



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Nerea Suero Fontecha

WILSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented
Sètondji Roland Adjovi (Co-Counsel)

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Notice: This Judgment has been corrected in accordance with article 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. The Applicant, a D-1 level staff member appointed as Chief of the Financial Information Operations Service in the Department of Management, is contesting the decision not to “fully and fairly consid[er] [him] during the selection decision for Chief of Enterprise Application Centre, [New York], [Job Opening no. 63461, D-1 level], Umoja Position Number 30045431”. As remedies, the Applicant seeks “rescission of the [decision] and the findings of the [Management Evaluation Unit, “MEU”], leaving [the Tribunal] to determine whatever remedies they see fit, including appropriate referrals to the Secretary-General for the enforcement of accountability”. The initial application was filed on 7 February 2017 and subsequently amended on 30 January 2018.

2. In response, the Respondent submits that the contested decision was lawful because the Applicant was given full and fair consideration for the position and another rostered candidate was selected in accordance with ST/AI/2010/3 (Staff selection system).

Factual and procedural history

3. Job Opening no. 63461 was posted on Inspira (the online United Nations jobsite) on 28 July 2016 with a deadline of 25 September 2016.

4. A total of 110 job applications were received, including from five rostered candidates. The Applicant, who applied on 29 July 2016, was among these rostered candidates.

5. The Assistant Secretary-General of the Office of Information and Communications Technology (“ASG/OICT”) considered that three of the rostered candidates met the requirements of Job Opening no. 63461, including the Applicant, and that two of the rostered candidates only partially met the requirements of Job

Opening no. 63461. The ASG/OICT concluded that Ms. SS (name redacted) was the most suitable rostered candidate for the position and, on 11 October 2016, selected her for the post. On the same day the Applicant was informed that Ms. SS was selected for the position but had not yet accepted and that her release from her position was not yet negotiated.

6. On 12 October 2016, at 7:04 p.m., the Applicant received an email notification from Inspira that another candidate from a roster of pre-approved candidates had been selected for the post.

7. After being informed on 11 October 2016 that another candidate was selected for the position, on 12 October 2016, the Applicant filed a request for management evaluation of the decision not to select him for Job Opening no. 63461.

8. On the same day, 12 October 2016, the Applicant filed an application for suspension of action with the Tribunal. After filing the application for suspension of action, the Applicant received an email notification that another rostered candidate was selected.

9. On 18 October 2016, the Applicant received the formal acknowledgment letter from the MEU.

10. By Order No. 241 (NY/2016) issued on 19 October 2016, the application for suspension of action was rejected on the ground that the contested decision was already implemented since the selected candidate had accepted the offer for the post.

11. On 21 November 2016, the Applicant received the MEU's response dated 18 November 2016, upholding the contested decision.

12. On 7 February 2017, the Applicant filed the initial application. In addition to the contested decision not to “fully and fairly consid[er] [him] during the selection decision for Chief of Enterprise Application Centre, [New York], [Job Opening no.

63461], Umoja Position Number 30045431”, in the application, he also initially challenged, “The “[d]ecision not to fully and fairly consider [his] application for Temporary Job Opening #52485, Director, Information Systems and Technology, D-2, Umoja [P]osition [N]umber 30015906”, but he later withdrew this latter appeal as results from below.

13. On 8 February 2017, the Registry transmitted the application to the Respondent, instructing him to file his reply by 10 March 2017. On the same day, the case was assigned to the undersigned Judge.

14. Also on 8 February 2017, the Applicant filed a motion entitled, “Motion for Production of Evidence”.

15. On 10 February 2017, the Respondent filed a motion entitled, “Motion to Seek Enforcement of Practice Direction No. 4 [(on filing of application and replies)]”.

16. On 13 February 2017, the Applicant resubmitted his application together with annexes in compliance with Practice Direction No. 4.

17. On 10 March 2017, the Respondent filed his reply to the application.

18. On 22 March 2017, by Order No. 50 (NY/2017), the Tribunal instructed the Applicant to file a submission by 21 April 2017 addressing the receivability issues raised in the Respondent’s reply. The Tribunal also instructed the parties to file a jointly signed submission by 28 April 2017, informing the Tribunal whether they were amenable to enter into discussions for the informal resolution of the present case.

19. On 26 March 2017, the Applicant filed a submission in response to Order No. 50 (NY/2017) addressing the receivability issues raised in the Respondent’s reply.

20. On 4 April 2017, by Order No. 69 (NY/2017), the Tribunal instructed the parties to attend a case management discussion (“CMD”) at the courtroom of the Tribunal in New York on 10 May 2017.

21. On 10 May 2017, the Tribunal conducted the scheduled CMD, at which the Applicant and Respondent’s then Counsel participated in person.

22. On 11 May 2017, following the CMD, the Applicant filed a motion entitled, “Motion to Introduce Additional Evidence of Bias”. The Applicant also submitted two documents relating to his placement on a roster at the D-1 level (relating to Job Openings no. 23941 and 25327).

23. By Order No. 95 (NY/2017) of 15 May 2017, and Order No. 98 (NY/2017) of 19 May 2017, the Tribunal ordered (emphasis omitted):

... The Applicant’s request for leave to file additional evidence is granted.

... By 5:00 p.m. on Friday, 26 May 2017, the Respondent shall file a reply, if any, to the Applicant’s Motion for Production of Documents of 8 February 2017 and a reply, if any, to the Applicant’s Motion to Introduce Additional Evidence of Bias.

... By 5:00 p.m. on Friday, 2 June 2017, the Applicant shall file comments, if any, to the Respondent’s response to his motions.

... By 5:00 p.m. on Friday, 26 May 2017, the Respondent shall submit all information and supporting documents relating to the lateral reassignment to the D-2 level post in issue”.

24. On 26 May 2017, the Respondent filed his response to Order No. 95 (NY/2017) and Order No. 98 (NY/2017), and on 31 May 2017 the Applicant filed his comments.

25. By Order No. 124 (NY/2017) dated 29 June 2017, the Tribunal provided the following orders (emphasis omitted):

24. The Applicant's motion for production of evidence filed on 8 February 2016 is granted, in part.

25. By 5:00 p.m. on Monday, 31 July 2017, the Respondent shall file, in a redacted form if necessary, the information and documentation indicated in the Applicant's motion of 8 February 2017 at Page 2, paragraphs: a, d, e, f, g, h, i, j, k, and m and Page 3, paragraphs: n, s, t, u, v, w, x, all of which appears to be relevant for the present cast.

26. By 5:00 p.m. on Friday, 18 August 2017, the Applicant may file his comments, if any, to the above mentioned documentation;

27. By 5:00 p.m. on Friday, 18 August 2017, the parties shall file a joint submission informing the Tribunal whether they agree to enter into discussions for an informal resolution of the case either through the Office of the Ombudsman or through *inter partes* discussions and seek the suspension of the proceedings.

28. In the event the parties do not agree to pursue informal resolution, by 5:00 p.m. on Thursday, 31 August 2017, the parties are to file separate statements informing the Tribunal if any additional evidence is requested to be produced in the present case and if so, stating its relevance and if the case can be decided on the papers before it.

26. On 31 July 2017, the parties filed a joint request to suspend the proceedings for 30 days, including the deadlines for compliance with paras. 25 and 26 of Order No. 124 (NY/2017), in which they explained that they have agreed to explore informal resolution of the present case through *inter partes* discussions.

27. On 2 August 2017, by way of Order No. 149 (NY/2017), the Tribunal ordered that the proceedings, including the deadlines for compliance with paras. 25 and 26 of Order No. 124 (NY/2017), should be suspended until 5 September 2017, by which date the parties should inform the Tribunal as to the progress of the informal discussions and/or whether this case had been resolved. In the latter event, the Applicant was instructed to confirm to the Tribunal, in writing, that his application was withdrawn fully, finally and entirely, including on the merits.

28. On 5 September 2017, the parties filed a “Joint Request to Further Suspend Proceedings”, informing the Tribunal that the “parties have agreed to continue to explore the ongoing informal resolution of [the case] through current *inter partes* discussions” and seeking continued suspension of the case for an additional 30 days, including a suspension of the deadlines for compliance with paras. 25 and 26 of Order No. 124 (NY/2017).

29. By Order No. 180 (NY/2017) of 6 September 2017, the Tribunal ordered that the proceedings, including the deadlines for compliance with paras. 25 and 26 of Order No. 124 (NY/2017), be suspended until 5 October 2017, by which date the parties should inform the Tribunal as to the progress of the informal discussions and/or whether this case had been resolved. In the latter event, the Applicant was instructed to confirm to the Tribunal, in writing, that his application had been withdrawn fully, finally and entirely, including on the merits.

30. On 5 October 2017, the parties filed a “Joint Request to Further Suspend the Proceedings”, informing the Tribunal that they had engaged in discussions to informally resolve the present case and, while no agreement had been reached, the parties wished to continue to explore the possibility of an amicable solution to the case. The parties requested a continued suspension of the proceedings in the present case for an additional 30 days, including a suspension of the deadlines for compliance with paras. 25 and 26 of Order No. 124 (NY/2017).

31. By Order No. 222 (NY/2017) dated 6 October 2017, the request was granted and the proceedings were further suspended until 6 November 2017.

32. By joint submission dated 6 November 2017, the parties informed the Tribunal that they had engaged in discussion to informally resolve the present case, but that since they had not reached an agreement, the Applicant wished to resume the proceedings.

33. On the same date (6 November 2017), the Respondent filed his response to para. 25 of Order No. 124 (NY/2017).

34. By Order No. 250 (NY/2017) dated 7 November 2017, the Tribunal ordered (a) the Applicant to file his comments on the Respondent's response of 6 November 2017 by 20 November 2017, and (b) the parties to respond to para. 28 of Order No. 124 (NY/2017) by 4 December 2017.

35. On 12 November 2017, the Applicant filed (a) a motion for clarification of Order No. 250 (NY/2017) and for direction, and (b) his comments on the Respondents response to para. 25 of Order No.124 (NY/2017).

36. On 3 and 4 December 2017, the Applicant and the Respondent, respectively, filed their responses to para. 28 of Order No. 124 (NY/2017) on production of additional evidence.

37. By Order No. 275 (NY/2018) of 15 December 2017, the parties were instructed to attend a CMD on 16 January 2018 to discuss the further proceeding in the present case, including the Applicant's requests for additional evidence and the consolidation of Case No. UNDT/2017/063 with the present case.

38. On 16 December 2017, Applicant informed the Tribunal that he would be on a mission assignment between 6 and 19 January 2018 and requested the CMD to be rescheduled the week following his return.

39. On 18 December 2017, the Tribunal informed the parties via email that due to the Applicant's unavailability on 16 January 2018, the CMD was rescheduled for 29 January 2018.

40. At the CMD on 29 January 2018, the Applicant and Respondent's Counsel, Mr. Alan Gutman, who was accompanied by an intern, were present in person.

41. Upon the request of the Tribunal, the parties presented their arguments regarding joining Case No. UNDT/2017/063 with the present case. The Applicant indicated that the two cases are connected as the second decision contested in the present case, namely the decision not to fully and fairly consider him for “Temporary Job Opening #52485, Director, Information Systems and Technology, D-2, Umoja [P]osition [N]umber 30015906”, was related to two of the contested decisions in Case No. UNDT/2017/063. Counsel for the Respondent indicated that the two cases should not be joined, since the second decision in the present case, in his view, was not receivable, and that the same decision could not be contested in two different cases. The Applicant further noted that the additional evidence was relevant as detailed in his 3 December 2017 motion, while the Respondent’s Counsel maintained that the case could be decided based on the evidence already before the Tribunal.

42. On 30 January 2018, the Applicant filed a motion to amend the initial application expressing his willingness to withdraw the second decision contested in the present case for receivability reasons, namely his non-selection for Temporary Job Opening no. 52485, and stated that all the factual assertions should remain part of the application. The Applicant indicated that he conceded that this part of the application concerned one of decisions challenged in Case No. UNDT/NY/2017/063.

43. By Order No. 37 (NY/2018) dated 15 February 2018, the Tribunal provided the following orders to the parties (emphasis omitted):

... The Tribunal takes note of the Applicant’s withdrawal of the “[d]ecision not to fully and fairly consider [his] application for Temporary Job Opening #52485, Director, Information Systems and Technology, D-2, Umoja [P]osition [N]umber 30015906” from the present case;

... The Applicant’s request for production of additional written and oral evidence is rejected;

... By 5:00 p.m. on Friday, 30 March 2018 [a UN holiday and, by email dated 16 March 2018, changed to 2 April 2018], the parties are

to file their closing submissions based only on the evidence already before the Tribunal.

44. On 2 April 2018, the parties filed their closing submissions.

45. On 25 September and 6 October 2018, after General Assembly resolution 73/389 (Tenth progress report on the enterprise resource planning project) was adopted on 21 September 2018, the Applicant provided the Tribunal with updated additional information referring to his closing arguments.

46. On 24 October 2018, the Applicant filed a motion to introduce additional evidence, appending two documents and stating that the new evidence, which came into his attention on the same date (24 October 2018), showed that the selected candidate was unlawfully placed on the roster before being selected for the relevant position, and improperly favoured during the selection process as a rostered applicant.

47. On 19 November 2018, the Applicant filed a motion to introduce further additional evidence, appending the relevant email exchange and indicating that this evidence only came into his possession on 16 November 2018.

48. On 26 November 2018, the Applicant informed the Tribunal that Mr. Sètonджи Roland Adjovi had been “authorized to act as his co-counsel” in the present case.

Applicant’s submissions

49. The Applicant’s principal submissions related to the contested decision in the present case may be summarised as follows:

- a. The Applicant was not fully and fairly considered for the position because the recruitment process was full of irregularities and the selected candidate was improperly favoured;

b. Mr. MM (name redacted) was the incumbent of the relevant position until 8 April 2016. UMOJA position no. 30045431 was upgraded from the P-5 level to the D-1 level when the OICT budget for 2016-17 was approved, effective 1 January 2016. Job Opening no. 58836 (Director, Global Services Division, at the D-2 level, which was also an upgraded post from the D-1 level), effective 1 January 2016, was advertised on 15 April 2016. This should have been done also for position number no. 30045431. Instead, Job Opening no. 63461 was only issued on 28 July 2016;

c. Mr. MM would have “normally” been ineligible to apply for another job opening, either laterally at the P-5 level or for a promotion to the D-1 level, until 4 August 2016. Ms. SS (name redacted) had been “officially” placed by Ms. R (name redacted) on 18 May 2016 with agreement from the Department of Field Support Services as Officer in Charge of the Enterprise Applications Center in New York in OICT within the Department of Management [“OICT/DM”] for the “next 3-4 months”. This was done more than 2 months before the position’s Job Opening was even advertised. The selection for Job Opening no. 41653 was only completed on 15 June 2016, with Mr. EI (name redacted) selected for the position and Ms. SS rostered effective that same date;

d. Classification of an upgraded post must be done prior to advertising the position in Inspira. No action was taken to start the process to classify the relevant post until 27 June 2016. The association of position no. 30045431 with the generic job profile at the D-1 level, “Chief of Service/Branch/Division”, was completed on 8 July 2016 by the classifications office within the Office of Human Resources Management;

e. The process of classification of the relevant position should have commenced immediately at the beginning of 2016, after the approval of the upgrade from the P-5 level to the D-1 level was effective 1 January 2016.

However, since Mr. MM was still the incumbent of the post at that time with the likely intention of giving him this upgraded post as the incumbent, the process was not even started because he may have been considered ineligible for applying for the position until 4 August 2016. This violated sec. 4.4 of ST/AI/2010/3;

f. Similar to other job openings, the Hiring Manager did not act in good faith and the process was tainted by ulterior motives. As stated, *inter alia*, in *Asaad* 2010-UNAT-021, that while the Secretary General may be considered to have discretion in selection matters, such discretion is not unfettered. The former United Nations Administrative Tribunal ruled on many occasions that the Administration must act in good faith and respect procedural rules. Its decisions must not be arbitrary or motivated by factors inconsistent with proper administration (see, for example, Judgement No. 952, *Hamad* (2000)). Also, its decisions must not be based on erroneous, fallacious or improper motivation (*Schook* UNDT/2011/083);

g. The Applicant's candidature was not fully and fairly considered. The only work experience requirement shown in the Job Opening was "A minimum of fifteen years of progressively responsible experience in planning, designing, development, implementation and maintenance of 'ERP' [assumedly, Enterprise Resource Planning] systems is required". In the evaluation matrix, the Applicant's experience was characterised as "some experience in planning, designing, development, implementation and maintenance of ERP systems", which cannot be accepted for two reasons:

i. It does not specify how many years of experience the Applicant actually had, when 15 years are required. Since it states that he, "Meets the requirements", axiomatically then he must have at least 15 years of relevant experience, not "some experience";

ii. It fails to explain how the Applicant met the requirements, not referring in any way to what he had stated in both his cover letter and Personal History Profile, which certainly details an extensive level of experience in this area, namely 31 years.

h. If this evaluation had been submitted as a case to a Central Review Body (“CRB”), it would have been sent back as not explaining how or why the applicant has “some” experience, but meets the requirement. The evaluation matrix showed the assessments of three other applicants in addition to Ms. SS and the Applicant’s evaluations. One other was rated as, “Meets the requirements”. The comments under work experience in the evaluation are exactly the same as in the Applicant’s evaluation. This is not individually assessing the Applicant’s suitability for the position; it was just cut and pasted, indicating that no effort was taken whatsoever in assessing his experience. The other two candidates were rated as, “Partially meets the requirements”. Again, the comments under work experience were exactly the same, indicating no effort was taken to individually assess these candidates’ applications either. In the assessment for Ms. SS, she was rated for the same criteria as, “She possesses the REQUIRED experience in planning, designing, development, implementation and maintenance of ERP systems”. She is then rated as, “Exceeds the requirements”, by including criteria not included in the Job Opening. When assessing work experience, educational requirements and language requirements against what is shown in an applicant’s Personal History Profile, the Hiring Manager can look only at what is stated in the Personal History Profile against the required and desirable evaluation criteria listed in the advertised job opening. The only criterion under work experience was “A minimum of fifteen years of progressively responsible experience in planning, designing, development, implementation and maintenance of ERP systems is required”. In the Inspira Manual for Hiring Managers, sec. 9.2, it is

stated that 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 job opening in terms of academics, experience, and language and that it is preferred to use clear evaluation requirements listed as “required” or “desirable” in the job posting;

i. If Ms. SS indeed met this requirement, she could only be rated as, “Meets the requirements”, just like the others. She cannot exceed the requirements because there were no other requirements listed in the Job Opening. If she was rated as, “Exceeds the requirement” based on having 20 years of experience when 15 years were needed, the Applicant should also receive the same rating for having 31 years of real “ERP” experience. The rating of Ms. SS goes to a lot of effort to individually detail and “glorify” her experience, while the other applicants just get a cut and paste review with no individual review or statements about their specific experience. This is favouritism towards the desired applicant. Clearly the Hiring Manager had no interest in assessing the real experience; she simply wanted to give the appearance of “minimally” giving the Applicant’s application full and fair consideration;

j. The selected candidate did not meet the criteria of the advertised post and the evaluation made by the Hiring Manager was incorrect. The educational requirements in Job Opening no. 41653 and the contested Job Opening no. 63461 are not identical. In addition, the basis justified to the CRB for Ms. SS meeting the requirements in Job Opening no. 41653 (when it was questioned whether she met the educational requirements for Job Opening no. 41653) was that a Master’s degree in Public Policy and Administration was considered as “Business Administration”. The CRB accepted that explanation. However, for Job Opening no. 63461, the

educational requirements are much more specific “Advanced university degree (Master’s degree or equivalent degree) in computer science, information systems, mathematics, statistics or related field”. Unlike in Job Opening no. 41653, no Business Administration degree was included. Therefore, Ms. SS’s degree cannot be justified as meeting the educational requirements for Job Opening no. 63461 on this basis;

k. Ms. SS’s work experience is long and impressive, and she is a highly qualified Information and Communications Technology (“ICT”) professional with more than 15 years of ICT experience. It was on this basis that the CRB agreed that Ms. SS met the work experience of Job Opening no. 41653, “A minimum of fifteen years of progressively responsible experience in planning, designing, implementation, maintenance, and/or management of ICT systems and services in public, business and/or international environment is required”. However, the work experience requirement contained in Job Opening no. 63461 is very different and very specific in requiring “A minimum of fifteen years of progressively responsible experience in planning, designing, development, implementation and maintenance of ERP systems”. Ms. SS does not have the required experience for Job Opening no. 63461. The MEU simply ignored this and did not attempt to validate the assertions of the Hiring Manager that Ms. SS met the requirement with any other expert. The Hiring Manager’s false and easily disproved statement about the educational requirements between the rostering Job Opening and the contested Job Opening being “identical” calls into question the veracity of any other statement made, particularly contained within the same sentence. The ERP Umoja project has an Assistant Secretary-General (“ASG”), a D-2 level staff member, and numerous D-1 level staff members well familiar with what constitutes ERP experience. When Ms. SS’s temporary assignment as Officer-in-Charge and her official appointment to Chief were announced, respectively on 18 May 2016 and on 6 December 2016 (both emails sent by

the Hiring Manager), neither message made reference to any ERP experience of Ms. SS whatsoever. ERP experience also was listed as the primary requirement in other job openings for the same post, such as Job Opening no. 63461, previously encumbered by Mr. MM prior to his resignation and which was upgraded from the P-5 level to the D-1 level after the approval of the ICT strategy and budget. When justifying the selection and announcing the appointment of Mr. MM, the Hiring Manager specifically highlighted Mr. MM's ERP experience. ERP experience was also required for Job Opening no. 54326 (D-2). When announcing the lateral transfer of Ms. DLP (name redacted) from Umoja to OICT, the Hiring Manager again specifically highlighted her ERP experience. The emails announcing these two other appointments, including for the previous incumbent of the post, show that the Hiring Manager, when making announcements to all staff, always highlights the actual experience of the person. When someone has ERP experience, it is shown in the announcement;

l. The non-inclusion of any reference to ERP experience in the emails announcing Ms. SS as both Officer-in-Charge (18 May 2016) and Chief (6 December 2016) should be considered as public confirmation that Ms. SS did not meet the work experience requirement;

m. Evaluation criteria that was not initially included in the advertised job opening was introduced after the initial evaluations;

n. The Hiring Manager considered that "extensive experience in leading large-scale applications for the peacekeeping missions ... [was] crucial expertise in the implementation of the Enterprise Application Center". This requirement was not expressed anywhere in Job Opening no. 63461 in addition to the 15 years of ERP experience (which Ms. SS does not have). Additionally, peacekeeping (or the field) is not even mentioned once in the text of Job Opening no. 63461. Numerous examples of job openings specify

experience in peacekeeping at least as a desirable evaluation criterion. However, in Job Opening no. 63461, there is no reference at all to peacekeeping in the responsibilities nor in the work experience evaluation criteria. The Chief, Enterprise Application Centre in New York has the following responsibilities: Conceptualizes, develops strategy for and directs the design and implementation of enterprise systems initiatives such as Inspira (Peoplesoft), Collaboration platforms, Enterprise Content Management platforms, UMOJA (SAP), and directs the timely completion of multiple, concurrent and often disparate tasks for projects that often involve innovative applications, dissimilar systems, as well as databases and highly complex system integration and linkages. These enterprise systems are used by everyone globally in the United Nations Secretariat, both in Headquarters and Field Offices, and certainly not just in peacekeeping. This problem has been raised by the CRB members on numerous occasions in job openings, i.e. the use of where experience is obtained rather than what experience is required, which favours certain applicants. In this case, this “crucial” criterion was not even stated in the Job Opening. Even if it were accepted, none of the other applicants, including the Applicant, were rated against it in the matrix, which means that the use of it as a determining factor of the applicant’s rating was inappropriate. This arbitrary criterion introduced by the Hiring Manager was yet another way simply to favour Ms. SS’s predetermined selection, since she has worked in the Department of Field Services, specifically supporting peacekeeping missions. This is not discretion; it is favouritism;

o. The Hiring Manager was biased against the Applicant. It is well established that the Applicant attempted to get a response from OICT for almost eight weeks after the email from Ms. WB (name redacted) on 5 May 2016. Increasingly the Applicant’s messages became more urgent and direct as the feelings of hurt intensified due to receiving no responses, culminating in his final message to the Executive Office on 22 June 2016, prior to being

forced to submit the case for management evaluation to comply with time limits. It is clear from the Executive Office's responses that his messages were being forwarded to the Hiring Manager for comments, with no responses forthcoming. The casual and unilateral evaluation of the Applicant's work experience by the Hiring Manager with no oversight by anyone and the discarding of his application are evidence in themselves of bias against him.

Respondent's submissions

50. In the reply, in relevant parts of the submissions referring to the contested decision in the present case, the Respondent stated, *inter alia*, as follows (footnotes and references to annexes omitted):

... The Applicant was fully and fairly considered for the position of Chief, Enterprise Application Centre (D-1) in OICT (JO 63461). The selection process was conducted in accordance with the procedures set out under ST/AI/2010/3. [ASG/OICT], as the head of office, lawfully exercised her discretion to select a roster candidate who was best suited for the position.

... The Secretary-General is vested with a wide discretion to select staff members for positions. A selection exercise is a competitive process (Staff Regulation 4.3). The Dispute Tribunal conducts a limited judicial review of a selection exercise. When candidates have received full and fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the Dispute Tribunal will uphold the outcome of the selection exercise (*Rolland* [2010-UNAT-119, paras. 20-21, and also referring to: *Frohler* 2011-UNAT-141, para. 32; *Charles* 2013-UNAT-285, para. 39; and *Bofill*, 2013-UNAT-383, paras. 21 and 26].

... The ASG/OICT, as the head of the office, lawfully exercised her discretion to select a roster candidate for the job opening. Section 9.4 of ST/AI/2010/3 provides that the head of office may use a roster to fill vacancies for position-specific job openings without reference to a central review body. In assessing the roster candidates, the ASG/OICT reviewed the Personal History Profiles of each candidate, including the Applicant's. She documented her review in a comparative analysis.

... The ASG/OICT concluded that Ms. SS was the only roster candidate that exceeded the minimum experience requirements for the job opening. Ms. SS has extensive expertise implementing large-scale Enterprise Applications for peacekeeping missions, and has managed global development teams of application professionals. The ASG/OICT considered this experience to be crucial expertise for successfully performing the function of the position, namely the implementation of the Enterprise Application Centre and a centralized ICT unit of the UN Secretariat. The ASG/OICT also considered the geographical and gender mandates of the Organization. Ms. SS is a female from an underrepresented country.

... Accordingly, the ASG/OICT concluded that Ms. SS was the most suitable roster candidate for the position and made her selection decision in accordance with section 9.3, ST/AI/2010/3.

... The Applicant's disagreement with the ASG/OICT's evaluation of the roster candidates is irrelevant. The Appeals Tribunal has held that the assessment of candidates is the responsibility of the Organization, and it is not for the Dispute Tribunal to assess the candidates anew and substitute its assessment for that of the Organization [*Ljungdell* 2012-UNAT-265, para. 31, and *Bofill* 2013-UNAT-383, para. 21, and also referring to *Wang* 2014-UNAT-454, paras. 31 and 41].

... The Applicant's claim of bias is without merit. The Applicant has provided no credible evidence that the selection decision was tainted by bias or made in retaliation for previous complaints made by him. The Applicant has not met his burden of proving that the decision was so motivated [*Jennings* 2011-UNAT-184, para. 25, and *Hepworth* 2011-UNAT-178, para. 29)].

... The Applicant is not entitled to the rescission of the contested decisions. The contested decisions were lawful.

... The Applicant's request to referrals to the Secretary-General for enforcement of accountability should be rejected. First, the Applicant establishes no legal or factual basis for the request. Second, the Dispute Tribunal stated in *Ware* UNDT/NBI/2015/069, para. 61, that "it is not appropriate for parties to make motions for referral".

Consideration

Applicable law

51. Article 8 of the United Nations Charter provides:

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in the principal and subsidiary organs.

52. Article 101 of the United Nations Charter provides, in relevant parts:

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

[...]

3. 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.

53. Article 7(c) of the International Covenant on Economic, Social and Cultural Rights, which entered into force on 3 January 1977, provides that:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

[...]

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

[...]

54. ST/SGB/2011/1 (Staff Rules and Staff Regulations), in effect at the relevant time, provided in relevant part (emphasis in the original):

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.

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.

Regulation 4.4

Subject to the provisions of Article 101, paragraph 3, of the Charter, and without prejudice to the recruitment of fresh talent at all levels, the fullest regard shall be had, in filling vacancies, to the requisite qualifications and experience of persons already in the service of the United Nations.

55. ST/AI/2010/3 (Staff selection system) provides in relevant parts (emphasis added and footnotes omitted):

[...]

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 Staff in the Professional and above categories, up to and including those at the D-2 level, are expected to move periodically to different positions in different organizational units, duty stations, missions or occupational groups throughout their careers. The system provides for the circulation of job openings, including anticipated staffing needs in missions through a compendium of job openings 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 job opening, subject to the provisions contained in sections 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 job openings 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 job openings at the same level without advertisement of the job opening or further review by a central review body. Heads of mission retain the authority to transfer staff members, under conditions established by the Department of Field Support, within the same mission, to job openings at the same level without advertisement of the job opening 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 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 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.

[...]

3.3 Heads of departments/offices who have been delegated authority to appoint and promote staff up to and including the D-1

level for service limited to the entity concerned are encouraged to opt for the full application of the system for upcoming job openings, in which case the appointment of the individual selected as a result would not, or would no longer be, limited to service with the entity concerned. Should the head of department/office exercise this option, the case would be considered by a Secretariat central review body and would be referred to the Secretary-General for decision if the central review body found that the evaluation criteria had not been properly applied and/or that the applicable procedures had not been followed.

[...]

Section 4

Job openings

[...]

4.8 The deadline for applying for job openings *shall* normally be:

- (a) 60 calendar days after posting for position-specific job openings in the Professional and above categories, unless in cases of unanticipated job openings OHRM or the local human resources office exceptionally approves a 30-day deadline;

4.9 Generic job openings *will* be posted for the period of time that is deemed sufficient to attract the number of qualified candidates sufficient to satisfy the vacancies projected through workforce planning.

[...]

Section 7

Pre-screening and assessment

[...]

7.5 Shortlisted candidates shall be assessed to determine whether they meet the technical requirements and competencies of the job opening. 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.

7.6 For each job opening, the hiring manager or occupational group manager, as appropriate, shall prepare a reasoned and documented record of the evaluation of the proposed candidates against the applicable evaluation criteria to allow for review by the central review body and a selection decision by the head of the department/office.

7.7 For position-specific job openings, up to and including the D-1 level, the hiring manager or occupational group manager shall transmit his/her proposal for one candidate or, preferably, a list of qualified, unranked candidates, including normally at least one female candidate, to the appropriate central review body through OHRM, the local human resources office or the Field Personnel Division of the Department of Field Support. OHRM, the local human resources office or the Field Personnel Division shall ensure that, in making the proposal, the hiring manager or occupational group manager has complied with the process.

[...]

Section 9

Selection decision

[...]

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

9.3 When recommending the selection of candidates for posts up to and including at the D-1 level, the hiring manager shall support such recommendation by a documented record. The head of department/office shall select the candidate he or she considers to be best suited for the functions. In the final selection decision, due consideration should also be given to staff members who are victims of malicious acts or natural disasters; serving staff members who have served under the former 200 and 300 series of the Staff Rules; candidates from troop- or police-contributing countries for positions in a peacekeeping operation or Headquarters support account-funded positions in the Department of Peacekeeping Operations, the Department of Field Support and other departments with support account resources; and prior service or employment of candidates in field duty stations, for positions for which relevant field experience is highly desirable, as applicable and as stipulated in General Assembly resolutions 63/250 and 65/247.

9.4 Candidates for position-specific job openings up to and including at the D-1 level included in a list endorsed by a central review body other than the candidate selected for the specific position shall be placed on a roster of candidates pre-approved for similar

functions at the level of the job opening, which shall be drawn from all duty stations for job openings in the Professional and above categories and the Field Service category. Following the selection decision, roster candidates shall be retained in a roster indefinitely or until such time the present administrative instruction is amended. Candidates included in the roster may be selected by the head of department/office for a subsequent job opening without reference to a central review body.

9.5 Qualified candidates for generic job openings are placed on the relevant occupational roster after review by a central review body and may be selected for job openings in entities with approval for roster-based recruitment. The roster candidate shall be retained on an occupational roster indefinitely or until such time the present administrative instruction is amended. Should an eligible roster candidate be suitable for the job opening, the hiring manager may recommend his/her immediate selection to the head of department/office/mission without reference to the central review body.

[...]

Receivability

56. The Tribunal notes that the contested administrative decision regarding Job Opening no. 63461 was notified to the Applicant on 11 October 2016 and he requested a management evaluation of the decision on 12 October 2016, within 60 days of the date of notification. The present application was filed on 7 February 2018, within 90 days of the date when the Applicant received the management evaluation decision—21 November 2017. Therefore, the Tribunal concludes that the application is receivable in accordance with art. 8.1(c) and (d) – (i) of the Dispute Tribunal’s Statute and art. 7.1(a) of the Dispute Tribunal’s Rules of Procedure.

On the merits

57. The Tribunal will further analyze the contested decision in light of the grounds of appeal invoked by the Applicant.

Screening review

58. Section 1.1 of the Recruiter's Manual issued in March 2011 states that the manual serves 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. The Tribunal appreciates that, 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, the Tribunal appreciates that, once adopted and published on Inspira, these manuals, which establish in detail the steps to be followed in the selection process, must be respected by the Administration.

59. In relevant parts, the applicable Hiring Manager's Manual (version 3.0, October 2012) states as follows (emphasis omitted):

[...]

7.4.2 Eligibility Criteria for All Applicants

7.4.2.1 Academic Qualifications

1. An applicant is required to have the level of education as stated in the job opening.
2. Job openings for positions in the General Service (GS) and related categories require a high school diploma.
3. Job openings for positions at the professional and higher category normally require an advanced university degree.

a. Applicants with a first level university degree combined with additional qualifying experience (earned after receipt of degree) are also considered to have met the educational requirements equivalent to a Master's. A first level university degree may not be substituted by relevant experience. [...]

b. Certain positions require specialized studies for which a first-level university degree and experience cannot be substituted, such as Medical Doctors. For such positions, the minimum requirements shall be indicated as advanced in both the job opening and evaluation criteria.

When evaluating academic credentials of staff members and applicants, the United Nations is guided by the "World Higher Education Database (WHED)" compiled by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Association of Universities (IAU). This database provides a comprehensive list of higher education institutions sanctioned or accredited by competent national authorities in participating countries (referred to as the "IAU/UNESCO List"). Taking fully into account that the Member States have different education systems, the United Nations references the credential level determined by competent national authorities conferred by an institution in the participating countries provided in the IAU/UNESCO List. This credential level is therefore referenced and used to determine the equivalence of the applicant's degree.

[...]

9.1 Overview

1. 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 job opening. Eligible roster applicants who have expressed interest, by submitting an updated PHP via Inspira, in the job opening are also released to the Hiring Manager as a priority within the posting period of the job opening.

2. 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 job opening that the Hiring Manager, together with the assessment panel, conducts the assessment exercise as stipulated in the job opening. The most promising

applicants are subsequently invited for a competency-based interview.

3. Short-listed applicants shall be assessed to determine whether they meet the technical requirements and competencies of the job opening. Hiring Managers or [Occupational Group Managers (“OGMs”)] shall use the appropriate assessment methods commensurate to the knowledge and competencies required for the position.

4. Alternatively, the Hiring Manager may immediately recommend the selection of a qualified roster applicant from among the released rostered applications. The Hiring Manager, while not required to interview rostered applicants is encouraged to do so in a less formal setting in order to establish a sense of the roster applicant’s overall fit within the team/unit. In order to speed up the process, under such circumstances the Hiring Manager need not record his/her evaluation of new non-rostered applications. Selection of a roster applicant is not required to go through a review by a Central Review body. One or preferably several roster applicants found suitable may be recommended for selection at this stage.

5. In order to move the recommendation of a roster applicant forward for selection, the Hiring Manager shall be required to create an assessment record for the proposed roster applicant.

[...]

9.2 Evaluating Applicants

1. 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.

2. In order to speed up the process, the Hiring Manager may start analyzing the applications of released applicants before the deadline date of the job opening. 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 job opening 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 job opening and until all eligible applicants have been released.

3. 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:

[...]

c. Short List - these applicants seemingly meet the basic evaluation criteria as well as all defined desirable qualifications as outlined in the job opening. 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.

9.3 Composition of the Assessment Panel

1. All Assessment Panels must be composed of staff members holding a fixed-term appointment, a permanent appointment or a continuing appointment and serving at the same or at a higher level than that of the job opening. The staff members shall normally not be the current or temporary position incumbents that are to be replaced. Retirees from the [United Nations] System, staff members on a temporary appointment, consultants, contractors and interns are not allowed to be part of Assessment Panels.

2. It is suggested that the members participating in evaluating the assessment exercise be the same members as the panel conducting the competency-based interviews. Ideally, all applicants for one job opening are to be assessed and/or interviewed by the same assessors.

3. In the event that changes occur during the evaluation process in either the members participating in evaluating the assessment exercise or the members conducting the competency-based interview, reasoned and relevant

information should be provided in the transmittal memorandum for submission to the relevant Central Review body. In identifying and assigning the panel of assessors, by nomination, the Hiring Manager must ensure that the individuals selected fulfil the appropriate requirements as follows:

- a. Professional knowledge and experience:
 - i. Years of professional work and intrinsic knowledge of the subject area or work in the job family.
 - ii. Relevant occupational experience/employment for the previous five years is desirable.
- b. Personal qualities: Self-responsibility, ability to listen, ability to express him/herself clearly, patience, reliability and flexibility to handle changing circumstances, sense of humour, persistence, judgment and ability to quickly recognize and understand a situation and to be able to think analytically.
- c. Freedom from outside pressure: There is no appearance of a conflict of interest.
- d. Competency-based selection and interviewing skills and follow-up programme: Training module has been completed prior to serving on the panel.
- e. Training in Inspira: Completion of Inspira self-study training.

[...]

9.4 Conducting Assessment Exercises

1. A reasoned record shall be prepared for the applicant who has passed the assessment exercise and the interview, against the applicable evaluation criteria set out in the job opening. The Hiring Manager convokes the most promising applicants for a written or other assessment exercise as stipulated in the job opening and evaluation criteria, whom he/she short listed based on the recorded preliminary evaluation of their application. Such invitations are sent in advance of the anticipated date of the interview, i.e. the notice period is at least five working days. The message will normally contain:

- a. reference to the position;

- b. date, time and means (in person, by e-mail) of where and how the assessment will be held;
- c. the name and functional title and department/office/mission of each assessor (optional);
- d. a note to the effect that the applicant's answer to the written test may be reviewed for plagiarism;
- e. a request for confirmation, from the applicant, of continued interest and availability.

[...]

15.6 Consideration of Roster Applicants

1. When a new Job Opening is posted, Inspira will send an automatic job alert to the applicants that he/she will be considered as a roster candidate in that Job Opening (a roster candidate is preapproved for selection for a position with similar functions within the same job code (i.e., job family, category/level, functional title (which may vary slightly from the posting title) and roster type), alerting them to apply if they are interested and available for immediate selection.
2. Roster candidates must express their interest and availability for published job openings by submitting an updated PHP and cover letter to the relevant Job Opening in Inspira. This process is functionally identical to applying to the Job Opening.
3. When a roster candidate applies to a job opening in the same job code for which they were rostered, the Inspira tool will display a corresponding 'roster flag'.
4. Legacy roster candidates are identified by "GX" in the RM column on the Manage Applicants page. Inspira roster candidates are identified by "RM".
5. Hiring Managers may immediately recommend the selection of a qualified roster applicant from among the released rostered applications. The Hiring Manager is not required to interview the rostered applicant. In order to speed up the process, under such circumstances Hiring Managers need not record their evaluations of new non-rostered applications. Selection of a rostered applicant does not require a further review by the Central Review bodies. One or preferably several roster applicants found suitable may be recommended for selection at this stage.

6. In order to move the recommendation of the roster applicant forward for selection, the Hiring Manager shall be required to enter a final evaluation for the proposed roster applicant.

[...]

15.7 Selection of Roster Candidates

1. In instances where a selected candidate for a position-specific job opening fails to take up the functions within the specified period for personal reasons or vacates the position within one year from the Inspira selection date, the Head of Department/Office may select another candidate from the list endorsed by the Central Review body with respect to the particular job opening. If no such candidate is available, the Head of Department/Office may decide to advertise the position in the compendium.

2. The Recruiter will have to ensure that reference verifications and the required designation for positions performing significant functions in financial, human and physical resources as well as information and communication technology have been obtained for all rostered candidates from the Department of Management and the Office of Information and Communication Technology (OICT) prior to selection.

3. Once a job opening is advertised, Hiring Managers may immediately recommend the selection of a qualified roster applicant or qualified roster applicants (when filling multiple positions) from among the released applications. Hiring Managers are not required to interview roster applicants but are encouraged to do so in a less formal setting in order to establish a sense of the applicant's overall fit within the team/unit. In order to speed up the process, under such circumstances the Hiring Manager need not record his/her evaluation of new non-rostered applications. Selection of a roster applicant is not required to go through a review by a Central Review body. One or preferably several roster applicants found suitable may be recommended for selection at this stage.

4. In order to move the recommendation of a roster candidate forward for selection, the Hiring Manager shall be required to enter a final assessment in order to 'recommend' the proposed roster candidate for selection.

[...]

9. Where only roster candidates are recommended for selection by the Hiring Manager, further reference to the Central Review body is not required.

60. The Tribunal notes that Job Opening no. 63461 clearly indicated that the key responsibilities of the incumbent of the post are, *inter alia*, to formulate and implement the respective substantive work program of the Enterprise Application Centre, a centralized ICT unit of the Secretariat, and to direct the design and the implementation of the enterprise systems initiatives. The education required for the post was as follows: “Education: Advanced university degree (Master’s degree or equivalent degree) in computer science, information systems, mathematics, statistics or related field. A first-level university degree in combination with qualifying experience may be accepted in lieu of the advanced degree. Prince 2 or PMP [presumably, Project Management Professional] certification is desirable”.

61. As results from the section on education in the comparative analysis of the short-listed rostered candidates for the Job Opening, the Applicant, who holds a Bachelor’s degree in computing, was correctly considered as meeting the requirement on education. As for the selected candidate, it is indicated that she holds a Master’s degree in public administration, and she was also considered to have met the educational requirement.

62. The Tribunal notes that the standard language used in a vacancy notice/job opening at the United Nations is as follows: “Education: Advanced University degree in [the explicit required areas of studies]. A first level University degree in the required areas in combination with at least [...] 2 years of additional working experience in the required areas and/or extensive experience in a related field may be accepted in lieu of the advanced university degree”; the first and second sentence must be read and applied together. The Tribunal considers that in case a vacancy announcement/job opening allows a first level university degree (a Bachelor’s degree or equivalent) in lieu of an advanced university degree (a Master’s degree or equivalent), the first level university degree must be in the same required areas as the

advanced university degree and not in a completely different area of studies, and that the standard language “a first level university degree” cannot be interpreted and/or changed during the selection process to allow candidates with “any” first level university degree to apply, be considered and /or selected for the post.

63. The Tribunal also considers that if the vacancy announcement/job opening allows also a first level university degree in a related field to the required areas of studies, a clear and accurate language must be used providing complete information, including in relation to the “related field(s)”, if any, to the specific areas of studies required for the post and to expressly identify and enumerate them together with the required work experience in the required and/or related fields of studies, after a careful verification in order to ensure a fair selection and to prevent any misrepresentations/errors in the identification of such related fields of studies. Therefore, the Tribunal considers that the use of a general formulation of a vacancy announcement/job opening must be avoided, because such a form may include elements which are not applicable to the requirements for a particular post. Such a first level degree usually requires at least 2 years or more extensive and continuous work experience in the required field(s) or related field(s).

64. The Tribunal underlines that the selection process must be conducted, from the beginning to the end, in a manner consistent with the principles of equal treatment of all candidates, objectivity and transparency, which require precise terminology in vacancy notices/job openings and that none of the criteria for the post as detailed in the vacancy notice/job opening can be modified during the selection process through an additional announcement or *de facto* by pre-screening, considering and ultimately selecting applicants which do not fulfill all the requirements as initially established in the published vacancy announcement/job opening.

65. The Tribunal notes that, in the present case, Job Opening no. 63461 stated that a first-level university degree in combination with qualifying experience could be accepted in lieu of the advance university degree (Master’s degree), and considers

that such first level university degree was required to be, like in the Applicant's case, a degree on computer science, information systems, mathematics, statistics or in related fields to these specific areas of expertise (like, for example, physics, which is recognized to be part of the exact mathematical sciences or so-called "hard science").

66. As results from the section on education in the comparative analysis of the short-listed rostered candidates for the Job Opening, the Applicant, who holds a Bachelor's degree in computing, was correctly considered as meeting the requirement on education. As for the selected candidate, it is indicated that she holds a Master's degree in public administration, and she was also considered to have met the educational requirement.

67. The Tribunal notes that public administration is generally defined as being the implementation of government policies and an academic discipline that studies this implementation and prepares civil servants for working in the public service. It results that the public administration is not a field related to computer science, information systems, mathematics or statistics, which are all mathematical sciences (so-called "hard sciences"). The Tribunal consequently concludes that the Hiring Manager erred in finding that the selected candidate's Master's degree was related to, and therefore relevant for, any of the required specifically mentioned areas (computer science, information systems, mathematics, statistics) and wrongly determined that she fulfilled the educational requirement for Job Opening no. 63461.

68. The Tribunal considers that there is no evidence that the selected candidate had a first-level degree in any of the required areas, namely computer science, information systems, mathematics, statistics or a related field, which—together with the relevant required working experience—could have substituted the required Master's degree. Also, the Tribunal considers that no related field(s) to computer science, information systems, mathematics or statistics were identified in the Job Opening. The Tribunal reiterates that, in cases where the job opening refers to related fields of activity, these fields must be clearly identified in order to ensure the required

equivalency between the principal areas of education and the alternative ones, and to prevent any errors of appreciation regarding the required education of the candidates. The Tribunal also observes that there are areas of expertise which do not have related field(s) and this expression appears to be included in the majority of the job openings automatically by using a standard language, which is incorrect and is directly affecting the accuracy and transparency of the selection process.

69. The Tribunal notes that five rostered candidates were shortlisted to be considered by the Hiring Manager. The Applicant, who has a Bachelor's degree in computing, together with another candidate, who has a doctorate degree in science and technology, were correctly considered that they fulfilled the educational requirement. However, that candidate, who has a doctorate degree in science and technology, was found to partially meet the required working experience. Three other rostered candidates were found to meet the education requirement even though the Master's degree was either in business administration or public administration, which are not the required areas of study. The Tribunal concludes that, while it is uncontested that the selected candidate's extensive previous experience and education were relevant for other positions that she applied for and was selected and/or rostered for, the Job Opening in question did not include in "Education" section as being required a Master's degree in public administration. As explained above, a Master's degree in public administration is not equivalent and, therefore cannot substitute the required Master's degree in computer science, information systems, mathematics or statistics.

70. The Tribunal further notes that Job Opening no. 63461 included additional desirable qualifications only in relation to education and languages: Prince 2 or PMP [again, presumably, Project Management Professional] certification, and knowledge of another United Nations language (in addition to fluency in English), respectively. No desirable qualifications, like for example extensive work experience in field missions, were stated in relation to work experience. However, as follows from the

document “Comparative Analysis of All Rostered Candidates—[Job Opening no. 63461], D-1, OICT/DM (Version 1.0)”, the selected candidate was considered to have exceeded the work experience requirement because, “[Ms. SS] has been identified as the most qualified candidate for the subject D-1 position, as she has an extensive experience in leading large scale Enterprise Applications for the peace keeping missions, which is crucial expertise in the implementation of the Enterprise Applications Center. [Ms. SS] possesses extensive experience with applications both HQs and field [...]”. The other rostered candidates’ field experience was nowhere evaluated. It results that the selected candidate’s field experience was considered “crucial” even though field experience was not a required and/or desirable qualification for the post.

71. The Tribunal therefore concludes that an additional criterion was used to evaluate only the selected candidate for the post, namely field experience, and that this criterion was not included in the Job Opening and the Hiring Manager erred in finding that the selected candidate exceeded the requirement of working experience.

72. The Tribunal notes that, on 4 August 2016, the Applicant submitted a report to the Assistant Secretary-General for Human Resources Management concerning irregularities in the recruitment process for another Job Opening, published a couple of months prior to Job Opening no. 63461, for which the Applicant also applied and was not selected. In the Ethics Office’s report of 3 May 2017, the Director of the Ethics Office concluded that the Applicant’s report concerning irregularities constituted a protected activity under ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations) and indicated that its finding was based on testimonies that “the [Hiring Manager] has been trying for many years to undermine [the Applicant’s career], that “it was widely known that [the Hiring Manager] had been side-lining [the Applicant] for a long time since 2014 or 2015”, and that “other ICT chiefs across the Organization commented that [the Hiring Manager] had several times declared

publicly her antagonism to [the Applicant's] person and positions affirming that as long as she would be in charge of OICT, [the Applicant] would never be selected for any position”.

73. Section 9.3 of the Hiring Manager's Manual (version October 2012) provides, in relevant parts, as follows:

[...]

2. It is suggested that the members participating in evaluating the assessment exercise be the same members as the panel conducting the competency-based interviews. Ideally, all applicants for one job opening are to be assessed and/or interviewed by the same assessors.

3. In the event that changes occur during the evaluation process in either the members participating in evaluating the assessment exercise or the members conducting the competency-based interview, reasoned and relevant information should be provided in the transmittal memorandum for submission to the relevant Central Review body. In identifying and assigning the panel of assessors, by nomination, the Hiring Manager must ensure that the individuals selected fulfil the appropriate requirements as follows:

- a. Professional knowledge and experience:
 - i. Years of professional work and intrinsic knowledge of the subject area or work in the job family.
 - ii. Relevant occupational experience/employment for the previous five years is desirable.
- b. Personal qualities: Self-responsibility, ability to listen, ability to express him/herself clearly, patience, reliability and flexibility to handle changing circumstances, sense of humour, persistence, judgment and ability to quickly recognize and understand a situation and to be able to think analytically.
- c. Freedom from outside pressure: There is no appearance of a conflict of interest.
- d. Competency-based selection and interviewing skills and follow-up programme: Training module has been completed prior to serving on the panel.
- e. Training in Inspira: Completion of Inspira self-study training.

[...]

74. In *Finniss* 2014-UNAT-397, the Appeals Tribunal stated that:

... The guidelines in paragraph 9 of ST/AI/2006/3 provide that candidates need to be evaluated against pre-approved evaluation criteria. It is reasonable to expect that the selection process is not only fair but also seen to be fair. Thus, as a matter of fair process, there is no room for extraneous considerations such as bias, prejudice and discrimination.

75. The Tribunal refers to the persuasive holding by the Administrative Tribunal of the International Labour Organization (“ILOAT”), Judgment No. 179, *In re Varnet* (1971), where the ILOAT stressed that:

... It is a general rule of law that a person called upon to take a decision affecting the rights or duties of other persons subject to his jurisdiction must withdraw in cases in which his impartiality may be open to question on reasonable grounds. It is immaterial that, subjectively, he may consider himself able to take an unprejudiced decision; nor is it enough for the persons affected by the decision to suspect its author of prejudice.

... Persons taking part in an advisory capacity in the proceedings of decision-making bodies are equally subject to the above-mentioned rule. It applies also to members of bodies required to make recommendations to decision-making bodies. Although they do not themselves make decisions, both these types of bodies may sometimes exert a crucial influence on the decision to be taken.

76. The Tribunal is of the view that the members of the assessment panel, even if they do not themselves make the selection decision, have a crucial role in conducting an independent and impartial process, assessing and evaluating the candidates, and submitting a list of recommended candidates to the Head of the Department, based on which he or she makes the selection decision. Further, the Tribunal considers that all member(s) of an assessment panel have a legal obligation and the correlative right to withdraw, on their own initiative, from an assessment panel if they made a prior assessment regarding one or more candidates and/or if the panel member’s impartiality could be open to question on reasonable grounds. The Tribunal considers

that all these requirements are applicable to the Hiring Manager when acting either as a member of an assessment panel or individually when shortlisting and selecting a rostered candidate.

77. In order to preserve the fairness of the entire selection procedure, the applicants invited for an interview have the right to recuse any panelist(s) or the hiring manager (when making a selection from the roster) if the applicants have reasonable grounds to believe that the impartiality of the panelist(s) or of the hiring manager could be open to question. However, such a recusal request (which can be formulated orally or in writing regarding any member of the panel or only regarding the hiring manager if s/he is acting individually to assess and select a rostered applicant) must be made in good faith and submitted diligently, as soon as possible, after the assessment panel members/hiring manager are announced or known. Such a request may be made before the interview, during the interview or after the interview, but must be made before the panel's or hiring manager's decision regarding the recommended candidate(s) for the relevant post is taken.

78. Therefore, in light of the Ethics Office report of 3 May 2017, the condition of impartiality of the relevant Hiring Manager, who was also the hiring manager for Job Opening no. 63461, as required by para. 3(c) of sec. 9.3 of the Hiring Manager's Manual, was not respected in the present case.

79. Moreover, in the present case the Tribunal considers that the Applicant only became aware of the fact that the Hiring Manager was biased against him after the selection process was completed, and the Applicant therefore had no reasonable opportunity to request the recusal of the Hiring Manager during the selection process, and/or before the selection decision was made. It appears that the Hiring Manager should have recused herself because of her previous statement regarding the Applicant.

80. The Tribunal is of the view that the fundamental human rights principle of equal treatment of staff members from art. 8 of the United Nations Charter, which includes, *inter alia*, equal treatment, fairness and transparency during the entire procedure for selection and/or promotion of staff, is fully respected only when all the candidates for each job opening are fully and fairly considered for the post. Moreover, according to art. 7(c) of International Covenant on Economic, Social and Cultural Rights, any individual has the fundamental right to an equal opportunity to be promoted in his/her employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.

81. In light of the above, the Tribunal considers that the Applicant's grounds of appeal are founded. The Tribunal concludes that the Applicant's fundamental rights to be fully and fairly considered for Job Opening no. 63461 and to have an equal opportunity to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence (pursuant to art. 8 and art. 101 of the Charter of the United Nations and art. 7(c) of the International Covenant on Economic, Social and Cultural Rights), were not respected and that the contested selection decision is unlawful.

82. Regarding the Applicant's motions to adduce additional evidence, filed on 24 October 2018 and on 19 November 2018, the Tribunal underlines that no additional submissions and/or evidence may be submitted after the closing submissions. Therefore, the documentation submitted by the Applicant on 24 October 2018 and on 19 November 2018, which appear to refer to additional procedural irregularities, cannot be considered part of the relevant evidence in the present case.

Relief

83. The Tribunal notes that the Applicant requested the rescission of the contested decision not to select him for Job Opening no. 63461 and of the findings of the MEU, leaving the Tribunal to determine other relevant remedies, such as whether to refer

the case to the Secretary-General for the enforcement of accountability under art. 10.8 of the Statute of the Dispute Tribunal.

84. As established by the consistent jurisprudence of the Appeals Tribunal, a staff member has no right to be selected for a post, but has a right to be fully and fairly considered for it (see, for instance, *Andrysek* 2010-UNAT-110 and *Luvai* 2014-UNAT-417). Further, a staff member has the right to an equal opportunity to be promoted in his/her employment to an appropriate higher level, subject to no considerations other than those of seniority and competence. This right is of fundamental nature, as recognized by the United Nations Charter, art. 101, and the International Covenant of Economic, Social and Cultural Rights, art. 7(c).

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

... As the Tribunal stated in *Villamoran* 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 (*Villamoran*, *Valimaki-Erk* UNDT/2012/004).

86. ST/AI/2010/3 (Staff selection system) 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 (they have since then be reissued several times). The Tribunal appreciates 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 mandatory and form part of the procedures applicable from “the beginning to the end” of the staff selection process. The Tribunal considers that these guidelines 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. In line herewith, 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 (not appealed); *Eldam* UNDT/2010/133 (not appealed)).

87. The Tribunal notes that in Judgment No. 3073, ILOAT stated as follows:

According to the case law, an international organisation which decides to hold a competition in order to fill a post cannot select a candidate who does not satisfy one of the required qualifications specified in the vacancy notice. Such conduct, which is tantamount to modifying criteria for appointment to the post during the selection process, incurs the Tribunal’s censure on two counts. Firstly it violates the principle of *patere legem quam ipse fecisti*, which forbids the Administration to ignore the rules it has itself defined. In this respect, a modification of the applicable criteria during the selection procedure more generally undermines the requirements of mutual trust and fairness which international organisations have a duty to observe in their relations with their staff. Secondly, the appointment body’s alteration, after the procedure had begun, of the qualifications which were initially required in order to obtain the post, introduces a serious flaw into the

selection process with respect to the principle of equal opportunity among candidates.

88. Further, the Tribunal notes that the Appeals Tribunal stated in para. 48 of *Onana* 2015-UNAT-533 that “the direct effect of an irregularity will only result in the rescission of the decision not to promote a staff member when he or she would have a significant chance for promotion”.

89. Consequently, since the required selection procedures were not followed, the appeal is to be granted, and pursuant to art. 10.5(a) of the Dispute Tribunal’s Statute, the unlawful decision not to select the Applicant for Job Opening no. 63461 is to be rescinded. Further, taking into account the particular circumstances of the present case, namely that: (a) the selected rostered candidate did not fulfill the educational requirement for the relevant Job Opening; (b) the additional evaluation criterion that was not included in the Job Opening was only used to evaluate the selected candidate; (c) the evidence on file confirms the Applicant’s contentions that some of the Hiring Manager’s statements made prior the selection exercise indicated a strong bias against him; and (d) he had a significant chance of the selection since it appears from the comparative analysis of rostered candidates for Job Opening no. 63461 made by the Hiring Manager that he was the rostered candidate who fully met all the requirements of the job opening, the Tribunal considers it appropriate to order the Administration to restart the selection process by conducting a *de novo* assessment, followed by a comparative analysis, of the rostered candidates, which fulfill/meet all the requirements as detailed in the Job Opening. The Tribunal considers that this remedy would be sufficient, and underlines that the new selection process is expected to respect the candidates’ rights to be fully and fairly considered for the Job Opening and to have an equal opportunity to be promoted in their employment to an appropriate higher level, subject to no considerations other than those of seniority and competence. The Tribunal recommends that the new assessment exercise should be conducted by a different hiring manager. The Tribunal underlines that, *inter alia*, according to the educational requirement, candidates must have a Master’s degree in

computer science, information systems, mathematics, statistics, or related field to these specific areas, if any, or the equivalent first university degree in computer science, information systems, mathematics, statistics or related field, if any, together with the relevant number of years of working experience in the required fields. Further, the Tribunal underlines that “business administration” or “public administration” are not related fields to computer science, information systems, mathematics or statistics, and that a Master’s degree in these areas is not equivalent to a Master’s degree in computer science, information systems, mathematics or statistics.

90. In accordance with art. 10.5(a) of the Statute of the Dispute Tribunal, as an alternative to rescinding the contested selection decision for Job Opening no. 63461, the Respondent may elect to pay the Applicant three months of net-base salary, amount which, in line with the recent jurisprudence of the Appeals Tribunal, represents a reasonable compensation in cases of non-selection/non-promotion where the applicant was not fully and fairly considered for the post and the contested decision is not rescinded.

91. The Applicant’s request to rescind the MEU’s findings is to be rejected, since the consistent jurisprudence of both the Dispute and the Appeals Tribunals is that the MEU’s decision is not an appealable decision before the Dispute Tribunal (see, for instance, *Nwuke* 2016-UNAT-697).

Conclusion

92. In the light of the above, the Tribunal DECIDES:

- a. The amended application against the decision not to select the Applicant for Job Opening no. 63461 is granted and the contested decision is rescinded. Further, taking into account the particular circumstances of the present case, the Tribunal orders the Administration to restart the selection

process by conducting a *de novo* full and fair evaluation, including a new comparative analysis of the rostered candidates which fulfill all the requirements for the post, as detailed in the Job Opening;

b. As an alternative to rescinding the contested decision, the Respondent may elect to pay the Applicant three months of net base salary, pursuant to art. 10.5(a) of the Statute of the Dispute Tribunal;

c. The above shall be paid within 60 days from the date this judgment becomes executable, during which period the US Prime Rate applicable as at that date shall apply. If the sum is not paid within the 60-day period, an additional 5 percent shall be added to the US Prime Rate until the date of payment;

d. The Applicant's request to rescind the MEU's findings in relation to the contested decision is rejected.

(Signed)

Judge Alessandra Greceanu

Dated this 21st day of December 2018

Entered in the Register on this 21st day of December 2018

(Signed)

Nerea Suero Fontecha, Registrar, New York