



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/051/T  
Judgment No.: UNDT/2022/029  
Date: 25 March 2022  
Original: English

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**Before:** Judge Joelle Adda  
**Registry:** New York  
**Registrar:** Nerea Suero Fontecha

PONCE GONZÁLEZ

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

George G. Irving

**Counsel for Respondent:**

Nicole Wynn, ALD/OHR, UN Secretariat

Maureen Munyolo, ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant, a staff member of the United Nations Interim Security Force in Abyei (“UNISFA”), appeals the “denial of full and fair consideration for the P-5 post of Chief, Operations and Resource Manager (“the post”) in UNISFA”.
2. The Respondent replied that the application is without merit.
3. For the reasons set out below, the Tribunal finds that the decision not to select the Applicant for the post was lawful and dismisses the application.

## **Facts**

4. On 14 September 2020, the Applicant applied for the post.
5. On 14 December 2020, the Applicant became aware that a selection decision had been made.
6. On 5 January 2021, the Applicant sought management evaluation of the decision not to select him which was upheld on 17 February 2021.

## **Consideration**

### *Parties’ submissions*

7. The Applicant argues that the Chief Mission Support (“CMS”), who made the selection decision, lacked the required delegated authority from the Head of Mission. He further questions the authenticity of the memorandum dated 24 November 2019 from the Acting Head of Mission to the CMS delegating onto the latter the authority to manage the mission’s human resources and the screenshot of the online portal reflecting the delegation of authority.

8. The Respondent replies that the 12 December 2019 memorandum is authentic, that it bears the UNISFA letterhead and contains a reference number, a stamp and a handwritten note confirming that the CMS received the delegation of authority on 15 December 2019. The subdelegation was subsequently recorded in the online portal as shown in the screenshot submitted into the record.

9. The Applicant further refers to findings by the Dispute Tribunal and Appeals Tribunal concerning separate selection exercises appealed by the Applicant involving the same hiring manager as the one involved in the contested decision under review in this case. The Applicant argues that these findings are binding in the review of this case.

10. The Respondent replies that the selection process under review in this case is not connected to any prior recruitment processes appealed by the Applicant.

11. The Applicant further argues that significant changes were made to the experience requirements for the post which departed from those in the generic job description used in a prior recruitment exercise for the post of Chief, Operations Resource Manager. The Applicant claims that the job description should have remained consistent with the generic job description and that the alteration was introduced to discriminate against him.

12. The Applicant further avers that he meets the minimum and desirable requirements for the post and that his candidacy was not afforded full and fair consideration.

13. The Respondent replies that the Applicant was evaluated against the published criteria and recalls that the job opening listed two desirable criteria: 1) experience implementing UN common system administrative and/or financial policies and practices, and 2) experience planning and administering complex organizational resources in a volatile environment. The Respondent states that the Applicant's personal history profile ("PHP"), which the Hiring Manager considered in its entirety,

did not show operational management experience, according to the Hiring Manager, to demonstrate that he met the desirable criteria of planning and administering complex organizational resources in a volatile environment. Therefore, the Hiring Manager did not shortlist him further.

14. The Applicant further claims that the Administration improperly changed the assessment criteria with respect to previous selection exercises for the same post title and should have used a written assessment exercise followed by a competency-based interview.

15. The Applicant further contests the fact that he was deemed unsuitable for the post given that this assessment was conducted by the same hiring manager who had “unlawfully” disqualified him for another selection process.

16. The Applicant further challenges the fact that the hiring manager who was to execute the decision also acted as Head of Entity who had to make the decision which, in his understanding, is contrary to sec. 2.3 of ST/SGB/2019/2 (Delegation of authority in the administration of the Staff Regulations and Rules and the Financial Regulations and Rules).

17. The Applicant claims that the documents produced by the Respondent do not show that the Applicant’s candidacy was properly reviewed. He refers in particular to the fact that the Respondent states that the Applicant was in the longlist but did not advance further to the shortlist because he did not meet the desirable requirements of operational management experience and planning and administering complex organizational resources. However, the Applicant objects that there is no record that the shortlisted candidates were assessed against those desirable criteria.

18. The Applicant states that according to the job announcement, the post requires experience in operational management composed of finance and budget, human resources, technology, general administration which the Applicant possesses and is shown in his PHP. He argues that the Respondent arbitrarily applied the job criteria.

19. The Applicant further objects to the assessment of one of the shortlisted candidates who, in the Applicant's estimation, lacks significant field experience and therefore, should have been excluded.

20. The Respondent explains that the Applicant was among the 15 candidates initially identified for the next stage of the selection process and released to the hiring manager following the review of their PHPs.

21. Following a comparative analysis, the selected candidate was considered to be more suitable for the position.

*Applicable law*

22. The Appeals Tribunal has consistently held that the Administration has broad discretion in matters of staff selection. In reviewing such decisions, the Dispute Tribunal must assess whether the applicable procedure was applied in a fair, transparent, and non-discriminatory manner. The Dispute Tribunal's role is not to substitute its decision for that of the Administration (see, for instance, *Kinyanjui* 2019-UNAT-932, para. 14).

*Analysis*

Preliminary matter

23. At the outset and with respect to the Applicant's claims concerning findings made by the Dispute and Appeals Tribunals on separate selection cases appealed by the Applicant, the Tribunal does not find from the evidence that there is any link between the selection decision under review in these proceedings and previous selection decisions appealed by the Applicant. The Tribunal is therefore not bound by any judicial finding resulting from other appeals and will adjudicate this matter exclusively on the basis of the evidence submitted by the parties in these proceedings.

Delegation of authority

24. The Tribunal notes that the 12 December 2019 memorandum from the Head of Mission to the CMS concerning the sub-delegation of authority in matters of human resources bears all indicia of authenticity. It further notes that the delegation was accepted by the CMS on 12 December 2019. The delegation of authority was entered in the sub-delegation portal as shown in the screenshot provided by the Respondent.

25. The Tribunal is therefore satisfied that the CMS had the delegated authority on human resources matters, including recruitment of posts up to the D-1 level, pursuant to ST/SGB/2019/2. The Tribunal sees no merit in the Applicant's assertions that the Respondent manipulated the evidence in this respect.

Vacancy announcement

26. The Applicant alleges that the vacancy announcement incorporated significant changes in the experience required with respect to those used in previously advertised vacancy for the roster of Chief Operations Resources Manager.

27. The Applicant claims that these changes were introduced in order to discriminate his candidacy because the selection process "is to be looked as a continuum".

28. The Respondent denies that the selection exercise for the post was part of a continuum, as claimed by the Applicant.

29. The Tribunal finds no evidence of a link between the selection process under review and any prior selection processes. There is also no evidence, other than the Applicant's speculation, that the vacancy announcement for the post was tailored to exclude his candidacy, nor does he explain why the criteria listed in the vacancy announcement would be beyond the Respondent's discretionary power.

Administration's review of the Applicant's candidacy

30. The Tribunal recalls that in *Ross* 2019-UNAT-926 (para. 48), the Appeals Tribunal stated its well-settled jurisprudence that “any irregularity (procedural or substantive) in promotion cases will only give rise to an entitlement to rescission or compensation if the staff member has a significant or foreseeable chance for promotion. The irregularity must be of such a nature that, had it not occurred, the staff member would have had a foreseeable and significant chance for promotion”.

31. In light of this caselaw, to be able to determine if the substantive and procedural defects claimed by the Applicant warrant the rescission of the selection decision or give rise to a right to compensation, the Tribunal will first review the selection of the successful candidate.

32. The vacancy announcement included a special notice that the job was only open to rostered candidates and listed two desirable criteria: (1) experience implementing UN common system administrative and/or financial policies and practices, and (2) experience planning and administering complex organizational resources in volatile environment.

33. The evidence shows that the selected candidate was a rostered candidate who had been encumbering the position of Chief, Finance and Budget Officer, at the P-5 level, since July 2019 in a field mission.

34. The selected candidate's PHP shows that she possessed over 20 years of experience in human resources management, finance, technology or general administration, including in the United Nations as well as managing diverse teams, including several large field missions, where she held the posts of Deputy Chief Finance and Budget and Officer in Charge Finance and Budget, where she led teams of 12 to 30 professionals.

35. In the selection memorandum, the Hiring Manager stated that he considered the selected candidate to be the most suitable candidate for the post “on the basis of her professional experience. [The selected candidate] has over 20 years of professional experience in finance, budgeting, administration, and project management in both the United Nations and the private sector. She also has extensive experience in large field operations in the East/Central Africa regions [...]”.

36. The Tribunal is satisfied that the evidence supports the Hiring Manager’s evaluation of the selected candidate’s candidacy.

37. A review of the Applicant’s own PHP shows that he encumbered the post of Chief Budget and Finance Office at UNISFA since 2016, with six field staff under his supervision. The comparative review shows that this post is at the P-4 level.

38. Prior to this post, the Applicant held several posts in the United Nations field missions, such as Chief Finance and Budget Officer in the United Nations Mission in Kosovo (P-4 level), supervising 10 field staff, Chief Budget Officer in UNISFA (P-4 level), supervising three staff.

39. Prior to that experience, the Applicant held several posts at the P-4 level in different entities in New York since 1996.

40. The Tribunal recalls that its role is not to substitute its own criteria for those of the Administration. Based on the evidence, the Tribunal finds that it was within the Respondent’s discretion to select the successful candidate.

41. Moreover, the Tribunal is not persuaded that the Applicant has shown that he had a significant chance of selection over the selected candidate, absent any of the procedural irregularities that he alleges.

42. The Tribunal therefore finds no grounds to disturb the contested decision.



**Conclusion**

43. In light of the foregoing, the application is rejected.

*(Signed)*

Judge Joelle Adda

Dated this 25<sup>th</sup> day of March 2022

Entered in the Register on this 25<sup>th</sup> day of March 2022

*(Signed)*

Nerea Suero Fontecha, Registrar, New York