



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/026

Judgment No.: UNDT/2025/023

Date: 29 May 2025

Original: English

Before: Judge Francesco Buffa

Registry: Geneva

Registrar: Liliana López Bello

NOVO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alister Cumming, UNICEF

Rosangela Adamo, UNICEF

Introduction

1. The Applicant, an Emergency Coordinator with the United Nations Children's Fund ("UNICEF") in the Bosnia and Herzegovina Country Office ("BiH CO"), filed an application contesting his non-selection for the position of Health and Nutrition Specialist, UNICEF, advertised in Inspira through Job Opening No. 82841 ("the JO").

2. For the reasons set out below, the Tribunal decides to partially grant the application.

Facts and Procedural History

3. The following facts are undisputed and result from the records.

4. The Applicant applied for the JO No. 82841 on 2 September 2023. He was shortlisted and invited to a written test. Following the outcome of the test, the Applicant was invited for an interview on 30 October 2023. The Panel unanimously assessed the Applicant as not suitable for the position.

5. On 26 January 2024, the Applicant was informed of his non-selection.

6. On 18 March 2024, the Applicant requested management evaluation of the decision not to select him for the JO No. 82841.

7. By response dated 5 April 2024, the Deputy Executive Director, Management, UNICEF, decided that the contested decision was fully consistent with the regulatory framework concerning staff selection, and that the Applicant received full and fair consideration during the selection process.

8. On 1 July 2024, the Applicant filed the instant application.

9. On 31 July 2024, the Respondent filed his reply challenging, *inter alia*, the receivability of the application.

10. By Order No. 124 (GVA/2024) of 1 October 2024, the Tribunal instructed the Applicant to file a rejoinder and the parties to consider resolving this case amicably.

11. On 10 October 2024, the parties filed a joint submission informing the Tribunal that they were unable to amicably resolve the matter and requesting that the litigation proceed.

12. On 13 October 2024, the Applicant filed his rejoinder.

13. On 1 February 2025, this case was assigned to the undersigned Judge.

14. By Order No. 6 (GVA/2025) of 11 February 2025, the Tribunal instructed the Applicant and the Respondent to file their respective closing submissions, which they did on 18 and 25 February 2025, respectively.

Submission by the Parties

15. The Applicant was one of three candidates interviewed for the position of Health and Nutrition Specialist, UNICEF, under JO No.82841.

16. The Applicant claims that he met all the requirements for the position, and that the interview panel did not have the proper expertise and was not competent to assess the suitability of candidates for the position. He further claims that the recommended candidate did not meet one of the minimum requirements of the JO, namely, to have “five years of professional work experience at the national level in planning, programming, implementation monitoring and evaluation of technical cooperation programmes related to Health and Nutrition”.

17. By contrast, the Respondent argues that the application is not receivable because the Applicant is not contesting his non-selection for the position, but rather the selection of the other candidate. However, the Applicant does not have legal standing to challenge the outcome of a selection process. He can only challenge an administrative decision that has an impact on his own terms of employment or that carries direct legal consequences.

18. On the merits, the Respondent contends that the Applicant received full and fair consideration for the position and was deemed not suitable due to his performance at the competency-based and technical interview. The Tribunal is not competent to determine the correctness of said decision, but even if it were, the Applicant did not provide any evidence to support his claim that the interview panel was not competent to assess the suitability of the candidates.

19. Furthermore, the fact that the Applicant received the highest test score in the written test does not mean he was suitable for the position. The written assessment was administered to identify candidates eligible for the interview, and the suitability assessment was a combination of evaluation methods, including competency-based, technical, and motivational questions. The interview panel unanimously decided that the Applicant was not suitable for the position due to the level of technical knowledge demonstrated, lack of the required competencies, and his overall performance during the interview.

20. Lastly, contrary to the Applicant's assertion, the successful candidate met the minimum requirement of relevant working experience.

21. Having identified above the most significant parts of the parties' submissions, the Tribunal must first consider the issue of receivability raised by the Respondent.

Consideration

Receivability

22. Article 2.1(a) of the UNDT Statute provides, *inter alia*, that the Dispute Tribunal "shall be competent to hear and pass judgement on an application" that appeals "an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment".

23. Article 8.1(a) of the UNDT Statute provides, *inter alia*, that an application shall be receivable if the Dispute Tribunal is competent to hear and pass judgment on the application under art. 2 of its Statute.

24. In this case, the Respondent claims that the application is not receivable to the extent that the Applicant challenges the selection of another candidate.

25. The Tribunal partially agrees with the Respondent, noting that the selected candidate is not part of this judicial proceedings, which accordingly cannot affect him/her.

26. Thus, the Tribunal cannot make a decision with respect to the selection of another candidate for the JO No. 82841.

27. Notwithstanding, the Tribunal highlights that the Appeals Tribunal has held that it is the role of the Dispute Tribunal to adequately interpret and comprehend the application submitted by the moving party, as the judgment must necessarily refer to the scope of the parties' contentions. Thus, the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review (*Fasanella* 2017-UNAT-765, para. 20).

28. In this sense, the Tribunal notes that in his application, the Applicant is also challenging his own non-selection for the JO No. 82841 due to multiple alleged irregularities in the selection process. He claims that he was not given full and fair consideration, and that the competency-based and technical interview was biased due to a lack of expertise in the interview panel.

29. As to the first claim, being a competition among different candidates, each candidate has the legal interest to stress any irregularity concerning other candidates, in order to empower comparatively his/her position and profit from the selection process, showing the unfair consideration of his/her position and the unlawfulness of the Administration's choice of the best candidate.

30. Similarly, the claim about the interview panel's lack of expertise is strictly connected to the assessment of the Applicant's position in the selection, and it is receivable.

31. Therefore, the Tribunal determines that the application is receivable regarding the decision not to select the Applicant for the post of Health and Nutrition Specialist, UNICEF, under JO No. 82841.

Applicable law

32. Staff Regulation 4.2 provides that:

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. [...]

33. Staff Regulation 4.3 provides in relevant part:

In accordance with the principles of the Charter, selection of staff members shall be made [...] on a competitive basis.

34. CF/AI/2016-005, *Staff Selection*, provides in relevant part:

3.7 There are two types of vacancy announcement: (i) a specific vacancy announcement which invites applications for specific posts; and (ii) a generic vacancy announcement (GVA) which is issued in order to build and maintain talent groups. [...]

3.8 Vacancy announcements specify, in addition to the description of the job and the deadline for application the qualifications, skills and competencies that are required for the post, which will be used for assessing eligible candidates. [...]

3.9 Hiring managers in consultation with HR may decide to either advertise specific posts limited to a specific audience (e.g. only UN/UNICEF staff) and/or advertise more widely. However, only UNICEF staff members holding a permanent, continuing or fixed-term appointment will be considered internal candidates.

[...]

5.4 Shortlisting is based on criteria reflected in the VA, such as required qualifications, skills, knowledge and experience for the type and level of appointment. [...]

5.5 The selection focal point will be responsible for reviewing the content of the applicants' personal profile (such as academics or professional experience), as well as the preparation of shortlist in collaboration with the hiring manager.

5.6 To ensure a fair, transparent and competitive process, normally at least three candidates should be assessed for the same vacancy and the assessment shall follow the same structure for each evaluated candidate.

5.7 A combination of evaluation methods and techniques may be used (e.g. written tests, competency-based and/or technical interviews, presentations). Passing criteria of each assessment shall be assigned in advance (e.g. relative weighting, minimum passing marks, etc).

5.8 The hiring manager establishes a selection panel that includes members of both genders and from different geographic backgrounds to the extent possible to assist him/her in identifying the most qualified and suitable candidate(s), and a designated chair for the panel. Such panel should be composed of a minimum of three UNICEF or UN staff members, of which, one should be HR/operations staff member.

Standard of review

35. It is well-established that in matters of staff selection the Secretary-General has broad discretion, and that the hiring manager is in the best position to assess whether the requirements of a job opening, including work experience requirements, have been met.

36. In reviewing such decisions, it is not the role of the Tribunal to substitute its own decision for that of the Administration (*Lemonnier* 2017-UNAT-762, paras.30-31). However, the Tribunal can assess whether the applicable Regulations and Rules have been applied and whether they have been applied in a fair, transparent, and non-discriminatory manner.

37. The Tribunal's role is limited to examine (i) whether the procedures as laid down in the Staff Regulations and Rules were followed; and (ii) whether the staff member was given fair and adequate consideration (*Abbassi* 2011-UNAT-110, para. 23; *Majbri* 2012-UNAT-200, para. 35; *Ljungdell* 2012-UNAT-265, para. 30).

38. The Tribunal recalls that in selection and appointment matters, there is a presumption of regularity concerning the performance of official acts (*Krioutchkov* 2021-UNAT-1103, para. 29; *Rolland* 2011-UNAT-122, para. 26).

Accordingly, in a recruitment procedure, if the Administration minimally shows that a staff member's candidature was given full and fair consideration, the burden of proof shifts to the candidate, who must then be able to show through clear and convincing evidence to have been denied a fair chance of promotion (*Flavio Mirella* 2023-UNAT-1334, para. 61).

39. 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:

- a. Whether the applicable procedures were properly followed;
- b. Whether the Applicant was given full and fair consideration; and
- c. Whether the decision was tainted by bias or extraneous factors.

Whether the applicable procedures were properly followed

40. The Applicant alleges that, in the recruitment process for the position in dispute, the selected candidate did not meet the eligible requirement of working experience at the national level (*i.e.*, five years of professional work experience at the national level in planning, programming, implementation monitoring and evaluation of technical cooperation programmes related to Health and Nutrition). He submits that the selected candidate's working experience with the Republika Srpska cannot be considered experience at the national level; and stresses that the recruitment process was flawed because a candidate who does not meet the requirements stated in the vacancy announcement was selected. The Applicant, who allegedly meets all the requirements, was assessed as not suitable by the selection panel and not recommended for the position.

41. The Tribunal notes that BiH is a country with a decentralized system of administration, and that the Republika Srpska is only one part of the country that covers less than half of the territory of BiH. Furthermore, according to the Constitution of BiH, Republika Srpska it is a sub-national level.

42. Having the experience of working in one entity with a specific health system is not enough to be able to work in the territory of the Federation of BiH, which has 10 cantons and the district of Brčko, each of them with an independent health system. These separate and distinct health systems are completely different from the health system in Republika Srpska.

43. Experience in the Republika Srpska Public Health Institute and the Republika Srpska Ministry of Health and Social Welfare does not meet the working experience requirement at the national level because health systems in the Federation of BiH and the Brčko District are completely different from those in the Republika Srpska, which is just one part of Bosnia and Herzegovina.

44. In this context, the Tribunal notes that the selected candidate does not meet the eligible requirement of working experience at the national level, that is, five years of professional work experience at the national level.

45. As already mentioned, being part of the same selection process, each candidate has the legal interest to stress any irregularity concerning other candidates, to empower comparatively his/her position and profit from the selection process, showing the unfair consideration of his/her position and the unlawfulness of the Administration's choice of the best candidate.

46. Indeed, by misapplying the eligibility requirements, UNICEF has not provided the Applicant a fair competitive process.

47. The Applicant further recalls that he was holding a position of Emergency Coordinator in UNICEF CO BiH and that the member presiding the selection panel at stake was his first supervisor. He adds that the latter was influential of the other members of the Panel for different reasons; and that the members of the Selection Panel were not competent to assess the suitability of candidates for the position.

48. The Tribunal notes that the Applicant raised this claim only in his rejoinder, and not in the application, and therefore, that the claim is not receivable.

49. As far as the Tribunal has the task to assess, even *ex officio*, the lawfulness of the procedure followed by the Administration, the Tribunal noted on this matter that there was no infringement of the rules concerning the composition of the Panel. Moreover, the fact that one member of the Selection Panel was the Applicant's supervisor did not cause, in this case, any conflict of interest able to affect the procedure.

Whether the Applicant was given full and fair consideration

50. The Tribunal stresses that, notwithstanding the aforementioned irregularities concerning the selected candidate, the Applicant does not have the right to "win" the selection process, as he had to undergo the assessment of the additional requirements foreseen in the procedure.

51. The selection report shows that the Applicant did not demonstrate the required level of strategic thinking, a competency required for this position. In particular, it shows that the Applicant failed in the competencies of nurturing, leading, managing people, and thinking strategically. According to the Panel, the Applicant's response to building and maintaining partnerships and self-awareness/ethical awareness competencies showed very limited proficiency. The Panel also identified gaps in the Applicant's technical knowledge and expertise.

52. As a result, the Panel unanimously assessed the Applicant as not suitable for the position, considering the level of technical knowledge demonstrated, lack of required competencies, and his overall performance during the interview.

53. Therefore, in accordance with art. 101.3 of the Charter and staff regulation 4.2, the Applicant was not recommended for the position.

54. In this situation, the Dispute Tribunal is not responsible for determining the correctness of that decision. It can only assess whether the Applicant was given full and fair consideration, which, in its view, he was with reference to his specific qualities.

55. As a result, despite some flaws in the recruitment process, the Applicant has no right to the position.

Whether the decision was tainted by bias or extraneous factors

56. The Tribunal finds the Applicant's claims of bias or extraneous factors unsubstantiated. He simply recalls his supervisor's prominent position on the Panel. Still, he does not refer to any specific fact that would render the supervisor's role improper. His claim is therefore without merit.

Remedies

57. The Tribunal notes that in his application, the Applicant was only seeking that the vacancy for the position Health and Nutrition Specialist (NO-3) UNICEF Sarajevo, BiH, JO No. 82841 be cancelled and that a new one be announced because the selected candidate for the position does not meet the requirements regarding work experience. In his final submissions, the Applicant asked this Tribunal to:

- (i) Find the contested selection decision unlawful and order its annulment;
- (ii) Direct UNICEF to cancel the current vacancy decision and re-advertise the position in strict adherence to the eligibility criteria; and
- (iii) Grant any further relief deemed just and proper.

58. Having this in mind, the Tribunal already highlighted on the one hand that no decision could impact the position of the selected candidate (who remained third and extraneous to this judicial proceedings) and, on the other hand, that to the extent the Applicant requests to be selected for the position, such remedy is not available, given that the Dispute Tribunal cannot assess the Applicant as suitable and direct his selection, for the reason already expressed in paras. 48 and 54 respectively.

59. Furthermore, this relief was requested for the first time in the Applicant's final submission and impermissibly expanded the scope of the relief sought in his application.

60. In conclusion, the Tribunal can only assess that the procedure was partially flawed for the reason above. The Applicant, who didn't activate urgently in order to interfere in the outcome of the challenged procedure, has now only an interest to ascertain the said past violation in connection to other different possible selection exercises, without any further remedy.

Conclusion

61. In view of the foregoing, the Tribunal DECIDES that the application is granted in part.

(Signed)

Judge Francesco Buffa

Dated this 29th day of May 2025

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

(Signed)

Liliana López Bello, Registrar, Geneva