



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/030

Judgment No.: UNDT/2025/024

Date: 29 May 2025

Original: English

Before: Judge Francesco Buffa

Registry: Geneva

Registrar: Liliana López Bello

PIGNATELLI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Nisha Patel, AS/ALD/OHR/UN Secretariat

Introduction

1. The Applicant, a Team Assistant at the G 4 level in the Administration and Programme Management Unit, United Nations Global Service Centre (“UNGSC”), in Brindisi, Italy, filed an application contesting the decision not to grant him a continuing appointment (“CA”) in the 2016-2021 Continuing Appointment review exercise.

2. For the reasons set forth below, the Tribunal decides to reject the application.

Facts

3. On 13 March 2006, the Applicant was recruited to a G-3 position with the United Nations Logistics Base (“UNLB”) on a fixed-term appointment. At the time, the Organization’s rules did not require that his recruitment be endorsed by a review body.

4. Between 2015 and 2016, the Organization conducted a Civilian Staff Review (“CSR”) to review the classification of posts within the UNLB. As a result of this process, the Applicant and others, had their post reclassified upward to the G-4 level. The Organization then decided, on an exceptional basis, to promote local staff members whose posts were reclassified one level higher without the need for a competitive recruitment process. The Applicant was among the UNLB staff who were promoted without review by the Central Review Body (“CRB”) or the Local Subsidiary Panel.

5. In 2023, the Organization launched the 2016-2021 Continuing Appointment review exercise.

6. On 2 February 2024, the Applicant was informed that he did not meet one or more of the criteria listed under sec. 2.1(b), (e) and (f) of ST/SGB/2011/9 and sec. 4.2(m) of the ST/AI/2012/3 and, therefore, did not qualify for a CA under the 2016-2021 Continuing Appointment review exercise.

7. On 13 March 2024, the Applicant requested management evaluation of the contested decision, which was upheld by a decision of the Under-Secretary-General for Management Strategy, Policy and Compliance dated 16 April 2024.
8. On 12 July 2024, the Applicant filed the instant application.
9. On 15 August 2024, the Respondent filed his reply.
10. By Order No. 130 (GVA/2024) dated 14 October 2024, the Tribunal instructed the Applicant to file a rejoinder and encouraged the parties to explore resolving the dispute amicably.
11. On 18 October 2024, the Respondent filed a supplemental reply.
12. On 5 November 2024, the Applicant filed his rejoinder .
13. On 12 November 2024, the parties filed a joint submission informing the Tribunal that they were unable to agree to settle the dispute amicably.
14. On 1 February 2025, this case was assigned to the undersigned Judge.
15. By Order No. 14 (GVA/2025) of 21 February 2025, the Tribunal directed the parties to file their respective closing submissions, which they did on 7 March 2025.

Consideration

Legal Framework

16. Under staff rule 4.13, a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of length of service, except as provided under staff rule 4.14(b).
17. Staff rule 4.14 provides the following:

Continuing appointment

- (a) A continuing appointment is an open-ended appointment.
- (b) Staff members recruited in the Professional category upon successful completion of a competitive examination pursuant to staff rule 4.16 shall be granted a continuing appointment after two years on a fixed-term appointment, subject to satisfactory service.

(c) The Secretary-General shall prescribe the criteria determining staff members' eligibility for consideration for continuing appointments.

18. Section 2.1 of ST/SGB/2011/9 on "Continuing appointments" provides the following in its relevant parts:

Eligibility

2.1 In order to be eligible for consideration for the granting of a continuing appointment, staff members who have been selected for a position through a competitive process which includes a review by a Secretariat review body in accordance with staff rule 4.15, and are serving with the United Nations Secretariat under a fixed-term appointment, must satisfy the following criteria:

(a) They must have completed five years of continuous service under fixed-term appointment(s) under the Staff Regulations and Rules of the United Nations, notwithstanding the provisions of section 2.2 below;

(b) They must have received a performance rating of at least "Meets expectations" or equivalent in the four most recent performance appraisal reports;

(c) They must have at least seven years of service remaining before reaching the Organization's mandatory age of separation;

(d) They must not be locally recruited staff in the General Service or related categories (including National Professional Officers) serving in field missions, including peacekeeping missions and special political missions;

(e) They must not be international or locally recruited staff serving in the International Criminal Tribunal for Rwanda or the International Tribunal for the Former Yugoslavia;

(f) They must not have been subject to any disciplinary measure during the five years prior to their consideration for the granting of the continuing appointment.

19. Additionally, ST/AI/2012/3 on "Administration of continuing appointments" specifies that:

2.1 The eligibility date for the purposes of a review, when permitted by the post envelopes defined in section 3 of ST/SGB/2011/9, will be set and announced by the Office of Human Resources Management.

2.2 In order to be eligible for consideration for the granting of a continuing appointment, staff members must satisfy the criteria set out in section 2.1 of ST/SGB/2011/9, by the eligibility date indicated in the announcement referred to in section 2.1 above.

[...]

2.5 In accordance with section 2.2 (a) (ii) of ST/SGB/2011/9, staff members must have been selected for a position through a competitive process which includes a review by a Secretariat review body in accordance with staff rule 4.15. Such a selection may have taken place at any time during the period of continuous service, but prior to the eligibility date.

Whether the contested decision is lawful

20. The Respondent contends that the Applicant was not eligible for consideration for a CA under the 2016-2021 CA review exercise because he did not meet the criteria set out in sec. 2.1 of ST/SGB/2011/9 on “Continuing appointments”. He further submits that the Applicant acknowledged that he did not meet the eligibility criterion of being selected for a position through a competitive process endorsed by a CRB, FCRB, or, exceptionally, the UNLB Local Subsidiary Panel. Thus, the contested decision is lawful.

21. The Applicant submits that the contested decision is unlawful because it is tainted by discrimination and arbitrariness. He argues that the eligibility criteria are ambiguous, as other staff members in a similar situation were granted a CA. And, that he should not be faulted for the Administration’s decision not to have a competitive process during the global re-classification exercise of 2016. In other words, the Organization decided on its own accord not to follow its own procedures to fill the upwardly reclassified post through a competitive recruitment involving review by the CRB, and the Applicant should not be penalized for the Organization’s decision to proceed in said manner.

22. The contested decision was lawful.

23. As the Respondent correctly pointed out, there is no legal expectancy or right to have a fixed-term appointment converted to a continuing appointment (see, e.g., *Igbinedion* 2014-UNAT-411, para. 23).

24. The Applicant has only a limited right to consideration for the granting of a continuing appointment should he meet the eligibility requirements established by the Organization.

25. In this case, the Organization applied the criteria in section 2.1 of ST/SGB/2011/9 on “Continuing appointments” , including those mentioned in the email to the Applicant on 2 February 2024, to correctly conclude that the Applicant was not eligible for a continuing appointment.

26. The Applicant acknowledges he did not meet the eligibility criterion of having been selected for a position through a competitive process endorsed by a central review body or, on an exceptional basis, the UNLB Local Subsidiary Panel.

27. Despite any possible distortions in the promotion process of personnel , or differences in treatment with other employees (eventually corrected by the Administration), there is no ambiguity in the legal eligibility criteria for consideration of a continuing appointment.

28. Indeed, the legal eligibility criteria objectively link the requirement of having undergone a competitive process endorsed by a review body to being considered for a continuing appointment, a requisite lacking in the Applicant’s employee status.

Conclusion

29. In view of the foregoing, the Tribunal DECIDES to reject the application.

(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