



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/102/R1  
Judgment No.: UNDT/2023/084  
Date: 9 August 2023  
Original: English

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**Before:** Judge Francis Belle

**Registry:** Nairobi

**Registrar:** Eric Muli, Officer-in-Charge

MOULANA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**

Cristian Gimenez Corte

**Counsel for the Respondent:**

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Fatuma Mninde-Silungwe, AS/ALD/OHR, UN Secretariat

## **Introduction and background**

1. By an application filed on 23 December 2020, the Applicant is contesting a decision to not select him for the position of Requisitions Officer, advertised through Job Opening No. 136259 (“JO# 136259”). By the same application, the Applicant also challenges the decisions: (i) not to select him for the Temporary Job Opening (“TJO”) No. 95616 FS-6; (ii) to extend the temporary assignment of HH (anonymized for confidentiality); and (iii) to place HH on the roster of pre-approved candidates for FS-6 Requisitions Officer.
2. The Respondent filed a reply on 28 January 2021.
3. On 30 January 2021, the Applicant filed a motion for production of specific documents which was not ruled upon.
4. On 5 October 2021, the Tribunal issued Judgment No. UNDT/2021/115 dismissing the application.
5. The Applicant appealed the said Judgment to the United Nations Appeals Tribunal (“UNAT”) and, on 28 October 2022, UNAT issued Judgment No. 2022-UNAT-1302 in which the appeal was partly granted and Judgment No. UNDT/2021/115 was remanded to the United Nations Dispute Tribunal (“UNDT”) “for proper consideration of [the Applicant’s] motion for production of documents and further proceedings by another Judge”.
6. The Tribunal held a case management discussion (“CMD”) on 23 May 2023.
7. By Order No. 091 (NBI/2023) issued on 24 May 2023, the Tribunal directed the Respondent to disclose the documents sought by the Applicant (paragraph five above) by 30 May 2023. The Applicant was granted leave to file his comments/observations on the disclosed documents by 6 June 2023. The parties complied with the directions in the said Order.

## Facts

8. The uncontested facts herein are reproduced from paragraphs 6 - 12 of Judgment No. UNDT/2021/115 (footnotes omitted).

6. In January 2018, Generic Job Opening No. 88622 for the post of Requisitions Officer, FS-6 was advertised in Inspira for roster purposes (“GJO# 88622”). The Applicant applied for the post on 6 January 2018.

7. Pending the completion of the rostering exercise in relation to GJO# 88622, [United Nations Mission in South Sudan] UNMISS advertised a temporary job opening for the position of Requisitions Officer TJO# 95616. The Applicant also applied for this position. On 11 July 2018, another candidate HH was selected for the position. HH was granted a temporary appointment initially until 3 November 2019 and it was subsequently extended until 2 November 2020.

8. On 27 November 2019, the Applicant was invited for the interview of the GJO# 88622. On 21 January 2020, the Applicant and HH were placed on a roster of preapproved candidates for the FS-6 Requisitions Officer post.

9. From 27 May 2020 to June 2020, Recruit from Roster JO# 136259 for the post of Requisitions Officer was issued in Inspira. The Applicant applied for the position on 3 June 2020.

10. On 12 June 2020, the Human Resources Management Section (“HRMS”), UNMISS, released 16 applications to the hiring manager for review and further assessment. Out of the 16 candidates, the hiring manager recommended three, including the Applicant, to the Head of Mission (“HM”) for selection for the post. The hiring manager proposed HH as the most suitable candidate for the post on account of her excellent experience in acquisition planning and requisitioning and having led a team of requisitioners to successfully implement the Mission’s Demand Acquisition

Plans for both the 2019 and 2020 periods.

11. On 13 July 2020, the HM selected HH for the position and not the Applicant. On 5 August 2020, HRMS informed the Applicant that he had not been selected for the position.

12. On 10 August 2020, the Applicant requested management evaluation of the contested decision. On 29 September 2020, the Management Evaluation Unit informed the Applicant that the Secretary-General had decided to uphold the contested decision.

## **Parties' Submissions**

### ***The Applicant***

9. The following is a summary of the Applicant's contentions.<sup>1</sup>
- a. In not selecting him for JO# 136259, the Mission did not consider the qualifications and experience of HH, the geographic distribution of posts in the United Nations and the Applicant's internal candidacy. Rather, the Mission granted an overarching and predominant consideration to the gender balance criteria, even where there was already 50-50% gender balance in the Acquisitions and Requisitions Section.
  - b. HH was a less qualified candidate, she did not meet the basic criteria for technical training, and she did not have experience in logistics in conflict and post-conflict areas. The Mission also violated section 5.1 of ST/AI/2010/4/Rev.1 (Administration of temporary appointments) because HH held only a G-5, but not a G-6 or G-7-level position. She did not qualify to be selected for an FS-6 level position, which is equivalent to a P-3 level position.
  - c. He was entitled to the position based on his nationality and on the requirement to recruit staff on as wide a geographical basis as possible. Considering that Sri Lanka, his home country, is greatly underrepresented in the United Nations, is a troop and police-contributing country and in implementing the obligation to recruit staff on a "wide geographic basis", he should have been selected. As an internal candidate, with experience in field missions, he ought to have been selected for the post. HH who was selected has no field experience.
  - d. HH was not endorsed by a Central Review Body ("CRB").
  - e. The Respondent failed to comply with the directions in Order No.

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<sup>1</sup> Paragraphs 17-21 of Judgment No. UNDT/2021//115 and the Applicant's response to Order No. 091 (NBI/2023).

091 (NBI/2023).

i. Pursuant to the Order, the Respondent was required to disclose the dates of the submissions of each candidate's application for JO# 136259. However, the Respondent failed to disclose this document but misguidedly disclosed GJO# 88622.

ii. The Respondent failed to disclose a copy of the interview invitation sent to HH but instead submitted a "sort of draft and informal Word "table" without any specification and lacking of any authenticity".

iii. The Respondent failed to disclose the official record stating the endorsement by the CRB of the selected candidate; instead, the Respondent produced an email whereby the CRB merely "informed" the Office of Human Resources ("OHR") of its endorsement. As required by ST/AI/2010/3 (Staff selection system) and ST/SGB/2011/7 (Central Review Bodies), as well as the Rules of Procedure for CRBs, a CRB panel should produce a record (e.g., a memorandum) of its recommendation. This recommendation from the CRB has never been produced.

iv. The Respondent failed to disclose HH's application, including the date of her application and instead merely submitted HH's profile in *Inspira*, which is "completely superfluous" in this instance. Accordingly, there is no evidence on record demonstrating that HH had applied for the position under dispute.

v. The Respondent failed to submit HH's letter of appointment for the fixed-term appointment. The Respondent only submitted the letter for the TJO.

vi. The Respondent failed to submit OHR's recommendation and written justification for the extension of HH's initial TJO appointment beyond the 364 days but instead submitted a standard

form that did not include any justification for the decision to extend HH's term.

vii. The Respondent failed to submit the names of the shortlisted candidates invited to the interviews and dates of the interviews (both for the TJO and the fixed-term appointment) but instead submitted a “sort of draft and informal Word “table” without any specification and lacking of any authenticity”.

viii. The Respondent failed to disclose the composition of the Panel that conducted the selection process for TJO# 95616.

ix. The Respondent failed to submit the Umoja Language Proficiency Examinations (“LPE”) certificate for HH but instead submitted a certificate titled “Expert in Source to Acquire”. The Respondent misguidedly labeled this certificate as “LPE” but submitted a different document.

x. Contrary to the Respondent's submission that some of the requested documents are irrelevant for the determination of issues in this case and that the Applicant's submissions are not receivable *ratione personae* or *ratione materiae*, the Appeals Tribunal has already decided on this matter against the Respondent and at this stage of the judicial proceeding, the only relevant matter is that the Respondent must comply with the Tribunal's Order.

10. The Applicant requests the following reliefs:

- a. Rescission of the contested decision;
- b. An award of compensation equal to the amount of money he would have earned had he been selected for the position;
- c. An award of compensation for the harm suffered because of his non-selection; and

- d. Referral of the case to the Secretary-General for accountability against the Mission leadership.

***The Respondent***

11. The Respondent's case is summarized below.<sup>2</sup>

- a. The Applicant received full and fair consideration. He was found suitable for the position and recommended for selection. However, the Applicant was not found to be the most suitable candidate and there was only one position to fill.
- b. The hiring manager proposed HH for selection as the most suitable candidate since she received a rating of "exceeds the requirements" for the competencies of Planning and Organizing and Client Orientation, while the Applicant received the rating of "successfully meets the requirements" for the same competencies. The hiring manager took into account HH's successful implementation of the Mission Demand Acquisition Plans for both 2019 and 2020, which is one of the position's responsibilities.
- c. The HM's decision to select HH based on the hiring manager's recommendation, his independent review of the personal history profile ("PHP") of the three recommended candidates, and the comparative analysis report ("CAR"), was reasonable. The record shows that the Applicant received full and fair consideration for the position as he was shortlisted, invited for the informal interview, and recommended for the position. The Applicant has not rebutted the presumption of regularity through clear and convincing evidence.
- d. The Applicant has produced no evidence of bias or any procedural breach in the selection process. The Applicant's allegation that HH as a GS-5 staff member holding a continuing appointment was not eligible to apply for the JO is meritless. Section 6.1 of ST/AI/2010/3 provides that staff

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<sup>2</sup> Paragraphs 23 – 31 of Judgment No. UNDT/2021/115 and Respondent's submission pursuant to Order No. 091 (NBI/2023).

members in the General Service (“GS”) category holding a permanent, continuing, or fixed-term appointment may apply for positions in the Field Service category at any level, “irrespective of the grade held in the General Service”. Accordingly, HH was eligible to apply for the position.

e. Contrary to the Applicant’s claim, the CRB endorsed the placement of HH on the roster for FS-6 Requisitions Officer. Both she and the Applicant were placed on the roster after successfully applying for the same GJO.

f. The Applicant was not entitled to preferred consideration for the position. He was not the only internal candidate and would not have been entitled to a preference. First, HH was also an internal candidate. She was a GS-5 staff member holding a continuing appointment. Second, the General Assembly has expressly rejected preferences for internal candidates and requested the Secretary-General to promote opportunities for external candidates. Furthermore, the Dispute Tribunal has held that “a mere availability of suitable internal candidates does not bar the Organization’s seeking the best candidates available internally and externally”.

g. The Applicant did not have a right to be selected due to his nationality. Staff regulation 4.2 provides that “due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible”. The hiring manager considered the geographic distribution of staff in his recommendation; he found that Canada, HH’s country of nationality, and Sri Lanka, the Applicant’s country of nationality, were equally represented. Accordingly, due regard was given to geographic representation in the selection decision. Moreover, the recruitment for the position was not subject to geographic representation. The job opening did not include a special notice about recruitment from underrepresented countries.

h. The HM considered that the Applicant was a national of a troop and police-contributing country. In fact, all the three recommended candidates



for the position were from troop and police-contributing countries, namely Canada and Sri Lanka. Accordingly, due consideration was given to candidates from troop and police-contributing countries in the selection decision.

i. The Respondent denies the Applicant's claim that gender was considered over merit. HH was a more suitable candidate than the Applicant, as evidenced by the comparative analysis report and the selection memorandum. Nevertheless, the hiring manager considered the gender distribution of staff in the section in line with the System Wide Strategy on Gender Parity, which establishes the Organization's priority to achieve gender parity.

12. In his submission pursuant to Order No. 091 (NBI/2023), the Respondent makes the following arguments.

a. The documents relating to the rostering for Requisition Officer, GJO No. 88622 and those relating to the selection and the extension of TJO# 95616 are irrelevant for the determination of issues in this case.

b. The Applicant's claim contesting the decisions to extend HH's temporary assignment and to place HH on the roster of pre-approved candidates for the FS-6 Requisitions Officer for GJO 88622 are not receivable *ratione personae*. The Applicant lacks standing to contest administrative decisions that concern someone else. They do not affect his contractual rights or carry direct legal consequences to him.

c. The Applicant did not seek management evaluation for his non-selection for TJO# 95616, the extension of HH's temporary appointment on the TJO and the decision to place HH on the roster as required by staff rule 11.2 (c). As such, these claims are not receivable *ratione materiae*. The Tribunal lacks jurisdiction to determine matters that have not been submitted for management evaluation.

d. The Applicant's request for UNMISS' response to the management

evaluation request is unsubstantiated and a fishing expedition. First, the Applicant has not specified any issue relating to the contested decision that can be clarified from the Mission's submission to the Management Evaluation Unit ("MEU"). A party seeking disclosure must provide a degree of specificity to their request. Second, the response to management evaluation is irrelevant and should be disregarded. Third, the review of the management evaluation is not subject to the Dispute Tribunal's jurisdiction.

13. In view of the foregoing, the Respondent requests the Tribunal to dismiss the application.

### **Considerations**

14. Pursuant to arts. 16.1 and 19.1 of the UNDT Rules of Procedure, the Tribunal reviewed the parties' submissions and took the view that the relevant facts in the present case are clear and there is no need to conduct a hearing on the merits as the matter can be determined based on the documents on record.

15. The submissions of the parties shall be assessed, considering, the nature of a review by the Tribunal taking special note of the fact that it is not the Tribunal's role to substitute its view for that of the Administration.<sup>3</sup> In a selection case the Tribunal's task is to determine whether the Applicant had a full and fair opportunity to be selected for the job which was advertised and for which another candidate was selected. The Tribunal's assessment would therefore involve scrutiny of the entire process in which the Applicant was involved and the result of that process in which another candidate was chosen for the position advertised.

16. The Tribunal must determine whether the process was lawful, fair and in no way perverse nor unreasonable.<sup>4</sup> It is in this context that the Tribunal intends to assess the Applicant's submissions in relation to the appointments which were not subjected to management evaluation.

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<sup>3</sup> *Ljungdell* 2012-UNAT-265, para. 30, citing to *Schook* 2012-UNAT-216, quoting *Sanwidi* 2010-UNAT-084.

<sup>4</sup> *Sanwidi* 2010-UNAT-084, para. 40.

17. The Applicant made assertions that a number of the job openings were unnecessary and unlawful and that the candidate, HH, should never have been appointed consequently to the TJO nor the subsequent fixed-term appointment in the circumstances. The Tribunal treats these assertions as largely rhetorical since there had been no management evaluation of the decisions made in relation to the various job openings which were advertised in relation to the acquisition and requisition jobs namely, GJO# 88622 and TJO# 95616. The challenges to these job offers were therefore, part of the factual background upon which the Applicant sought to rely to establish his reasons for arguing that the appointment made pursuant to JO# 136259 was unlawful.

18. In relation to the argument that HH should never have been appointed to the advertised position because she was not qualified as a GS employee for a field service position in the United Nations, it is noted that section 6.1 of ST/A1/2010/3, applicable at the relevant time, states:

Staff members holding a permanent, continuing, probationary, or fixed-term appointment shall not be eligible to apply for positions more than one level higher than their personal grade. Staff members in the General Service and related categories holding a permanent, continuing or fixed-term appointment may apply for positions in the Field Service category at any level, irrespective of the grade held in the General Service and related categories, provided they meet the requirements of the post.

19. In relation to the Applicant's complaint that the series of job openings was unnecessary so close to each other. The applicable part of the rules at section 4.3 states,

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

20. The Applicant also raises the issue that no CRB was involved in ensuring that the advertised job opening was approved by the proper managerial officials. ST/AI/2010/3, under section 1 of definitions, stipulates,

(d) *Central Review bodies*: joint bodies established under staff rule 4.15 which are to ensure that candidates have been evaluated on the basis of approved evaluation criteria and that the applicable procedures have been followed in the process of appointing, selecting and promoting staff up to and including the D-1 level, except for advice on appointment of candidates having successfully passed a competitive examination in accordance with staff rule 4.16. Field central review bodies are established for peacekeeping operations and special political missions for the same purpose;

21. The Applicant also criticizes the temporary appointment of HH pursuant to TJO# 95616. However, it is not a hard and fast rule that a temporary appointment could not be used in this case simply because it was extended beyond the expected one-year mark. In *Ponce Gonzales*<sup>5</sup>, UNAT stated,

However, the Secretary-General rightly asserts that Section 2.2 (d) of ST/AI/2010/4 stipulates, on the issue of use and duration of temporary appointments, that temporary appointments may be granted for specific short-term requirements that are expected to last for less than one year at the time of the staff member's appointment such as to temporarily fill a vacant position pending the finalisation of the regular selection process. There was thus no irregularity in the fact that the Administration had maintained two recruitment exercises for the short period of a few days.

22. UNAT opined that as long as the TJO had no impact on the Applicant's chances of selection, then an irregularity could not be relied upon as a basis for the selection process to be declared unlawful.

#### *The Discovery*

23. The Applicant had sought for the disclosure of a number of documents from the Respondent. Some of the documents were not disclosed. The Respondent submitted that the documents which were not disclosed related to the rostering for the post of Requisition Officer, GJO# 88622 (R/11-R15) and those relating to the

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<sup>5</sup> 2023-UNAT-1344, para. 58.

selection in TJO# 95616 (R/16 - R/18 and R/2) are irrelevant for the determination of the issues in this case.

24. The Tribunal agrees that the Applicant cannot base his argument against the selection process in JO# 136259 by questioning the process in other matters which do not affect his case. However, it would have been preferable for the Respondent to make his objection at the time of the CMD, when Order No. 091 (NBI/2023) was considered, so that the Applicant would have been aware of the objections and that no disclosure would take place.

25. The Applicant has chosen a series of decisions to object to but there is only one decision which is before the Tribunal for adjudication. The objection to the disclosures in the circumstances is upheld since they cannot have an impact on the fairness of the selection decision in this matter.

### **Conclusion**

26. When judging the validity of the Secretary General's exercises of discretion in administrative matters the Dispute Tribunal determines if the decision is legal, rational, procedurally correct and proportionate. The Dispute Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered and examine whether the decision is absurd or perverse.<sup>6</sup>

27. However, it is not the role of the Dispute Tribunal to consider correctness of the Secretary-General's choice among the various courses of action open to him. The selection decisions are also veiled with a cloak of regularity, which has not been successfully challenged. The Applicant did question why he was not informed of the outcome of the selection decision within 14 days of the decision. The Applicant called to find out what the outcome of the selection process was and was told that someone else was appointed.

28. The procedure spelt out in ST/AI/2010/3 was not followed. However, the Tribunal is unable to see how this irregularity could have had any impact on the

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<sup>6</sup> *Sanwidi, op. cit.*

selection process.

29. In the circumstances the Application fails to establish that the selection of HH was unlawful.

**Decision**

30. The application is denied. There is no evidence to support an allegation that the selection process of HH was so irregular that it had any impact on the non-selection of the Applicant.

31. The Applicant is not granted any remedy.

*(Signed)*

Judge Francis Belle

Dated this 9<sup>th</sup> day of August 2023

Entered in the Register on this 9<sup>th</sup> day of August 2023

*(Signed)*

Eric Muli, Officer-in-Charge, Nairobi