



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2024/045
Judgment No.: UNDT/2025/042
Date: 1 July 2025
Original: English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

BAPIDI-MBON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Nicole Wynn, AS/ALD/OHR, UN Secretariat
Victoria Nakaddu Mujunga, AS/ALD/OHR, UN Secretariat

Introduction

1. On 1 July 2024, Mr. Didier Parfait Bapidi-Mbon (Applicant), a P-3 Public Information Officer with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), filed an Application contesting the cancellation of a Recruit from Roster (RFR) Job Opening (JO) for the position of P-4 Radio Producer (Position).

2. The Respondent filed a Reply, and the Applicant then filed a Rejoinder. Thus, the case is ripe for ruling.

Facts

3. The facts in this case are not in dispute.

4. Between 16 November and 10 December 2023, MINUSCA advertised the RFR/JO (222075) on Inspira. The Applicant applied on 21 November 2023.

5. At the end of the application period, the Applicant was the only candidate that Inspira automatically screened as qualified. As a result, the Hiring Manager consulted both the Human Resources office at MINUSCA (“HR”) and the Recruitment and Outreach Unit in New York. They advised the Hiring Manager to issue a Position Specific Job Opening (“PSJO”) to attract a more diverse pool of candidates in terms of gender and geographical distribution, and they did so.

6. The PSJO (228733) was posted between 20 February and 20 March 2024. Subsequently, the RFR/JO was cancelled on 21 February 2024. A Temporary Job Opening (“TJO”) (228778) was also posted on 21 February 2024. The Applicant received an automated Inspira notification of the RFR/JO cancellation on 22 February 2024.

7. The Applicant then requested management evaluation of the decision to cancel the RFR. The Management Advice and Evaluation Section (MAES) determined that the request was not receivable because the RFR had been cancelled and thus was not a final administrative decision.

8. The Applicant then filed this application with the Dispute Tribunal.

Parties' Submissions

Applicant's Submissions

9. The Applicant's requests the Tribunal to rescind the contested decision, and retroactively implement the selection process to put him on the RFR post. His principal contentions are:

- a. The decision is receivable in fact and in law as an administrative decision having an effect on him as a staff member in an employment situation, and has direct and concrete repercussions on his right to be fully and fairly considered for the post through a competitive process.
- b. The Administration's argument that the initial RFR "did not attract sufficiently diverse candidates in terms of gender and geographical distribution" is unsupported because these considerations are not in the job description and applying that criteria changed the nomination criteria during the selection process;
- c. The Administration's decision was in violation of the principle which prohibits the administration from ignoring the rules that it has itself defined.
- d. The reasons given by the Administration for cancelling the RFR post "do not have any regulatory or legal basis, and thus are arbitrary or motivated by factors inconsistent with proper administration, and based on erroneous, fallacious or improper motivation".
- e. The Administration's argument that the cancellation of the RFR and readvertisement of the PSJO was a continuation and steps in the same process of filling the post is in error since there is a different framework applicable to each of the vacancies.
- f. The only and obvious object of the PSJO and TJO is to circumvent the roster.

g. The MINUSCA Director of Mission Support did not have the delegated authority under the relevant Secretary-General's Bulletin and Administrative Instruction to take the decision.

h. The decision to cancel the post was made based on the Applicant's nationality contrary to existing rules and regulations and constitutes discrimination.

Respondent's Submissions

10. The Respondent requests the Tribunal to reject the Application in its entirety. Its principal contentions are:

a. The decision is not receivable *ratione materiae* in that it does not constitute a "final administrative decision" for the Dispute Tribunal to review because the JO was cancelled without a selection. Further, the contested decision produced no adverse consequences to the Application's contract or his terms of employment.

b. The Application should be rejected, as a decision to cancel a job opening where there is only one longlisted candidate is lawful and rational, to widen the applicant pool to achieve gender parity and to increase geographical distribution, which are legitimate grounds in line with the Organization's applicable regulations and policies.

c. The Applicant has not met its burden of producing evidence that the decision was not tainted by bias, discrimination, or ill-motivation.

Considerations

Receivability

11. The Respondent alleges that the application is not receivable *ratione materiae* because the JO was cancelled without a selection. Thus, the cancellation did not produce any adverse consequences to the Application and did not amount to a final administrative decision.

12. The Appeals Tribunal has held that “[w]hat constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision.” *Andati-Amwayi*, 2010-UNAT-058, para. 19.

13. In examining whether there was an administrative decision in this case, the Dispute Tribunal takes particular note of *Ponce-Gonzalez* 2021-UNAT-1099 which seems to be directly on point. Like the instant case, *Ponce-Gonzalez* involved three recruitment efforts to fill the same position, in that case a TJO that was cancelled, then an RFR that was cancelled, and a second TJO. Mr. Ponce-Gonzalez challenged only the decision to disqualify him for the RFR recruitment, and the Respondent argued that the application was not receivable. The Dispute Tribunal agreed that the case was not receivable, and an appeal was taken.

14. The Appeals Tribunal determined Mr. Ponce-Gonzalez’s claim was receivable even though the post to be filled might remain the same in the various selection exercises. The reasons for this can be summarized as follows:

- a. there is “a considerable difference in the legal framework applicable to each of the posts” so the recruitment exercise was not the same (*Id.*, para 40);
- b. the second TJO was issued before the RFR was cancelled so there were actually two selection exercises and not one continuous one (*Id.*, para 42);
- c. having been found unsuitable in the RFR, his right to a full and fair consideration in the second TJO could be jeopardized (*Id.*, para 43); and
- d. finding the RFR challenge not receivable would violate the “delicate balance [that] must be struck between efficiency in the recruitment exercise and respect of the rights of the candidates.” (*Id.*, para 44)

15. When this analysis is applied to the facts in the pending case, it leads to the conclusion that the application is receivable.

16. First, the three recruitments in this case were of different types: initially a Recruit from Roster post (RFR/JO222075) the cancellation of which is the

challenged decision; followed by a Position Specific Job Opening (PSJO228733); and finally a Temporary Job Opening (TJO228778). The legal frameworks for these types of recruitments are considerably different.

17. Second, the PSJO was advertised before the RFR/JO was cancelled, so there were actually two selection exercises and not one continuous recruitment exercise.

18. Third, the delicate balance to be struck between efficiency in the recruitment and respect for the rights of the candidate(s) requires that the application be found receivable to avoid the concerns of delay and another candidate being “wrongly selected”, “which would probably only lead to a possible payment of compensation in lieu of rescission instead of a more effective and suitable remedy.” *Id.*, para. 44.

19. The remaining analysis in *Ponce-Gonzalez* does not apply to this case because the Applicant here was not found unsuitable for the post. However, that analysis is merely an alternative ground for finding the application receivable, and not one of four cumulative factors necessary to the determination.. Thus, the Tribunal determines that the application in this case is receivable.

Merits

20. The Appeals Tribunal has long held that the Administration

has broad discretion in matters of staff selection [and] in reviewing such decisions, it is the role of the UNDT or the Appeals Tribunal to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and nondiscriminatory manner. The Tribunals’ role is not to substitute their decision for that of the Administration.

Ljungdell, 2012-UNAT-265, para. 30, also citing *Schook*, 2012-UNAT-216 and *Sanwidi*, 2010-UNAT-084.

21. In *Kinyanjui* 2019-UNAT-932, paras. 21-24, the Appeals Tribunal also explained that

the Administration is not under an obligation to pursue a recruitment procedure once begun, by filling the post which has become vacant. This falls within the discretionary authority of the Administration to terminate a recruitment procedure and/or to initiate a new one. The rule is nonetheless that, in filling the post, the Administration must

proceed with the appointment of successful candidates in accordance with the recruitment results. However, it can deviate from that rule for sound reasons, justifying its decision clearly and fully, i.e. on account of irregularities occurred in the recruitment process or for reasons connected with the interests of the service, while providing an adequate statement of the reasons therefor which are subject to the above mentioned jurisprudential principles of judicial review as to their correctness and veracity.

22. Throughout, it must be remembered that, while a staff member has a right to be fully and fairly considered, a candidate does not have a right to be selected or promoted. *Ross* 2019-UNAT-944, para. 23, quoting *Ross* UNDT/2019/005, para. 46. See also, *Andrysek* 2010-UNAT070, para. 17; *Charles* 2013-UNAT-286, para. 27; *Hersh* 2014-UNAT-433, para. 30; *Wang* 2014-UNAT-454, para. 41; *Luvai supra*, para. 32.

23. In non-selection cases, there is a presumption of regularity, meaning that “all official acts are presumed to have been regularly performed. ... The presumption stands satisfied if the Administration is able to minimally show that full and fair consideration was given to the candidate.” *Ibekwe* 2011-UNAT-179, para. 1; *See also, Rolland* 2011-UNAT-122, para. 26; *Luvai* 2014-UNAT-417, para. 40; *Simmons* 2014-UNAT-425, para. 23; *Landgraf* 2014-UNAT-471, para. 28; *Dhanjee* 2015-UNAT-527, para. 30; *Zhuang, Zhao & Zie* 2015-UNAT-536, para. 48; *Staedtler* 2015-UNAT-547, para. 27; *Survo* 2015-UNAT595, para. 68; *Niedermayr* 2015-UNAT-603, para. 23.

24. Once the presumption of regularity is satisfied, the burden of proof shifts to the staff member who must show, by clear and convincing evidence, that he was denied a fair chance of selection. *Lemonnier*, 2017-UNAT-762, paras. 34-36; and *Ibekwe, supra.* para. 1. Thus, a candidate must prove that procedures were violated: discrimination against the applicant; relevant material was ignored or irrelevant material was considered; or other particular grounds depending on the facts. *Rolland, supra* para. 26; and *Majbri* 2012-UNAT-200, para. 30.

25. In applying the presumption of regularity to this case, the Respondent explains that when only one candidate was automatically screened as qualified by

Inspira, the Hiring Manager extended the RFR application deadline for two weeks in order to attract more applicants. After the extension resulted in no additional qualified candidates, the Hiring Manager consulted both the Human Resources office at MINUSCA (“HR”) and the Recruitment and Outreach Unit in New York. Both advised the Hiring Manager to issue a PSJO to attract a more diverse pool of candidates in terms of gender and geographical distribution, which was done.

26. The Applicant does not dispute these factual allegations. He merely argues that no “existing legal and established administrative instruments provides for the cancellation of an [RFR] exercise once it has begun”, “[n]o rule, regulation or administrative instruction provides for the cancellations of an [RFR] exercise if there is no woman or qualified woman among the rostered candidates”, and the RFR exercise “was for a nongeographical post thus not subject to geographical representation.” He also claims that “the Hiring Manager did not have to ‘seek advice’ from anyone.”

27. Here again, a decision of the Appeals Tribunal seems directly on point with the instant case. In *Canova*, 2022-UNAT-1252, the Appeals Tribunal addressed the cancellation of a recruitment in order “to advance the affirmative action policy and the requirements of geographical representation.” *Id.* para. 37. The judgment first noted that

[t]his Tribunal has consistently held that the Administration is not obliged to pursue or complete a recruitment process once begun. The Administration has a wide discretion to cancel a procedure for sound reasons and in the interest of the Organization. Provided there is a reasonable and rational basis for the decision, the UNDT should defer to the Administration and not interfere with the exercise of discretion. The standard of review is the lower standard of rationality because the Administration is best placed to assess and implement polycentric human resource decisions that are allocative and distributive in nature.

In assessing the reasonableness and rationality of the cancellation decision generally, regard must be had to the motive, purpose, basis and effect of the decision. If there is a rational connection between the purpose of the empowering provision, the information on which the decision is based and the purpose and reasons for it, the decision will be rational and thus reasonable and lawful.

The motive for the cancellation decision was to advance the affirmative action policy and the requirements of geographical representation. The Organization is the custodian of human rights internationally and is obligated to advance the cause of gender equity; and, given its structural character, it is also required to ensure that its staff complement reflects and represents the different regions of the world.

The evidence indisputably reveals that the first recruitment exercise did not yield a satisfactory result in achieving those imperatives. The legitimate purposes of the gender and regional policies were not realized. Thus, in his discretion, the Secretary-General of UNCTAD opted to start the process again in the hope that a second round would cast the net wider and produce a more representative pool of candidates to be considered for selection. Hence, the cancellation decision aimed at achieving a legitimate policy and was rationally connected to that purpose.

Id. paras. 35-38, citing *Kinyanjui*, 2019-UNAT-932.

28. The Tribunal finds that the facts on their face show that the cancellation was performed regularly, and thus satisfy the presumption of regularity.

29. With respect to the Applicant's arguments, they are belied by the facts, the jurisprudence¹, and common sense. A specific rule, regulation or administrative instruction is not required in order to cancel a recruitment process; the authority to cancel is inherent in the authority to begin the process. See also, *Canova*, para. 35 and *Kinyanjui*, para. 21.

30. Second, contrary to the Applicant's assertions, the RFR/JO itself contains a "Special Notice" which says that the "United Nations Secretariat is committed to achieving 50/50 gender balance and geographical diversity in its staff." This is reiterated again in the FRF/JO under "United Nations Considerations" which contains the following language: "Due regard will be paid to the importance of recruiting the staff on as wide a geographical basis as possible. The United Nations places no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs." Indeed, staff regulation 4.2 uses the same language to be broadly applied to all

¹ The Applicant cites several cases from the Dispute and Appeals Tribunals. However, these citations are often to *obiter dicta*, and the cases are often distinguishable.

recruitments, that “[d]ue regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.”

31. Staff rule 4.6 makes that even more clear: “Recruitment on as wide a geographical basis as possible, in accordance with the requirements of staff regulation 4.2, shall not apply to posts in the General Service and related categories.” Thus, the only exception to a geographic diversity is in the General Service or related categories, which is not the case here.

32. Additionally, there is an administrative instruction on gender parity (ST/AI/2020/5, *Temporary special measures for the achievement of gender parity*). Applicant himself acknowledges that ST/AI/2010/3/Rev.2 recommends having at least one woman in the list of qualified candidates.

33. Third, there is nothing irregular about a hiring manager seeking advice on a recruitment exercise from their local Human Resources office and/or the Recruitment and Outreach Unit in New York. Those offices exist for the purpose of providing advice and support to hiring managers and others where needed.

34. Thus, the Tribunal finds the Applicant’s arguments to be unavailing and that the presumption of regularity has been satisfied. As a result, the burden of proof shifts to the Applicant to show by clear and convincing evidence that he was denied a fair change of selection for impermissible reasons.

35. First the Applicant argues that his application was not given a fair examination because “relevant considerations (for example, being a national from a troop and police contributing country) were ignored. It therefore gives an impression of bias, discrimination, arbitrariness, and consequently unlawfulness.”

36. Of course, this argument ignores the fact that the RFR/JO recruitment was cancelled when the Inspira pre-screening produced only one applicant as minimally qualified. This was before reaching the stage of considering other factors such as the ones the Applicant mentions. So, the Applicant’s perceived impression of bias, discrimination and arbitrariness is simply incorrect.

37. Next, the Applicant argues that, by considering gender and geographic distribution “which are not in the job description”, the Administration changed the nomination criteria. As explained above, this is factually unsupported since the RFR/JO specifically contained a special notice about both gender balance and geographical diversity.

38. The record also demonstrates that, on 8 February 2023 (just months before the initiation of this recruitment exercise), the Special Representative of the Secretary-General and Head of MINUSCA issued a memorandum to all hiring managers observing the need for gender parity and greater geographical representation in MINUSCA and the imposition of temporary special measures to address these goals. The memorandum specifically referenced “[a]ll types of posts and positions” and “urge[d] all of you to keep this engagement in mind when making hiring recommendations...”

39. The Respondent points out (and the Applicant does not dispute) that MINUSCA has not yet attained gender parity at the P-4 level. “Seventy-one percent of the staff members at the P-4 level are men, while twenty-nine percent are women. In the Strategic Communications and Public Information (SCPI) Office where the Position is located, seventy-three percent of the staff members are men, while twenty-seven percent are women.” Since the Applicant is a male, proceeding with the RFR/JO exercise in which he is the only qualified candidate would fly in the face of the gender parity AI and the Special Notice in the RFR/JO itself.

40. Similarly, the Applicant is from Cameroon, and Cameroonians are overrepresented at MINUSCA, being the third most represented nationality. So continuing the RFR/JO in which he is the only minimally qualified candidate would not address this overrepresentation.

41. The Applicant also claims that he was discriminated against because he is Cameroonian. In this regard he argues that, since he is currently a MINUSCA staff member and the last holder of the post for which the RFR was initiated is also Cameroonian, “my selection cannot therefore increase the number of Cameroonians”. He concedes that there is no systematic discrimination against

Cameroonians and that he is “the first victim of MINUSCA’s ill-motivated maneuvers.”

42. Of course, this ignores the fact that Cameroon is already over-represented at MINUSCA. As noted in *Canova, supra*, the “Organization is the custodian of human rights internationally, and ... given its structural character, it is also required to ensure that its staff complement reflects and represents the different regions of the world.” Maintaining overrepresentation is not consistent with that requirement. Thus, the Tribunal finds that the Applicant has failed to present clear and convincing evidence of unlawful discrimination.

43. In addition, the Applicant uses the term “ill-motivated decision” a few times in his submissions, but his argument seems to be that “by ignorance, the MINUSCA Administration has neglected the fact that in terms of gender and geographical representation, the Roster is not the right place to get them....these people are there [on the roster] exclusively based on excellence, following a difficult process, a true assault course, at the end of which only the best are admitted.” This argument itself smacks of hubris and discrimination by the Applicant.

44. He goes on to say that the “Administration cannot take advantage of its own ill-motivated decision [because] it did nothing to have a pool of qualified women.” His related argument is that, having chosen to go the RFR route, the Administration had to select from the roster and, since he was the only candidate deemed qualified, it had to select him. Of course, when the arguably short-sighted decision to initially recruit from a roster produced just one minimally-qualified candidate, the Administration was not obliged to take that one candidate. It was perfectly acceptable to readvertise the vacancy in an effort to expand the pool of candidates, as was done in this case with the PSJO.

45. Finally, the application also mentions “likely another irregularity”. He notes that the Hiring Manager and Head of Entity are not among those listed as receiving the MAES decision and “thus I strongly suspect that the DMS [Deputy for Mission Support] abused his power by cancelling the RFR as he doesn’t have delegated authority... to take that decision.”

46. There is no evidence in the record that the DMS was the person who made the contested cancellation decision. This is admittedly mere suspicion on the part of the Applicant, and it seems unfounded on its face. The response to Applicant's request for management evaluation is necessarily after the contested decision, and who is listed as copied on the response to that request is not indicative of who took the decision. Moreover, even a strong suspicion is far short of clear and convincing evidence.

Conclusion

47. For the reasons set forth above, the Tribunal decides that:

- a. The application is receivable;
- b. The application fails on its merits; and
- c. Thus, the application is DENIED.

(Signed)

Judge Sean Wallace

Dated this 1st day of July 2025

Entered in the Register on this 1st day of July 2025

(Signed)

Wanda L. Carter, Registrar