.1 Immediate and anticipated [JOs] for positions of one year or longer shall be advertised through a compendium of [JOs]. The compendium shall include both position-specific [JOs] and generic job openings ["GJOs"]. The compendium shall be published electronically and shall be updated regularly.

4.2 Position-specific [JOs] shall be included in the compendium when:

- (a) A new position is established or an existing position is reclassified;
- (b) The incumbent separates from service;
- (c) The incumbent is selected for another position under the provisions of this instruction or as a result of a lateral reassignment by the head of department/office within that department or office.

4.3 [GJOs] shall be issued in the compendium for the purpose of creating and maintaining viable rosters of qualified candidates for immediate and anticipated [JOs], identified through workforce planning, in entities with approval to use roster-based recruitment, such as peacekeeping operations, special political missions and other field operations. [GJOs] shall contain information on the location of current and anticipated [JOs] and a clause making reference to the generic nature and roster purpose. Where such entities deem it necessary, position-specific [JOs] may also be issued to advertise [JOs].

4.4 The hiring manager or occupational group manager shall be responsible for creating the [JO] and for promptly requesting the inclusion of its announcement in the compendium, with the assistance of the executive or local human resources office.

4.5 The [JO] shall reflect the functions and the location of the position and include the qualifications, skills and competencies required. [JOs], to the greatest extent possible, shall be based on [GJPs] approved by OHRM, a previously published [JO] or a previously classified individual job description reflecting the actual functions of the position. The evaluation criteria of [JOs] created on the basis of individually classified job descriptions require approval by a central review body.

4.6 Each [JO] shall indicate the date of posting and specify a deadline date by which all applications must be received. The [JO], including the evaluation criteria, shall be approved by OHRM, the local human resources offices or the Department of Field Support prior to posting.

4.7 Pre-screening questions should be prepared as part of the [JO] to assist in determining an applicant's suitability for the [JO] to which he/she applied. The pre-screening questions must be related to the responsibilities of the position and the experience and professionalism required to undertake the functions, as reflected in the [JO].

...

Section 5
Applications

5.1 Applications must be submitted in accordance with the instructions set out in the [JO], including use of the electronic platform provided for this purpose.

...

Section 6
Eligibility requirements

...

6.3 Staff members in the Professional category shall have at least two prior lateral moves, which may have taken place at any level in that category, before being eligible to be considered for promotion to the P-5 level, subject to the following provisions:

...

(d) The requirement for lateral moves is waived for staff serving against language positions that are subject to the provisions of the administrative instruction setting out special conditions for recruitment or placement of candidates successful in a competitive examination for positions requiring special language skills when applying for another such language position.

...

Section 7
Pre-screening and assessment

7.1 Applicants applying to [JOs] will be pre-screened on the basis of the information provided in their application to determine whether they meet the minimum requirements of the [JOs].

7.2 OHRM, the local human resources office or the Field Personnel Division of the Department of Field Support will release electronically to the hiring manager (for position-specific [JOs]) and occupational group manager (for [GJOs]), within and/or shortly after the deadline of the [JO], the applications of candidates who have successfully passed the pre-screening process, together with the names of pre-approved eligible candidates, for consideration for selection.

...

7.4 The hiring or occupational group manager shall further evaluate all applicants released to him/her and shall prepare a

shortlist of those who appear most qualified for the [JO] based on a review of their documentation.

7.5 Shortlisted candidates shall be assessed to determine whether they meet the technical requirements and competencies of the [JO]. The assessment may include a competency-based interview and/or other appropriate evaluation mechanisms, such as, for example, written tests, work sample tests or assessment centres.

....

28. The relevant provisions from the Hiring Manager’s Manual on the Staff Selection System, issued in April 2012 and updated in October 2012 (“the Manual”) as applicable to the selection process for the JO states as follows (emphasis omitted):

a. Chapter 7 – Understanding How Applications are Managed:

Ch. 7.1 – Overview, paras. 1-6:

... An applicant for a [JO] may be a rostered applicant, a new applicant or a qualified applicant identified through a targeted outreach campaign.

... For screening the basic eligibility of the large pool of applicants, an automated pre-screening mechanism will assist in filtering new applications, resulting in a qualitative improvement rather than a quantitative increase in applicants.

... The automated pre-screening mechanism contains key conditions that will screen out non-eligible and non-qualified applicants from the outset based on the pre-determined eligibility requirements and commensurate with the job qualifications as stated in the [JO] and evaluation criteria. It will eliminate duplication of screening the same extensive list of applicants and will apply efficient pre-screening based on objective criteria. [I]nspira will keep a record of which criteria were checked to indicate that a particular condition was met or failed by an applicant. Where the Recruiter determines to overwrite the automated pre-screening results or makes a manual assessment, this is also recorded. Documentary evidence is maintained.

... Where additional information is required, along with the response to the Recruiter’s correspondence, this is recorded as well.

... A complete application consists of:

- a. The cover letter;
- b. Part of the profile;
- c. The application form; and
- d. The [electronic performance appraisal] [“e-PAS”] reports (applicable to staff members only).

... A Personal History Profile (PHP) is a date stamped version of the application form static for either a particular [JO] or static as printed on a certain date.

... Hiring team members (i.e. Recruiter, Hiring Manager, etc.), depending on their role in the evaluation of the application (profile and application) will have access to either a complete or partial application.

- a. The Recruiter will have access to the full application.
- b. The Hiring Manager will be able to view the following application information:

Address, Preferences, Cover Letter, Publications, Education, Relations, Employment, Response to Questions, Address, Preferences, General Details (Name, Date of Birth, Nationality, Gender), Skills Required for the [JO], Language, [United Nations Civil Service] Status (if applicable), Licenses and Certificates, [United Nations] Training.

...

Ch. 7.2 – Managing New Applications:

... Applications must be submitted electronically as indicated in the [JO].

... Every new application received passes through the automated pre-screening mechanism in line with the eligibility requirements and commensurate with the job qualifications as stated in the [JO] and evaluation criteria. At the end of this process, each applicant is either found eligible, not eligible or forwarded to the Recruiter for an in-depth review. In case of the latter, the Recruiter has to make a decision as to whether this particular applicant is eligible or not for the particular [JO]. Cases that are forwarded for a manual human resources review are discussed in more detail under each eligibility rule.

...

... Where applications received from serving staff members holding an appointment other than a temporary appointment do not contain the required copies of the latest two performance appraisal reports, the Hiring Manager, in liaison with the Recruiter, shall request these documents in writing from the applicant, or if unavailable, a short explanation as to why these are not available. The Hiring Manager may expect to receive a reply within five working days.

...

Ch. 7.4 – Eligibility Rules: Reviewing Automated Pre-screening and Conducting [Human Resources] Assessment:

...

Ch. 7.4.2 – Eligibility Criteria for All Applicants:

...

Sec. 7.4.2.2 – Knowledge of Language:

... An applicant must meet the language skills as stated in the [JO]. The level of knowledge is recorded as basic, confident or fluent. [JOs] require either ‘fluency in’ or ‘knowledge of’ a language. ‘Fluency’ equals ‘Fluent’ in all four areas (speak, read, write, understand) and ‘knowledge of’ equals a rating of ‘confident’ in any of the two out of four areas.

... An applicant is automatically pre-screened by the system for meeting the required knowledge of languages based on the indication in his/her application. When this requirement is met, an applicant is considered eligible. When the requirement is not met, serving staff holding an appointment other than a temporary appointment are manually reviewed by the Recruiter who uses judgement based on the available information, including IMIS data and related software bridges, such as the “EZ HR” tool in determining whether the applicant is released to the Hiring Manager for evaluation. An applicant who is not a serving staff member and who does not meet the language requirement is automatically screened out and not eligible.

Sec. 7.4.2.3 – Level of Job-Specific Expertise:

For [JOs] that require the applicant to perform a self-assessment on a set of skills, the applicant must possess the required level of expertise as stated in the [JO]. Each higher-

level implies control of the previous level's functions and accuracy. The level of expertise is recorded as:

- a. Not Applicable
- b. Unsatisfactory
- c. Partially Satisfactory
- d. Satisfactory
- e. Outstanding.

...

Chapter 9 – Conducting Assessments:

Chap. 9.1 – Overview:

... Applicants who have successfully passed the pre-screening process are released to the Hiring Manager on a daily basis within the posting period shortly after the posting of the [JO]. Eligible roster applicants who have expressed interest, by submitting an updated PHP via [I]nspira, in the [JO] are also released to the Hiring Manager as a priority within the posting period of the [JO].

... While the Hiring Manager may conduct his/her preliminary evaluation of the applicants' academics, work experience and knowledge of languages immediately when an application is released to him/her, it is not until after the deadline date of the [JO] that the Hiring Manager, together with the assessment panel, conducts the assessment exercise as stipulated in the [JO]. The most promising applicants are subsequently invited for a competency-based interview.

... Short-listed applicants shall be assessed to determine whether they meet the technical requirements and competencies of the [JO]. Hiring Managers or [Occupational Group Managers] shall use the appropriate assessment methods commensurate to the knowledge and competencies required for the position.

...

Chap. 9.2 – Evaluating Applicants:

... The standards set out below must be adhered to organization-wide in order to avoid variance in how evaluations and assessments are conducted and recorded.

... In order to speed up the process, the Hiring Manager may start analyzing the applications of released applicants before the deadline date of the [JO]. Evaluating each

application entails reviewing and documenting the findings of a preliminary analysis for each applicant as to whether he/she meets all, most, some or none of the stipulated requirements against the evaluation criteria as stated in the [JO] in terms of:

- a. Academics;
- b. Experience;
- c. Language.

It is preferred to use clear evaluation requirements listed as “required” or “desirable” in the job posting. However, the specialized test and/or interview shall not commence until after the deadline date of the [JO] and until all eligible applicants have been released.

... During the preliminary evaluation of each applicant, the Hiring Manager will review and rate each applicant in the three areas (academic, language and experience). The Hiring Manager may place the applicant in one of the following lists:

- a. Not Suitable - these applicants are rated unsatisfactory in any one of the three areas (academic, language or experience). No general comments are required, however, it must be self-evident as to why the applicant is not suitable.
- b. Long List - these applicants seemingly meet the basic evaluation criteria but may not meet the desired qualifications as outlined in the [JO]. They are considered qualified for the job and should be placed on the long list for further consideration and possible movement to the short list. A rating is required for each area (academic, language and experience) but a general comment is [only] required for staff members of the United Nations Secretariat.
- c. Short List - these applicants seemingly meet the basic evaluation criteria as well as all defined desirable qualifications as outlined in the [JO]. They are considered the most promising applicants for the job and should be convoked to an assessment exercise and/or interview to be conducted by the assessment panel. A rating is required for each area (academic, language and experience) and a general comment is required for [all] applicants.

29. The relevant provisions from the Applicant's Manual of August 2012 are as follows:

Chapter 2 – Overview of the Application Process

...

Step 4 – Complete the application:

Completing the application involves four parts:

Part 1 - Create Your Application:

Once your profile is saved, you can create an application. It is suggested that you prepare your application in advance even if you are not planning to apply for a [JO] right away, so that once a position of interest has been identified, the application process has already been started.

The application form consists of several sections: Preferences, Education and Work Experience, Skills, References, and Cover Letter and Additional Information. Submitting a complete and accurate application is integral in the application process.

A resume or CV is not accepted and is considered neither a substitute nor a complementary document to a duly completed application. Any supplemental information or documentation that the Organization may require will be requested in the course of the application.

Part 2 - Write the Cover Letter:

Part of the application includes the writing of a cover letter. The cover letter is the personal introduction that accompanies your application. A cover letter should be brief, three to four paragraphs, and as targeted as possible to the position.

Part 3 - Access and Update Your Draft Application:

When you apply to a [JO], the last version of your application appears. The application can be updated as well as any draft applications that have been created and saved but not submitted to a particular [JO]. Once an application has been submitted to a [JO], it can no longer be updated. It is recommended that you update your application for every [JO] you apply to so that it is targeted to the position.

Part 4 - Apply to a [JO] and Answer the Questions (as applicable):

To apply to a [JO], you have to link your application to the [JO] of interest. Once you have applied to the position a series of questions, (10 to 15) may appear. These questions are selected from a library of questions, are objective and relate to the position. They are used to filter applicants and a passing grade of 80% is required.

Step 5 - Submit the Application:

Submit your application as early as possible after a [JO] has been posted and well before the deadline date stated in the [JO]. [JOs] posted on the Careers Portal are taken off at midnight (GMT-5) on the deadline date. You will receive an e-mail acknowledgement confirming successful submission of your application for the [JO].

Once you submit your application, it will go through a pre-screening process. The process checks the information you entered in your application against the eligibility criteria. Passing the pre-screening process would allow you to be considered by the hiring team.

Further communications between the Organization and you may vary depending on your suitability and eligibility for the position.

...

Chapter 9 – Undergoing the Assessments:

...

Ch. 9.2 - Understanding the Evaluation of the applicants:

... The standards set out below must be adhered to organization-wide in order to avoid variance in how evaluations and assessments are conducted and recorded.

... In order to speed up the process, the Hiring Manager may start analyzing the applications of released applicants before the deadline date of the [JO]. Evaluating each application entails reviewing and documenting the findings of a preliminary analysis for each applicant as to whether he/she meets all, most, some or none of the stipulated requirements against the evaluation criteria stated in the [JO] in terms of:

- a. Academics
- b. Experience

c. Language

However, the specialized test and/or interview shall not commence until after the deadline date of the [JO] and the notification that all eligible applicants have been released has been sent.

... During the preliminary evaluation of each applicant, the Hiring Manager will review and rate each applicant in the three areas (academic, language and experience).

... After this review, which is recorded in a standardized format to enhance the quality of selected applicants, the Hiring Manager convokes the most promising applicants to an assessment exercise.

... Applicants who meet all required qualifications but do not meet the desirable qualifications are considered qualified for the job and should be considered for a long list. Applicants who meet both required and desirable qualifications are considered most promising applicants for the position.

... After the deadline date of the [JO], a substantive assessment is performed which may include, depending on success:

- a. The knowledge-based tests or other simulation exercise;
- b. The competency-based interview; and
- c. The assessment of applicants for positions involving significant functions in the management of financial, human and physical resources as well as information and communications technology shall also take into account the relevant criteria included in the [JO].

... The Hiring Manager is required to prepare a reasoned record of the evaluation of the applicants against the evaluation criteria. In doing so, the basis for this evaluation (e.g. application, cover letter, e-PAS, assessment exercise or interview) is indicated. The record should compare the applicants against the evaluation criteria and the [JO], not against one another. The Hiring Manager will review and modify the scores for each applicant, followed by selecting the applicant for the assessment exercises.

30. The relevant provisions from the Recruiter's Manual (2015 version) are as follows:

...

Chapter 5 – Advising on the Creation of a [JO]:

...

Ch. 5.4.1 – The Evaluation Criteria – Required Years of Work Experience:

... The minimum experience requirements contained in [Generic Job Profiles (“GJP”)] are set to ensure the application of organizational standards across the job families.

... For positions in the Professional and higher categories, only relevant experience acquired at the Professional category shall be counted. Relevant work experience obtained in the General Service and related categories or in the Field Service Category within the [United Nations] common system at the GS- 6, GS-7, FS-4, FS-5, S-5 to S-7, and TC-6 to TC-8 levels shall also be counted. Years of work experience acquired as a result of the receipt of Special Post allowance at the above qualifying levels shall also be counted.

... Staff members applying for positions one level higher than their personal grade shall meet the minimum work experience requirements of the position. In determining the eligibility of staff members and other applicants against the level of the position for which they are applying, the baseline for calculating the number of years of work experience required shall be established using the following tables for each respective level:

- a. For positions in the Professional and higher categories with an advanced university degree (Masters or equivalent):
 - i. P-2 level – a minimum of two (2) years (applicants who passed the National Competitive Examination, now known as the Young Professionals Program (YPP), do not require the two (2) years experience).
 - ii. P-3 level - a minimum of five (5) years.
 - iii. P-4 level - a minimum of seven (7) years.
 - iv. P-5 level - a minimum of ten (10) years.
 - v. D-1 level - a minimum of fifteen (15) years.
 - vi. D-2 level - over fifteen (15) years.

...

... Where a [JO] for a Professional category position stipulates that a first-level university degree may be substituted by another degree from e.g. a police academy, or another relevant diploma typically, in the areas of Security, Mine Action, Investigations or Crime Prevention, four additional years are added to the minimum requirement of relevant years of experience at the respective level to acknowledge the lack of the first-level university degree.

... For positions advertised at the P-3/FS-6 level, staff at the FS-5 level who are selected for such positions may only be appointed at the FS-6 level, regardless of their academic qualifications, due to the restrictions placed by the General Assembly on movement of staff from the General Service and related categories to the Professional level. Staff already at the Professional level may, of course, be appointed at the P-3 level.

... For National Professional Officer positions, the required minimum number of years of experience are:

- a. NO-A level - a minimum of one to two (1-2) years
- b. NO-B level - a minimum of two to three (2-3) years
- c. NO-C level - a minimum of five (5) years
- d. NO-D level - a minimum of seven (7) years
- e. NO-E level - over seven (7) years

...

Ch. 5.4.6 – Competencies:

... Every GJP and individually classified job description includes a set of applicable United Nations Secretariat competencies with their respective standard descriptions.

- a. For positions in the General Service and related category, the three most relevant competencies, one of which is Professionalism, are included in the evaluation criteria for job openings.
- b. For positions at the Professional and higher levels, the three most relevant competencies, are stated, plus two managerial competencies for managerial positions. The same number of competencies shall be listed in the published [JO].

... These definitions enable a common understanding of the core competencies required of all staff, namely the combination of skills, personal attributes and behavior assisting in building and maintaining the capacity of staff and in promoting a new organizational culture.

...

Ch. 5.5.1.6 - Work Experience:

... The required work experience is defined in such a way as to attract a suitable pool of qualified applicants. [JOs] that are too generally defined might attract a large pool of applicants who are generally qualified but do not necessarily meet the specific requirements of the position. Alternatively, if the required experience is too specific, this may eliminate perfectly suitable applicants who

lack a narrowly defined requirement. Too narrow a description could also lead to concerns that the [JO] has been tailored to suit a particular applicant.

... Clearly defined experience criteria, whether required or desirable, allow potential applicants to better understand the type of background sought and help him/her decide whether or not to submit an application. They allow applicants to customize their applications to the language of specific requirements and describe in their cover letter how he/she best meet the experience requirements. At the same time, clearly defined experience facilitates pre-screening and evaluation of qualified applicants.

... The nature of the required experience should not deviate from the GJP or classified job description and must have an eliminating question that:

- a. Reflects the required number of years in line with the provisions in the Managing Applicants section;
- b. Lists additional experience qualifications, first as ‘required’, then as ‘desirable’. Applicants must meet all ‘required’ criteria;
- c. Is relevant to the functions of the position, as reflected in the responsibilities of the position.

...

Ch. 5.7.3 – Evaluation Criteria (Checklist):

Field of work and applicable area of speciality:

- Have the applicable fields of work experience and areas of specialty, as applicable, been entered?
- Are all the fields of work experience relevant to the position?
- Are there not too many and not too few fields listed?
- Applicants are not automatically pre-screened by the system against field and/or areas of specialty, but these nevertheless form part of the evaluation criteria and applicants are evaluated against these criteria in the evaluation conducted by the Hiring Manager.
- Where more than one area of work and/or area of specialty are indicated, this entails that the applicant is expected to have experience in at least one “and/or” the other(s) area(s). The wording in the published [JO] will further define required versus desirable experience.

...

Ch. 6.2.1 – Assign Alternate Recruiter:

As a primary Recruiter, you can assign a designee (i.e. alternate, assistant or another member of your team) to review and approve the Evaluation Criteria, Screening Questions, Assessment Methodology and Job Posting information submitted by the Hiring Manager, as well as to publish the [JO]. However, you remain responsible for all actions taken by your designee(s) and have final approval authority for the [JO].

...

Ch. 7.4.2.3 – Level of Job-Specific Expertise:

For [JOs] that require the applicant to perform a self-assessment on a set of skills, the applicant must possess the required level of expertise as stated in the [JO]. Each higher-level implies control of the previous level's functions and accuracy. The level of expertise is recorded as:

- a. Not Applicable
- b. Unsatisfactory
- c. Partially Satisfactory
- d. Satisfactory
- e. Outstanding

...

Ch. 8.1 - Performing [Human Resources (“HR”)] Assessment on prescreened Applicants:

... Applicants who apply to a published [JO] are automatically prescreened by [I]nspira to determine whether they meet the eligibility criteria for consideration for the position. For this purpose the information provided by the applicant in his/her application and profile is screened against the Evaluation Criteria of the relevant [JO].

... The disposition of an applicant who applies to a [JO] is shown as Applied. Twice a day, namely at 7:00 hrs and 19:00 hrs Bangkok time, the automated pre-screening is automatically executed by the system to pre-screen applicants. At the end of this automated prescreening process, an applicant’s status is either:

- Screen - the applicant is automatically and immediately released to the Hiring Manager, so he/she can conduct a preliminary evaluation right away.
- Reject - the applicant failed at least one of the pre-screening rules and is not considered further; or
- HR Assessment Required - the applicant failed at least one of the pre-screening rules and requires a manual determination by the Recruiter as to whether this particular

application is eligible or not for consideration for the relevant [JO].

...

Ch. 9.2 - Advising on Evaluating Applications

... The standards set out below must be adhered to organization-wide in order to avoid variance in how evaluations and assessments are conducted and recorded.

... In order to speed up the process, the Hiring Manager may start analyzing the applications of released applicants before the deadline date of the [JO]. Evaluating each application entails reviewing and documenting the findings of a preliminary analysis for each applicant as to whether he/she meets all, most, some or none of the stipulated requirements against the evaluation criteria as stated in the [JO] in terms of:

- a. Academics;
- b. Experience;
- c. Language.

It is preferred to use clear evaluation requirements listed as ‘required’ or ‘desirable’ in the job posting.

However, the specialized test and/or interview shall not commence until after the deadline date of the [JO] and until all eligible applicants have been released.

... During the preliminary evaluation of each applicant, the Hiring Manager will review and rate each applicant in the three areas (academic, language and experience). The Hiring Manager may place the applicant in one of the following lists:

- a. Not Suitable - these applicants are rated unsatisfactory in any one of the three areas (academic, language or experience). No general comments are required, however, it must be self-evident as to why the applicant is not suitable.
- b. Long List - these applicants seemingly meet the basic evaluation criteria but may not meet the desired qualifications as outlined in the [JO]. They are considered qualified for the job and should be placed on the long list for further consideration and possible movement to the short list. A rating is required for each area (academic, language and experience) but a general comment is ONLY required for staff members of the United Nations Secretariat.
- c. Short List - these applicants seemingly meet the basic evaluation criteria as well as all defined desirable qualifications

as outlined in the [JO]. They are considered the most promising applicants for the job and should be convoked to an assessment exercise and/or interview to be conducted by the assessment panel. A rating is required for each area (academic, language and experience) and a general comment is required for [all] applicants.

Ch. 9.2.1 - Work Experience:

1. Relevance (or similarity):
 - a. What is the applicant's field of work?
 - b. Does the applicant possess knowledge of a particular geographic region covered by the job?
 - c. Has the applicant undertaken assignments that correspond to the job? Has the applicant published articles or books related to the job?
2. Work environment:
 - a. Does the applicant have experience in the public sector and/or the private sector?
 - b. Does the applicant have experience at the international and/or national level?
 - c. Does the applicant have field experience or peacekeeping experience?
3. Depth of experience:
 - a. What is the nature and quality of the applicant's experience in his/her field of work? For example, the number and complexity of reports drafted for the legislative organs, the number and type of missions conducted, etc.
4. Breadth of experience:
 - a. Is the applicant's experience limited to a specialized field of work?
 - b. Is the applicant multi-skilled and exposed to different fields of work?
5. Accomplishments/Tangible results achieved:
 - a. Does the applicant's application indicate any significant achievement?
 - b. Does the applicant appear to be a results-oriented person?
6. Progressively responsible experience:

- a. Has the applicant been working in the same position for many years?
- b. Has the applicant advanced in terms of responsibility or complexity of the job?
- 7. Managerial experience:
 - a. Does the applicant have the required number of years of planning and budgetary - as well as supervisory experience?
 - b. Does the applicant have the required level of managerial responsibility (e.g., junior level management, mid-level management, or senior level management)?
 - c. Does the applicant have specific achievements, leadership, negotiation skills etc.?
- 8. Supplementary questions under experience:
 - a. Do the answers provided by the applicant reveal exposure and/or experience of the nature required for the position?
 - b. Did the applicant substantiate the answer with concrete examples?

...

Considerations

Receivability

31. The Tribunal notes that the contested administrative decision was notified to the Applicant on 26 October 2016 and she requested a management evaluation on 23 December 2016, within 60 days of the date of notification. The present application was filed on 23 April 2017, within 90 days of the date when the Applicant received the management evaluation decision—7 February 2017. Therefore, the Tribunal concludes that the application is receivable in accordance with art. 8.1(c) of the Dispute Tribunal’s Statute and art. 7.1(a) of the Dispute Tribunal’s Rules of Procedure.

Scope of review

32. As consistently held by the Appeals Tribunal, staff members do not have a right to promotion, but they have a right to full and fair consideration (*Andrysek* 2010-UNAT-070).

33. In *Ljungdell* 2012-UNAT-265 (recalled in *Scheepers* 2015-UNAT-556), the Appeals Tribunal stated in para. 30:

... Under Article 101(1) of the Charter of the United Nations and [s]taff [r]egulations 1.2(c) and 4.1, the Secretary-General has broad discretion in matters of staff selection. The jurisprudence of this Tribunal has clarified that, in reviewing such decisions, it is the role of the [Dispute Tribunal] or the Appeals Tribunal to assess whether the applicable [r]egulations and [r]ules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration [footnote: *Schook* 2012-UNAT-216, quoting *Sanwidi* 2010-UNAT-084].

34. In *Abbassi* 2011-UNAT-110 (recalled in *Scheepers* 2015-UNAT-556), the Appeals Tribunal stated in paras 23-24:

... In reviewing administrative decisions regarding appointments and promotions, the [Dispute Tribunal] examines the following: (1) whether the procedure as laid down in the [s]taff [r]egulations and [r]ules was followed; and (2) whether the staff member was given fair and adequate consideration.

... The Secretary-General has a broad discretion in making decisions regarding promotions and appointments. In reviewing such decisions, it is not the role of the [Dispute Tribunal] or the Appeals Tribunal to substitute its own decision for that of the Secretary-General regarding the outcome of the selection process.

35. In *Aliko* 2015-UNAT-540, the Appeals Tribunal summarized its jurisprudence on the judicial review of selection decisions in para. 30 as follows:

“[I]t is not the function of the Dispute Tribunal [...] to take on the substantive role with which the interview panel was charged” [footnote: *Fröhler* 2011-UNAT-141, para. 32]. Rather, the Dispute Tribunal reviews the challenged selection process to determine

whether a “candidate[...] ha[s] received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration” [footnote: *Rolland* 2011-UNAT-122, para. 20]. The burden is on the candidate challenging the selection process to “prove through clear and convincing evidence” that he or she did not receive full and fair consideration of his or her candidacy, the applicable procedures were not followed, the members of the panel exhibited bias, or irrelevant material was considered or relevant material ignored [footnote: *Ibid.*, para. 21].

On the merits

36. In *Korotina* UNDT/2012/178 (not appealed), the Tribunal stated as follows:

... 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.

... 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).

... 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).

37. Section 2.1 of ST/AI/2010/3 states:

The present instruction establishes the staff selection system (the “system”) which integrates the recruitment, placement, promotion and mobility of staff within the Secretariat.

38. Section 2.6 of ST/AI/2010/3 states:

This instruction sets out the procedures applicable from the beginning to the end of the staff selection process. Manuals will be issued that provide guidance on the responsibilities of those concerned focusing on the head of department/office/mission, the hiring manager, the staff member/applicant, the central review members, the recruiter, namely, the Office of Human Resources Management (OHRM), the Field Personnel Division of the Department of Field Support, executive offices and local human resources offices as well as the occupational group manager and expert panel. Should there be any inconsistency between the manuals and the text of the present instruction, the provisions of the instruction shall prevail.

39. ST/AI/2010/3 establishes the procedures applicable to the staff selection process (sec. 2.6). The staff selection system manuals for “the Applicant”, “the Hiring Manager”, “the Recruiter”, “the Department Head” and “the Central Review Bodies”, were first issued in March 2011 in accordance with sec. 2.6 of ST/AI/2010/3. The Tribunal is of the view that the issuance of these manuals was mandatory under sec. 2.6 of ST/AI/2010/3, which states that “[m]anuals *will* be issued that provide guidance” (emphasis added), and that the steps set out in these manuals are therefore binding and form part of the procedures applicable from “the beginning to the end” of the staff selection process. The Tribunal considers that the guidelines provided in these manuals must be respected during the entire staff selection process, except where there is an inconsistency between the text of the manuals and the text of ST/AI/2010/3. In these circumstances, the text of ST/AI/2010/3 will prevail.

40. Section 1.1 of the Recruiter’s Manual, and sec. 1.1 of the Hiring Manager’s Manual, both issued in April 2012 and applicable in the present case (revised in October 2012 and in March 2015), state that the manuals serve as “a comprehensive step-by-step guide on the staff selection process”. A similar provision is included in the manuals for the Department Head and the Central Review Bodies.

41. In accordance with the above-mentioned provisions, the manuals for the Hiring Manager, Recruiter, Department Head and Central Review Body are all comprehensive step-by-step guides on the staff selection process, which means (in accordance with the definition of the word “comprehensive” in the *Oxford English Minidictionary* (Oxford University Press, 1995) and the *Webster’s New World College Dictionary* (Wiley Publishing, Inc., 2010) that they are including/dealing with all or many of the relevant details of the staff selection process. Further, once adopted and published on Inspira, the provisions from these manuals, which must be in accordance with and consolidate the ones from ST/AI/2010/3 (see *Asariotis* 2015-UNAT-496), establish in detail the steps to be followed in the selection process, must be respected by the Administration.

42. In *Gordon* UNDT/2011/172, para. 24 (not appealed), the Tribunal reiterated that, when the Administration chooses to use a procedure, it is bound to fully comply with it (see also *Mandol* UNDT/2011/013, para. 39 (not appealed); *Applicant* UNDT/2010/211, para. 28 (not appealed); *Eldam* UNDT/2010/133, para. 50 (not appealed)).

43. The Tribunal will analyze, in light of the grounds of appeal, whether the procedure as laid down in the staff regulations and rules, and the staff selection system, including the manuals, has been applied, and whether it was applied in a fair, transparent and non-discriminatory manner.

44. The Tribunal notes that the JO included the following basic evaluation criteria/requirements:

Education

Advanced university degree in Business Administration, Public Administration, Commerce, Law or other relevant disciplines. A first-level university degree in combination with two additional years of qualifying work experience may be accepted in lieu of the advanced university degree.

Work Experience

A minimum of five years of progressively responsible professional experience in procurement, contract management, administration or related area including preferably three years of experience in the [United Nations] common system.

Languages

Fluency in oral and written English is required.

45. As results from the Respondent's submissions, it is uncontested that the Applicant was considered to fulfil all the above-mentioned requirements for the P-3 post, she successfully passed the pre-screening process and she was included by the Recruiter (CSS/OSU) in the long list.

46. The Tribunal considers that, according to the mandatory provisions of sec.7.4 of ST/SGB/2010/3 and sec. 9.2.3(b) of the Hiring Manager's Manual, once a staff member is placed by the Recruiter on the long list, the Hiring Manager has the obligation ("shall") to: (a) review all released applications from the long list together with the documentation filed by each applicant and evaluate the experience of all applicants in relation to the requirements of the JO; (b) rate all the applicants for each area (academic, language and experience), (c) add a general comment for any applicant who is a staff member (internal applicant) of the United Nations Secretariat.

47. The Tribunal will further analyze if these mandatory requirements were followed in the present case.

48. The Tribunal notes that the following desirable requirements and highly desirable requirements were included in the JO (emphasis added):

Work Experience:

DESIRABLE

[...] 1. Three years of experience in the [United Nations] common system (out of the minimum required 5 years of professional experience in procurement, contract management, administration or related area); 2. Experience with large scale and complex procurement operations is desirable; 3. Proven experience in at least [three] of the following procurement areas is desirable: i. General goods (vehicles, visibility items, security equipment, vaccines, lab equipment), ii.

General services (hotels, insurance, transportation, relocation, consultancy, utilities), iii. Information [and] Technology (“IT”) (internet, IT equipment and software, web services, telephony), iv. Building (construction, maintenance, leases), and v. Vendor registration ([United Nations Global Marketplace], Business Seminars).

Languages:

Knowledge of French is desirable.

HIGHLY DESIRABLE

Procurement experience for both field missions and headquarters offices as well as experience working with [Enterprise Resource Planning (“ERP”)] systems in the area of purchasing and/or supply chain is also highly desirable.

Languages:

[...] Knowledge of another [United Nations] official language is an advantage.

49. The Tribunal notes that the Respondent stated that the Applicant was not shortlisted and therefore not invited to be tested through the written test and interview for any of the three P-3 posts because she did not fulfil the highly desirable requirement of having experience working with ERP programmes.

50. Having reviewed the parties’ submissions together with the evidence presented in the present case, the Tribunal considers that the contested administrative decision was not taken in accordance with the relevant mandatory legal provisions of ST/AI/2010/3 and with the Hiring Manager’s Manual for the following reasons.

51. As stated by the Respondent in his reply, “In accordance with the established recruitment practice at CSS, the evaluation of the desirable and highly desirable criteria for the JO of the applicants placed in the long list was done by the CSS/OSU [the Recruiter], who did not include the Applicant in the short list provided to the Hiring Manager, because she was not among the most qualified job candidates. The Applicant’s job application only demonstrated experience in four of the five desirable criteria. It did not explicitly reference any work with ERP systems in the area of purchasing and /or supply chain”.

52. It results that the CSS/OSU took the decision not to include the Applicant on the short list not because she was not fulfilling one of the desirable requirements, but one of the highest desirable requirements.

53. In the present case the CSS/OSU (the Recruiter) evaluated all the candidates, including the internal applicants, against all three requirements: mandatory, desirable and highly desirable based only on the cover letter and the PHP (application form), and provided a short list of the applicants which were identified to fulfil all these requirements to the Hiring Manager.

54. The Applicant fulfilled, as results from the matrix made by the CSS/OSU, the mandatory requirements, three out of five desirable requirements for work experience, the highly desirable requirement for language, but she was considered not to fulfil the highly desirable requirements for the work experience. In his response, the Respondent is making reference only to the category of desirable requirements and is including one of the highest desirable requirements in the category of desirable requirements.

55. The Tribunal considers that there is no legal provision which allows highly desirable requirements to be included in the JO, since in all manuals reference is made only to mandatory and desirable requirements and adding “highly desirable” is not legally justified and can result in artificial, non-transparent and incorrect evaluations during the preliminary pre-screening process.

56. The Tribunal underlines that any of the requirements included in the JO, mandatory and/or desirable, which are used as evaluation criteria during the preliminary evaluation of the applicants, cannot exceed the established responsibilities in the JO and considers that during the pre-screening stage the role of the Recruiter and the Hiring Manager is not to make final determinations if the applicants are fulfilling the requirements, but to identify those who appear to fulfil them. Moreover, while the Recruiter has the option to delegate in part his activity to

an alternate recruiter to evaluate the basic requirements, such an option is not available for the Hiring Manager.

57. The Tribunal further underlines that according to the mandatory provisions of sec.7.4 of ST/AI/2010/3, only the Hiring Manager or if it is the case, the occupational hiring manager, has the exclusive competence (“shall”) to evaluate all applicants included in the long list.

58. It results that the Hiring Manager has the obligation, due to the importance of his/her role and personal experience, to act fairly and professionally in comparing and evaluating the experience of the applicants against the responsibilities established in the JO. Therefore, the Hiring Manager cannot delegate this activity to the Recruiter and/or to other staff members. Further, the Tribunal considers that while the Recruiter has the role to identify all the applicants who are fulfilling the required/basic evaluation criteria and to include them in the long list of applicants to be released to the Hiring Manager for his/her evaluation, only the Hiring Manager has the competence to preliminary evaluate and determine the applicants which appear to be most qualified for the JO. The Tribunal underlines that, in situations where an applicant, after the automatic pre-screening, did not meet at least one of the basic criteria and they are to be rejected (not to be included in the long list), the Human Resources assessment is required, which always implies a manual review of the applicant’s profile and application for that particular pre-screening criteria which was not fulfilled. Such an assessment is to be conducted by the Recruiter together with the Hiring Manager in order to ensure that the decision to reject an applicant in the pre-screening phase, which constitutes the end of the selection process for that particular applicant, is taken based on a fair and full evaluation of the application, which for internal applicants includes the two latest e-PAS reports.

59. Therefore, the evaluation of the applicants against the desirable, including the highly desirable requirements, if any, in the pre-screening phase can be legally conducted only by the Hiring Manager, since s/he has the obligation to personally evaluate all the applications on an individual basis, reviewing the documentation of

each applicant, in order to determine if each respective applicant has undertaken assignments that correspond to the JO and if s/he appears to be eligible for the JO. Following his/her evaluation, the Hiring Manager is preparing the short list which includes all the applicants from the long list who appear to be most qualified for the JO and who are to be invited for the written test and /or the interview.

60. The Applicant's Manual, the Recruiter's Manual and the Hiring Manager's Manual indicate that a complete application for a JO consists in the following documents: the cover letter, part of the profile, the application form and the e-PAS reports (applicable to United Nations staff members only).

61. It results that when the applicant to a JO is a United Nations staff member, his/her complete application submitted on line (through Inspira) consists in: the cover letter, the PHP (a date stamped version of the application form static for either a particular JO or static as printed on a certain date) and the e-PAS reports for the last two years. Additional documentation may be filed by any applicant.

62. All these constitutive and cumulative parts of the application have equal value and must be submitted by the applicants in order for the application to be complete. The Tribunal underlines that there is no eliminatory order in which the different parts of the application are to be evaluated during pre-screening stage of the selection process and all are to be evaluated together. The legal provisions require during the selection process the evaluation of the "application" and not the evaluation of the "application form" (PHP), which is only one part of the application.

63. The Hiring Manager has to evaluate the information provided in the documentation against responsibilities/requirements of the JO and to short list applicants who are fulfilling the desirable requirements and appear the most qualified for the JO. The Tribunal considers that all the basic and desirable evaluation criteria, including regarding the work experience, must therefore be evaluated according to the information included in the application (cover letter, PHP and the e-PAS reports

for the applicants who are United Nations staff members) together with the other documents, if any, filed by each applicant.

64. The Tribunal further considers that mandatory texts do not establish an order of priority/preference of the documents to be reviewed and/or a hierarchy of the value of the documentation and considers that the Hiring Manager has to review the entire documentation filed by the Applicant. According to the fundamental legal principle *ubi lex non distinguit, nec nos distinguere debemus* (where the law does not distinguish, the interpreter is not allowed to distinguish), the Hiring Manager, throughout the entire selection process, including the preliminary phase of pre-screening, cannot establish an eliminatory order of the parts of the application to be evaluated and/or cannot impose a limit as to what documentation contained in the application is to be evaluated, namely only the cover letter and the application form (PHP).

65. Pursuant to sec. 5.1 of ST/AI/2010/3, applications must be submitted in accordance with the instructions set out in the JO, including the use of the electronic platform (Inspira).

66. In the present case the Applicant, who is a current staff member, filed her application timely, which consisted in the cover letter, PHP and the e-PAS reports for the last two years. As previously mentioned, the Recruiter considered, based only on the information included in the cover letter and in the PHP, that the Applicant met all the basic evaluation criteria and all the desirable requirements for the post, but not the highly desirable requirements.

67. The Hiring Manager reviewed and endorsed the shortlisted candidates as prepared by the Recruiter. It results that the Applicant's preliminary evaluation against the desirable and highly desirable requirements for the JO and the preparation of the short list, as per established recruitment practice, was entirely conducted by CSS/OSU, and not by the Hiring Manager. Therefore, the Applicant's exclusion from the short list was done by the CSS/OSU, and not by the Hiring Manager, as required

by the mandatory legal provisions presented above. The Hiring Manager only reviewed the short list as provided by CSS/OSU, which contained the name of the 32 applicants short-listed by the CSS/OSU without making any personal evaluations/ratings or changes to the initial list, and all were invited to participate in a written test.

68. As results from the matrix prepared by the CSS/OSU, the latter considered that the Applicant did not meet the two highly desirable requirements for work experience, and not only the one related to ERP systems in the area of purchasing and/or supply chain, as submitted by the Respondent.

69. The Tribunal observes that in the cover letter and in the PHP, the Applicant described her work experience and duties in procurement as follows:

Procurement: Since Nov[ember 2003] (12.5 years), all activities related to establishing long-term contracts for high-value goods and services for field missions, from the initial research for suppliers to making and defending recommendations, to liaison with [the Office of Legal Affairs (“OLA”)] and Insurance for complex SOW [unknown abbreviation]/contracts, to post-award contract management including liaising with Accounts for payments to contractors. I procured/reviewed cases for procurement of vehicles and vehicular equipment (including sale of [United Nations] assets), defence equipment, construction services, leasing, other engineering services, IT and communications products/services, aircraft on long-term lease, air/sea transportation for military contingents and/or their equipment, and freight forwarding services. [The Applicant] also worked as Secretary-HCC and as Vendor Registration & Management Officer where [she] reviewed vendor applications and served as Secretary-Vendor Review Committee. I often drafted communication to/for senior management.

...

Experience with ensuring consistency, clarity, checks and balances in the application of rules, policies and procedures in various areas where [the Applicant] worked, viz [unknown abbreviation]. Accounting, Insurance (Benefits Officer) and Procurement.

...

Description of Duties: Procured engineering support goods and services (mainly field defence, but reviewed and recommended to the

HCC, LCC cases for construction, leases and engineering services), vehicles, IT and communications, short-term air transportation for troop movements, long-term lease of aircraft, short and long-term freight forwarding services (air and sea). Also worked as Vendor Registration & Management Officer, and as Secretary of the Headquarters Committee on Contracts (HCC). Researched for suppliers, processed solicitation documents, evaluated proposals, analysed cases, formulated presentations, made and defended recommendations before the HCC, negotiated and drafted complex contracts, liaised with OLA/Insurance/Accounts when necessary, reviewed and analysed cases from field missions for presentation to the HCC (included leases etc.). Communicated on a daily basis, both verbally and in writing, with clients (requisitioners, suppliers, field missions, other [United Nations] offices, agencies, entities) for information/updates, resolving issues, guiding them on interpretation of policy and procedures, and for post-contract management. Planned, organised and implemented effectively by maintaining an overview, kept track of deadlines, persistently followed up. Handled Team Leaders' responsibilities whenever they were away (supervised one professional and up to, four support staff, delegated work and reviewed output) cumulative almost two years. Delivered presentations to small and large groups including government bodies (Chinese, Korean), trade offices in New York (United Kingdom, France, Belgium, European Union), and large supplier groups in New York, Romania, South Africa, Bangladesh and India.

70. The Tribunal further observes that the above-mentioned Applicant's work experience described by her in the PHP appears to reflect procurement activity for both field missions and headquarters offices and experience in establishing contracts and further delegation of the issuance of purchase orders specific to ERP, even if the initials "ERP" were not expressly mentioned. Moreover, having reviewed the content of the section, "Responsibilities", described in the JO, which are the mandatory ones to be fulfilled by the applicants, the Tribunal notes that there is no express/specific mention to "experience related to ERP systems", and that this was specified only in the content of the section, "Work experience", as being a highly desirable requirement therefore appears to have exceeded the content of section, "Responsibilities". It results that the Applicant respected her obligation to describe her experience in accordance with the terms of reference included in the section "Responsibilities" of the JO.

71. Furthermore, the Tribunal observes that the Applicant's last two electronic e-PAS reports filed as part of her application, but not evaluated as required, clearly indicate under "Section 1 – Goals" and under "Section 6 – Mid-Point Comments" made by her First Reporting Officer ("FRO") that the Applicant, who was evaluated as "successfully meets expectations", was already undertaking professional responsibilities which appear similar to the highly desirable ones indicated in the JO as follows (emphasis omitted):

a. The JO provided that:

Responsibilities:

Under the general supervision of the Chief of the Procurement and Contracts Unit, the incumbent will, within limits of delegated procurement:

- i. Plan, develop and manage the various procurement and contractual aspects of projects of significant complexity in the worldwide procurement of diverse services and commodities (e.g. information technology, electronic equipment and instruments, vehicles, medicines, food items, building maintenance materials, office supplies, construction, furniture, etc.) taking into account local economic and other conditions.
- ii. Advise the requisitioning units and recipient entities on the full range of procurement issues, provide support and guidance at all stage of the procurement cycle.
- iii. Prepare/oversee preparation and distribution of invitations to tender and manage/conduct all aspects of bid/proposal evaluations.
- iv. Formulate strategies and design innovative solutions to resolve issues of conflicts for complex procurement projects.
- v. Establish and maintain work program and schedule for ongoing contracts and new contracts.
- vi. Participate in the negotiations with senior supplier representatives; sign procurement orders up to the authorized limits, and in cases where the amount exceeds authorized limits prepare submissions to the Contracts Committee for review and subsequent approval.

- vii. Conduct market research to keep abreast of market developments, research and analyze statistical data and market reports on the global commodity market, production patterns and availability of goods and services.
- viii. Identify new technologies and products/services, evaluate and recommend potential supply sources and participate in the incorporation of research results into the procurement program.
- ix. Monitor adherence to contractual agreements, recommend amendments and extensions of contracts, and advise concerned parties on their contractual rights and obligations.
- x. Prepare a variety of procurement related documents, contracts, communications, guidelines and instructions.
- xi. Supervise a team of buyers if needed and provide them with necessary guidance and advice as required.

b. The Applicant's e-PAS report from the 2013-2014 cycle provides that (emphasis omitted):

Goal 1:

Description and Related Actions: [e]ffectively contribute to the [t]eam's goals of providing high-quality client services in procuring services for requisitioners ([United Nations] offices in and away from [Headquarters], field Missions, [United Nations] agencies and entities in the [United States] and all over the world).

Actions:

All procurement processes viz [unknown abbreviation], sourcing, source selection plan, research for suppliers; guide/liaise for supplier registration, communicate with suppliers/requisitioners/field Missions/Accounts to resolve situations that may arise, and with [the Office of Legal Affairs]/Insurance for complex solicitations, draft/despatch solicitation documents, analyse/evaluate proposals, present/defend cases with recommendations to the Headquarters Committee on Contracts (HCC), review/analyse/present cases from field missions to the HCC, negotiate and draft complex contracts, efficiently provide quality responses and guidance to field missions/requisitioners/suppliers including clarifying [United

Nations] procurement policy/procedures, maintain proper records, persistently move things along when required, maintain a positive dialogue and good professional working relations with clients and suppliers.

Success Criteria:

- (1) Deadlines met as agreed upon by [t]eam.
- (2) Feedback from clients to [t]eam [l]eader and Section Chief of good professional working relations and communication, and of efficient and effective service.

Goal 3:

Description and Related Actions:

- i. Effectively handle challenges specific to the Vehicles Team[;]
- ii. Sale of [United Nations] assets[;]
- iii. Extensive research to source potential suppliers for specialised vehicular equipment for which there may not be many registered vendors in [the United Nations Procurement Division's ("UNPD")] database, and help them through the vendor registration process[;]
- iv. Post-contract maintenance and administration[.]

Success Criteria:

- (1) Increase in number of vendors sourced[;]
- (2) Kept updated lists of spare parts[;]
- (3) Satisfactorily helped resolve issues related to contract administration[.]

Mid-[p]oint [c]omments:

[FRO]: [the Applicant] joined the EST [unknown abbreviation] team in July 2013. The responsibilities assigned to her are[:] i) management of the Field Defense portfolio, which includes administration of current contracts and establishment of related new contracts[;] ii) review of LCC [unknown abbreviation] /HCC case presentations originating from field missions[;] iii) drafting of official memos and contracts[;] and iv) market survey, among others. [The Applicant] has organized the share file at her own initiative. She is currently adapting to the pace of work and the team dynamics.

- c. The Applicant's e-PAS report from the 2014-2015 cycle provides that (emphasis omitted):

Goal 1:

Description and Related Actions: [t]o optimise the acquisition process and improve procurement services in relation to service delivery, in particular to reduce the time required to process requirements, execute [purchase orders]/[c]ontracts and communicate and report to customers.

Related Actions:

- i) Train customers on how the procurement process works and what customers need to do to allow the Engineering Support Team to render services more efficiently and professionally[.] Organise monthly review meetings with customers to monitor acquisition plan, provide updates and discuss any other issues.
- ii) Implement and monitor personal Key Performance Indicators (KPIs): (a) increase in procurement cases pre-cleared by HCC to help [UNPD] meet its target-of 45% for the performance evaluation year; [b] Decrease in procurement cases per year rejected by HCC to help [UNPD] meet its 10% target; (c) Process and post Expressions of Interest within three (3) days of receipt; (d) for Statement of Requirement/Works requiring no further input from requisitioners including changes/discussions, prepare and send RFP/ITB [unknown abbreviation] documents within a ten (10) day time-frame after receipt of the SOR/SOW [unknown abbreviation].
- iii) Continuously search for new commercial sources and potential vendors, which may be able to provide goods/services/solutions that meet customers' requirements.

Success Criteria:

- i) Held monthly meetings as per (i) above.
- ii) Met KPIs as per (ii) above.
- [iii]) Identified and included on the sourcing list additional vendors from developing countries and countries with economy in transition to help [UNPD] meet its target of 40%.

Goal 3:

Description and Related Actions: Improve professional Procurement knowledge/skills; timely submission of evaluation.

Related Actions:

- i) Attempt and succeed in on-line procurement training programme.
- ii) Identify other appropriate internal and external training programmes in line with role and responsibility and strive for professional growth.

Success Criteria:

- i) complete the procurement training programme.
- ii) Participate in internal (mandatory, [UNPD], OHRM or other departments' training) and external training sessions in the performance evaluation year, in line with [the Applicant's] role and responsibilities.
- iii) Complete and submit in Inspira [the Applicant's] performance document within the deadline and achieve the goals set at the beginning of [the] reporting period.

72. The Tribunal concludes that as results from her entire application which includes the cover letter, the PHP and the two e-PAS reports, the Applicant appeared to fulfil not only the basic and desirable requirements, but also the highly desirable requirements regarding work experience.

73. The Tribunal concludes that the Applicant's application for the three P-3 posts was not fully and fairly considered, since the Hiring Manager did not personally evaluate her candidacy based on the information included in the PHP and e-PAS reports, while formally endorsing the decision of the CSS/OSU not to shortlist the Applicant. The Applicant's e-PAS reports contained essential information regarding the Applicant's fulfilment of the highly desirable requirements for the JO.

74. The Tribunal considers that the established practice that was followed in this selection exercise was against the legal provisions and that the preliminary evaluation of the Applicant against the desirable and highly desirable requirements of the JO was not correct.

75. The Tribunal notes that no rating was given by the Hiring Manager to the Applicant regarding whether she was fulfilling the desirable requirements for the

posts, and the evaluation consisted only in a statement of “yes” or “no” made by the CSS/OSU.

76. The Tribunal underlines that a rating of competencies, according to the definition of “rate” provided by the *Oxford Dictionary*, consists in grading, “estimating the worth or value of” each of the required and/or desirable competencies, as described in the JO for each post. In addition, the *Webster Dictionary*, Fourth Edition (2012) defines “rating” as “placement in a certain rank or class”. It results that no such placement of the Applicant according to her competencies was made during the preliminary evaluation of her application for the three P-3 level posts. The Tribunal observes that the Applicant was not given ratings but the evaluation included general responses by “yes” or “no”. The required general comment for United Nations Secretariat staff members was not included, but included only the statement “yes: UNHQ [United Nations Headquarters]”. Furthermore, the Tribunal observes that the Applicant’s last two e-PAS reports filed as part of her application clearly indicate under “Section 1 – Goals” and under “Section 6 – Mid-Points Comments” made by her First Reporting Officer (“FRO”) that the Applicant, who was evaluated as “successfully meets expectations”, was already undertaking professional responsibilities similar to the highly desirable ones indicated in the JO. However, the Applicant was not shortlisted because the Hiring Manager did not consider the application in its entirety, including the two e-PAS reports, which are a constitutive part of the application and which during the selection process constitute a source of information regarding the Applicant’s work experience within the United Nations.

77. In light of the above-mentioned considerations, the Tribunal concludes that the Applicant was not fully and fairly considered for the three P-3 posts to which she applied, and the appeal is to be granted.

Relief

78. The Tribunal notes that the Applicant requested the following reliefs:

- a. Order the Secretary-General to assess the way the vacancies, i.e. [TJOs and JOs] [...] are managed and advertised, to avoid wasting resources of applicants (internal and non-[United Nations]) who believe the vacancies to be genuine; and
- b. [The Applicant] will agree to whatever compensation the Dispute Tribunal considers to be fair and reasonable in this case.

79. The Tribunal underlines that as results from the above considerations, the contested decision not to shortlist the Applicant pursuant to ST/AI/2010/3 is to be rescinded as being unlawful.

80. Pursuant to art. 10.5(a) and (b) of the United Nations Dispute Tribunal's Statute, the Tribunal can order rescission of the contested decision and/or specific performance:

... As part of its judg[...]ment, the Tribunal may only order one or both of the following:

- (a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;
- (b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

81. The Tribunal concludes that it has no competence to order the Secretary-General to assess the way the vacancies, i.e. JOs and TJOs, are managed and advertised, but only to review the lawfulness of the decisions taken based on the existing legal provisions, even though when it considers it necessary, the Tribunal may make observations and/or recommendations related to specific legal aspects of the current existing provisions. Therefore, the above-requested relief is to be rejected.

Moral damages

82. Article 10.5(b) of the Dispute Tribunal's Statute was amended by the General Assembly in December 2014 and the text has introduced, as a mandatory new requirement, that the Dispute Tribunal may only award compensation "for harm, supported by evidence". This requirement is both substantive, because the compensation can only be awarded for harm, and procedural, because the harm must be supported by evidence.

83. In the *Black's Law Dictionary*, 6th Ed. (1990), the word "harm" is defined as "[a] loss or detriment in fact of any kind to a person resulting from any cause" (see p. 718).

84. It results that, since art. 10.5(b) of the Dispute Tribunal's Statute makes no distinction between physical, material or moral harm, the provision is applicable to any types of harm and that the harm must be supported in all cases by evidence.

85. In *Benfield-Laporte* 2015-UNAT-505, the United Nations Appeals Tribunal held that (see para. 41, footnote omitted):

... [W]hile not every violation of due process rights will necessarily lead to an award of compensation, damage, in the form of neglect and emotional stress, is entitled to be compensated. The award of compensation for non-pecuniary damage does not amount to an award of punitive or exemplary damages designed to punish the Organization and deter future wrongdoing.

86. Further in *Kallon* 2017-UNAT-742, the majority of the full bench of the Appeals Tribunal decided, in paras. 62-66 and 68, that (footnotes omitted):

... The authority conferred by the [Dispute Tribunal] Statute to award compensation for harm thus contemplates the possibility of recompense for non-economic harm or moral injury. But, by the same token, Article 10(7) of the [Dispute Tribunal] Statute prohibits the [Dispute Tribunal] from awarding exemplary or punitive damages. The dividing line between moral and exemplary damages is not very distinct. And for that reason, a proper evidentiary basis must be laid supporting the existence of moral harm before it is compensated. This

prudent requirement is at the heart of the amendment of Article 10(5)(b) of the [Dispute Tribunal] Statute by General Assembly resolution 69/203. For a breach or infringement to give rise to moral damages, especially in a contractual setting (including the contract of employment), where normally a pecuniary satisfaction for a patrimonial injury is regarded as sufficient to compensate a complainant for actual loss as well as the vexation or inconvenience caused by the breach, then, either the contract or the infringing conduct must be attended by peculiar features, or must occur in a context of peculiar circumstances. Whether damages can be recovered depends therefore on evidence of the purpose and ambit of the contract, the nature of the breach, and the special circumstances surrounding the contract, the breach and its positive or negative performance.

... Generally speaking, the presence of certain circumstances may lead to the presumption of moral injury – *res ipsa loquitur*. The matter may speak for itself and the harm be established by the operation of the evidentiary presumption of law. However, when the circumstances of a certain case do not permit the application of the evidentiary presumption that such damages will normally follow as a consequence to an average person being placed in the same situation of the applicant, evidence must be produced and the lack of it may lead to the denial of compensation. Much will necessarily depend on the evidence before the [Dispute Tribunal].

... Conscious of the amendment and its purpose, the [Dispute Tribunal] in this case thoughtfully deliberated upon the nature of the harm caused by the injury and the evidence before it supporting a finding of harm. In reaching its conclusion, the [Dispute Tribunal] was guided by the principles pronounced by this Tribunal in *Asariotis* [2013-UNAT-309] prior to the amendment of Article 10(5)(b) by General Assembly resolution 69/203. In that case this Tribunal said:

... To invoke its jurisdiction to award moral damages, the [Dispute Tribunal] must in the first instance identify the moral injury sustained by the employee. This identification can never be an exact science and such identification will necessarily depend on the facts of each case. What can be stated, by way of general principle, is that damages for a moral injury may arise:

- (i) From a breach of the employee's substantive entitlements arising from his or her contract of employment and/or from a breach of the procedural due process entitlements therein guaranteed (be they specifically designated in the [s]taff [r]egulations and [r]ules or arising from the principles of natural justice).

Where the breach is of a fundamental nature, the breach may of itself give rise to an award of moral damages, not in any punitive sense for the fact of the breach having occurred, but rather by virtue of the harm to the employee.

(ii) An entitlement to moral damages may also arise where there is evidence produced to the Dispute Tribunal by way of a medical, psychological report or otherwise of harm, stress or anxiety caused to the employee which can be directly linked or reasonably attributed to a breach of his or her substantive or procedural rights and where the [Dispute Tribunal] is satisfied that the stress, harm or anxiety is such as to merit a compensatory award.

... We have consistently held that not every breach will give rise to an award of moral damages under (i) above, and whether or not such a breach will give rise to an award under (ii) will necessarily depend on the nature of the evidence put before the Dispute Tribunal.

... The distinction drawn between the two categories of moral injury or non-patrimonial damages in *Asariotis* has two dimensions. On the one hand, it speaks to the kinds of moral damage ordinarily at issue and, on the other, mentions the kind of evidence necessary to prove each kind of moral damage.

... The first kind of moral injury acknowledged in *Asariotis* takes the form of a fundamental breach of contract resulting in harm of an unascertainable patrimonial nature. Awards of moral damages in contractual suits by their nature are directed at compensating the harm arising from violations of personality rights which are not sufficiently remedied by awards of damages for actual patrimonial loss. The harm experienced by a blatant act of procedural unfairness may constitute an infringement of *dignitas*, not in all but especially in severe cases. Recognizing a right to dignity is an acknowledgement of the intrinsic worth of human beings. Human beings are entitled to be treated as worthy of respect and concern. The purpose of an award for infringement of the fundamental right to dignity is to assuage wounded feelings and to vindicate the complainant's claim that his personality has been illegitimately assailed by unacceptable conduct, especially by those who have abused administrative power in relation to him or her by acting illegally, unfairly or unreasonably.

...

... The evidence to prove moral injury of the first kind may take different forms. The harm to *dignitas* or to reputation and career

potential may thus be established on the totality of the evidence; or it may consist of the applicant's own testimony or that of others, experts or otherwise, recounting the applicant's experience and the observed effects of the insult to dignity. And, as stated above, the facts may also presumptively speak for themselves to a sufficient degree that it is permissible as a matter of evidence to infer logically and legitimately from the factual matrix, including the nature of the breach, the manner of treatment and the violation of the obligation under the contract to act fairly and reasonably, that harm to personality deserving of compensation has been sufficiently proved and is thus supported by the evidence as appropriately required by Article 10(5)(b) of the [Dispute Tribunal's] Statute. And in this regard, it should be kept in mind, a court may deem prima facie evidence to be conclusive, and to be sufficient to discharge the overall onus of proof, where the other party has failed to meet an evidentiary burden shifted to it during the course of trial in accordance with the rules of trial and principles of evidence.

87. In the application, the Applicant indicated that she requested "whatever compensation the Dispute Tribunal considers to be fair and reasonable in this case" as moral damages for the Administration's failure to fully and fairly consider her candidacy. It results that the Applicant's request for moral damages relates to the first category of moral damages identified in *Asariotis*.

88. As results from para. 70 from the Judgment of the Appeals Tribunal in *Kallon* 2017-UNAT-742, additional evidence is required in case of mental distress or anxiety allegedly produced by the contested decision, evidence which can consist in an applicant's testimony and/or medical or psychological report(s)/evidence to prove that the harm can be directly linked or is reasonably attributable to the breach of violation.

89. This Tribunal agrees with the majority decision taken in *Kallon* and considers that, in the present case, the Applicant suffered moral harm as a result of the unlawful decision which breached her due process right to have his complaint fully and fairly considered by the Administration as proved by the totality of evidence according to the standard of proof established by the Appeals Tribunal in *Kallon*, "[t]he evidence to prove moral injury of the first kind may take different forms. The harm to *dignitas*

or to reputation and career potential may thus be established on the totality of the evidence”.

90. Taking in consideration all the circumstances of the case, the Applicant’s request for moral damages is therefore to be granted. The Tribunal considers that the present judgment, together with USD3,000, represents a reasonable and sufficient compensation for the moral harm caused to the Applicant by the Administration’s failure to fully and fairly consider her application for each of the three P-3 posts.

Conclusion

91. In light of the foregoing, the Tribunal DECIDES:

- a. The application is granted in part, the Respondent is to pay the Applicant USD3,000 as moral damages caused by the Administration’s failure to fully and fairly consider the Applicant for each of the P-3 posts advertised in the JO.
- b. The Applicant’s request for the Tribunal to order the Secretary-General to assess the way the vacancies, i.e. TJOs and JOs are managed and advertised, to avoid wasting time and resources of applicants (internal and non-United Nations) who believe the vacancies to be genuine is rejected.

Observation

92. Taking into consideration the importance of the staff selection system adopted in 2010 which continues to be applied and the necessity of having accurate, transparent and fair procedural rules and guidelines during the entire selection process and having reviewed the content of ST/AI/2010/3 vis-a-vis the instructional manuals, the Tribunal recommends a substantive review to be conducted by the Organization.

93. Such a substantive review, which is expected to be conducted on an urgent basis, should harmonize all the procedural details included in ST/AI/2010/3 and each of the instructional manuals, including the ones regarding the specific role and mandate of the Recruiter and the Hiring Manager during each step of the selection procedure. The harmonization of the existing provisions or the adoption of new additional provisions in the manuals must ensure that their content is not exceeding and/or contravening the mandatory content of the principles and legal provisions of the United Nations Charter and ST/AI/2010/3 and that all the different interpretations and /or established irregular practices within the entire Organization will be corrected.

(Signed)

Judge Alessandra Greceanu

Dated this 20th day of February 2018

Entered in the Register on this 20th day of February 2018

(Signed)

Morten Albert Michelsen, Officer-in-Charge, New York