



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: Liliana López Bello

OPPAL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nisha Patel, AS/ALD/OHR, UN Secretariat

Nasuru Magomu, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a Chief Budget and Finance Officer with the United Nations Assistance Mission in Afghanistan (“UNAMA”), contests the decision not to select him for the position of Chief Finance and Budget Officer, at the P-4 level, with the United Nations Interim Security Force for Abyei (“UNISFA”).
2. For the reasons set forth below, the Tribunal decides to reject the application.

Facts and procedural history

3. Between 26 December 2022 and 22 January 2023, UNISFA advertised the position of Finance and Budget Officer (Chief of Unit) through the Recruit from Roster (“RfR”) Job Opening No. 198446.
4. On 2 January 2023, the Applicant applied for the position as a rostered candidate.
5. Upon closure of the posting period, the hiring manager reviewed a total of 28 applications. After the review exercise, four applicants, including the Applicant were considered to have met all required and desirable criteria.
6. On 4 March 2023, the hiring manager recommended to the Chief of Mission Support (“CMS”) a female candidate for selection, and listed the remaining three recommended candidates as alternates, including the Applicant, another female candidate and a third candidate.
7. On 7 March 2023, the Acting Head of Mission endorsed the recruitment process and selected the recommended female candidate.
8. On 16 August 2023, the Applicant requested management evaluation of the contested decision. Allegedly, he learned that his candidacy for the position was unsuccessful on 7 August 2023 after checking the status of his job application in Inspira.
9. On 16 November 2023, the Management Evaluation Unit (“MEU”) concluded the management evaluation noting, *inter alia*, that UNISFA had made

some errors in the selection process. MEU further concluded that the selected candidate was not eligible for selection under the required criteria. However, since the selected candidate was already on board and without fault for the selection error, MEU recommended, instead of rescission of the selection decision, that a new selection exercise for the post be undertaken in line with the expiration of the selected candidate's one-year appointment.

10. Based on the MEU recommendation, the Under-Secretary-General for Management Strategy, Policy and Compliance ("USG/DMSPC") decided to require UNISFA to redo the selection exercise for the post and not to grant the Applicant any compensation for loss of opportunity.

11. On 31 December 2023, the Applicant filed the present application.

12. On 1 February 2024, the Respondent filed his reply.

13. On 14 April 2024, pursuant to Order No. 26 (GVA/2024), the Applicant filed a rejoinder to the Respondent's reply, mainly addressing the issue of financial loss that he incurred due to the contested decision.

14. By Order No. 15 (GVA/2025) of 24 February 2025, the Tribunal instructed the parties to file their closing submissions, which they did on 24 February 2025 and 7 March 2025, respectively.

15. Regarding the remedies sought, the Respondent submits that the Applicant has no right to financial compensation because he suffered no economic loss due to his non-selection. The JO was for a position at the same P-4 level that the Applicant currently holds.

16. Further, the non-payment of settling-in, relocation, and mobility does not qualify as economic loss. The United Nations Appeals Tribunal ("UNAT" or "Appeals Tribunal") decided in *Alam* 2022-UNAT-1214, para. 30, that these entitlements and benefits are designed to cover the actual costs of relocation and living in a certain duty station. They are not meant to provide additional

remuneration or salary to staff members for the post and cannot be considered as another type of compensation.

17. The Respondent further submits that the Applicant has not lost the opportunity to compete for the position. UNISFA has been instructed to conduct a new recruitment exercise in which the Applicant can still participate.

Consideration

Legal framework

18. In reviewing administrative decisions regarding a staff selection decision, the Tribunal's role is well-settled in the jurisprudence. In *Lemonnier* 2017-UNAT-762, the Appeals Tribunal defined:

31. Judicial review of a staff selection decision is not for the purpose of substituting the Dispute Tribunal's selection decision for that of the Administration. Rather ... the Dispute Tribunal's role in reviewing an administrative decision regarding an appointment is to examine: "(1) whether the procedure laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration". The role of the UNDT is to "assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner".

19. The Secretary-General has broad discretion in making decisions regarding promotions and appointments and, in reviewing such decisions, it is not the role of the Tribunal to substitute its own decision for that of the Administration. Its role is "to assess whether the applicable rules and regulations have been applied and whether they were applied in a fair, transparent and non-discriminatory manner" (*Lemonnier*, paras. 30-31).

20. The Applicant's primary submissions are that:

- a. The MEU has already found the selection process for the post to be unlawful. He thus argues that due to this unlawful recruitment exercise, he lost the opportunity to broaden his experience in the United Nations and to bring his skills, experience, and knowledge to the position.

b. He was not notified of the decision not to select him within the specified 14 days in violation of sec. 10.1 of ST/AI/2010/3/Rev.1 (Staff selection system).

21. The Tribunal notes that the MEU indeed determined that there were irregularities in the selection process of JO No.198446 and recommended that the selection exercise be redone. The USG/DMSPC then directed UNISFA to conduct a new recruitment exercise for the position with due regard to the selected candidate's right to complete her one-year appointment.

22. Therefore, it is not necessary for the Tribunal to determine whether the procedure laid down in the Staff Regulations and Rules was followed, or whether the staff member was given fair and adequate consideration.

23. To determine whether the Applicant is entitled to any remedies, the Tribunal recalls that in the case of *Mohamed* UNDT/2019/088, it was decided that the Applicant in a selection case would have to establish not only a procedural error but also that he/she would have had a realistic chance of being appointed to the post (*Rao* UNDT/2022/092, para. 43).

24. As the Respondent correctly indicates, where the alleged procedural irregularity does not impact an applicant's chance of selection, the irregularity is irrelevant (*Charles* 2014-UNAT-477, paras. 24-25).

25. In view of the foregoing, and having reviewed the parties' submissions and the evidence on record, the Tribunal defines the issues to be examined in the present case as follows:

- i. Whether the Applicant would have had a realistic chance of being selected; and
- ii. Whether the Applicant suffered any financial loss due to the contested decision.

Whether the Applicant would have had a realistic chance of being selected

26. The Applicant does not contest that a review exercise was undertaken upon the closure of the posting period. After the review exercise, four applicants, including the Applicant, were considered to have met all required and desirable criteria.

27. Rather, the Applicant submits that he lost the opportunity to be selected due to the flawed selection process. He further alleges that he was not notified of the decision not to select him within the specified 14 days, which is a procedural violation of sec. 10.1 of ST/AI/2010/3/Rev.1. He states that he only became aware of his non-selection when he checked the status of his application in Inspira on 7 August 2023.

28. In response, the Respondent submits that the Applicant has not provided evidence that the procedural error identified during the management evaluation resulted in his non-selection. Or that he suffered financial loss because of it.

29. Furthermore, the Respondent recalls that, pursuant to sec. 2.1 of ST/AI/2020/5 (Temporary special measures for the achievement of gender parity), gender parity for an entity is considered within a 47 to 53 percent margin. At the time of the selection, UNISFA was short of that goal as it had only 21% women at the P-4 level. Given the gender disparity in UNISFA at the P-4 level, and the fact that another female candidate had also been shortlisted and included in the recommended list of alternates alongside the Applicant, the Mission would have been required to apply the temporary special measures to achieve gender parity and would have had to select said female candidate.

30. The Tribunal disagrees with the Respondent's arguments.

31. The Tribunal finds that to argue that the Applicant had no chance to be selected for the position, the Respondent referred to hypothetical scenarios, for example, by stating "would have been" or "would have had to" select the other female candidate. In fact, the hypothetical condition is simply a speculation.

32. The record shows that after the successful candidate was selected, the selection process was completed. Thus, when the selected candidate was not eligible for selection under the required criteria, the Applicant was no longer considered from the pool of three candidates who had met all required and desirable criteria.

33. The Respondent's self-created hypothetical scenario that the Mission would have been required to achieve gender balance and would have had to select another female from the three-candidate pool may or may not happen. In the Tribunal's view, there would be plenty of possible scenarios for the female candidate not to take the offer for the post, for example, declining the offer or being sick.

34. Accordingly, the Tribunal finds that, excluding the unlawfully selected candidate, the Applicant would have had a realistic chance of selection. The jurisprudence establishes that where the candidate pool is relatively small, and variation in the quality of candidates consequently reduced, compensation for loss of a "chance" of promotion may sometimes be made on a percentage basis. (*Hastings* 2011-UNAT-109, para. 2) Thus, the Tribunal determines that the Applicant had a one-third chance of being selected for the position.

35. As for the Applicant's argument that he was not notified of the decision not to select him within the specified 14 days in violation of sec. 10.1 of ST/AI/2010/3/Rev.1, the Tribunal agrees with the Respondent's argument that it did not affect the Applicant's non-selection.

36. In *Hassan* UNDT/2024/099, para. 47, the Tribunal determined that "for an unsuccessful candidate, it is essential to be informed in a timely manner of the selection decision to preserve his right to challenge an unfavourable decision." However, in the present case, this procedural deficiency did not affect the Applicant's right to request management evaluation and file the instant case.

37. Therefore, the Tribunal finds that the Applicant established not only a procedural error in the selection process but also that he would have had a realistic chance of being selected.

Whether the Applicant suffered any financial loss due to the contested decision

38. The Appeals Tribunal has held that the Dispute Tribunal must follow a principled approach to determine compensation for loss of opportunity on a case-by-case basis (*Solanki* 2010-UNAT-044, para. 20).

39. It is settled law that the violation of the Applicant's rights does not, of itself, entitle him or her to an award of damages. The Appeals Tribunal has consistently held that not every violation of a staff member's right will give rise to an award of compensation and that a staff member is entitled to compensation only where the staff member has suffered damage as a result of the violation (*Gnassou* 2018-UNAT-865, para. 24; *Nwuke* 2016-UNAT-697, para. 26).

40. The Tribunal notices that the Applicant did not seek rescission of the contested decision but only requests financial compensation for the loss of opportunity. As a result, the Tribunal will not consider rescission of the contested decision as a remedy.

41. To determine the Applicant's financial loss in the instant case, it is necessary for the Tribunal to examine his claims. The Applicant, in his application, initially claims "financial compensation for all losses which [he] would have received if appointed" as he suffered financial loss comprising of the "settling-in and relocation funds as well as loss in mobility funds". The Applicant further clarifies in his rejoinder and closing submission that he only submits a claim for loss of mobility allowance totaling USD41,875.20 (USD697.92 per month during a period of five years) due to the rejection of his loss of settling-in grant.

42. In this respect, staff rule 3.11 reads:

Mobility incentive

(a) The purpose of the mobility incentive is to encourage movement of staff members to duty stations classified as A to E in accordance with the classification of duty stations established by the International Civil Service Commission.

(b) Staff members in the Professional and higher categories, in the Field Service category, and internationally recruited staff in the

General Service category pursuant to staff rule 4.5 (c) may be paid a non-pensionable mobility incentive provided that they:

...

(ii) Are on an assignment of one year or more to a new duty station classified as A to E by the International Civil Service Commission[.]

43. Sec. 1.3 of ST/AI/2016/6 (Administrative instruction on Mobility and hardship scheme) provides:

Eligibility for the mobility incentive under this scheme shall require an appointment to a duty station, or a reassignment to a new duty station, for a period of one year or longer, normally giving rise to a settling-in grant under staff rule 7.14[.]

44. The Appeals Tribunal held that in *Alam* 2022-UNAT-1214, para. 30:

The Appellant also argues that the Dispute Tribunal failed to consider other losses including grants, difference in post adjustments, and extra costs he incurred as a result of staying in CAR and not relocating to New York. However, we find these entitlements and benefits, including rental subsidy, are designed to cover the actual costs of relocation and living in a certain duty station; they are not intended to provide additional remuneration or salary to staff members for the post. As such, these cannot be regarded as considerations in determining in lieu compensation.

45. Although the Applicant's alleged mobility allowance was not individually listed in the foregoing UNAT ruling, the Tribunal is of the view that entitlements and benefits related to relocation, including mobility incentive/allowance, are not intended to provide additional remuneration or salary to staff members for the post but designed to cover the actual costs of relocation and living in a particular duty station.

46. While the Tribunal understands that the purpose of the mobility incentive is to encourage movement of internationally recruited staff to field duty stations in accordance with organizational needs¹, and the Applicant wishes to contribute his

¹ See "A guide to the mobility and hardship scheme and related arrangements", <https://icsc.un.org/Resources/HRPD/Booklets/MOBILITYENG.pdf>.

skills, experience and knowledge to the new post through mobility, it remains that eligibility for the mobility incentive requires an appointment or a reassignment to a new duty station as per staff rule 3.11 and sec. 1.3 of ST/AI/2016/6.

47. Therefore, the Tribunal agrees with the Respondent that the non-payment of the Applicant's mobility allowance is not an economic loss as the Applicant was not relocated as a result of this selection process.

48. The Tribunal also notes that the Applicant suffered no additional economic loss as the contested position was at the same P-4 level at which the Applicant currently serves. Furthermore, the Applicant provides no evidence of any financial loss resulting from the delayed communication on the outcome of the selection process.

49. Nevertheless, the Tribunal recalls that the USG/DMSPC has instructed UNISFA to conduct a new recruitment exercise. Therefore, with the new recruitment exercise, the Applicant still has an opportunity to compete for the position.

50. Accordingly, the Tribunal concludes that although the Applicant has lost a chance of selection, he suffered no actual prejudice in the special circumstances of this case and, as a result, the remedies he seeks are denied.

Conclusion

51. In view of the foregoing, the Tribunal DECIDES to deny the application in its entirety.

(Signed)

Judge Sun Xiangzhuang

Dated this 29th day of April 2025

Entered in the Register on this 29th day of April 2025

(Signed)

Liliana López Bello, Registrar, Geneva