



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/034

Judgment No.: UNDT/2025/051

Date: 7 August 2025

Original: English

Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: Liliana López Bello

SAMANDAROV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Jérôme Blanchard, UNOG

Introduction

1. The Applicant, an Associate Human Rights Officer at the P-2 level, with the Office of the United Nations High Commissioner for Human Rights (“OHCHR”), contests the decision not to select him for the P-4 level post of Development Coordination Officer/Economist in the United Nations Resident Coordination Office in Kabul (“the Post”).
2. In response, the Respondent contends that the application is without merit.
3. For the reasons set out below, the application is rejected.

Facts

4. On 11 January 2024, the Applicant applied for the Post, which was advertised under Job Opening No. 225322 (“the Job Opening”, or “JO”).
5. Subsequently (date unknown), the hiring manager (“HM”) conducted a desk review of the Applicant’s job application and decided not to shortlist him for the Post for which reason his candidacy did not proceed in the selection process.
6. On 20 March 2024, the Applicant was notified through a generic email from Inspira (the job site of the United Nations Secretariat) of his non-selection for the Post.

Consideration

The scope of the judicial review of a selection decision

7. It is well-established that the Secretary-General has broad discretion in matters of appointment and promotions and that, when reviewing such decisions, it is not the role of the Tribunal to substitute its own decision for that of the Administration (see, for instance, in *Lemonnier* 2017-UNAT-762, paras. 30-31 and *Toson* 2022-UNAT-1249, para. 27).
8. Also, the Appeals Tribunal has consistently held that the Dispute Tribunal is to consider the following factors: (a) “whether the procedure as laid down in the

Staff Regulations and Rules was followed”; (b) “whether the staff member was given full and fair consideration”, and (c) “whether the applicable Regulations and Rules were applied in a fair, transparent and non-discriminatory manner” (see, for instance, in *Toson*, para. 28). Further, the Appeals Tribunal’s “jurisprudence provides that there is a ‘presumption of regularity’ that official acts have been regularly performed”. This presumption “arises if the management can minimally show that a staff member’s candidature was given a full and fair consideration”. Thereafter, “the burden of proof shifts to the staff member who must show through ‘clear and convincing evidence’ they have been denied a fair chance of promotion or selection” (see *Toson*, para. 29).

Did the Respondent provide an adequate reason for the contested decision?

9. The Applicant submits that the Respondent has failed to produce a “contemporaneous record” of the decision not to shortlist him for the relevant position.

10. The Tribunal notes that the Appeals Tribunal has held that “the information objectively supporting [a selection] decision is all under the control of the Administration” (see *Moulana* 2022-UNAT-1302, para. 32). Further, in *Russo-Got* 2021-UNAT-1095, the Appeals Tribunal upheld the Dispute Tribunal’s holding that “[n]ot keeping a written record of the contested administrative decision with reasons for the shortlisting process” was “irregular”. It also held that “the lack of a contemporaneous written record of the decision to shortlist and the lack of reasons for the shortlisting decision undermine the ability of a staff member to challenge that decision”, and “[w]ithout this record, the staff member is unable to challenge the decision and the tribunal conducting a judicial review is unable to adequately review the decision and its reasons”. The Appeals Tribunal therefore found that the Dispute Tribunal correctly rejected “the *ex post facto* evidence provided by the Secretary-General as a rationale for the short-listing decision” (see para. 33).

11. As a “contemporaneous record” of the contested decision, in response to the Tribunal’s Order No. 074 (GVA/2025) dated 27 June 2025, the Respondent produced “an extract of the matrix”, which had apparently been provided by United

Nations Resident Coordination Office in Kabul. This document, however, only reproduced a table from another document in which was indicated that the Applicant lacked experience in certain areas and therefore did “not meet required criteria”. No copy of the original document was disclosed, and no author or date was stated in the table. As explanation, the Respondent submits that the Tribunal’s e-Filing portal does not allow for “submission of .xls documents, only .pdf. documents”. The Tribunal does not accept this—the Respondent could simply have converted the original document into a pdf-document, or even made a photocopy of its relevant parts, and submitted it in evidence.

12. As evidence, the Respondent also submits an email of 8 February 2024 from a United Nations staff member (from the email it cannot be discerned what this person’s title or function is) to the Head of the United Nations Resident Coordination Office in which it is stated as follows, but with no explanation regarding the reason why the Applicant was not shortlisted for the Post:

Please find attached [...] the longlist for this position.

Short summary, for your kind information:

- 85 applications were screened in total: 14 female and 71 male.
- 19 candidates were identified as suitable for further shortlisting (i.e. those, meeting the requirements for the position).
- Gender distribution: 5 female and 14 male.

Kindly review the longlist to identify the most suitable candidate.

13. Accordingly, the Tribunal finds that the documentation provided by the Respondent has no evidentiary value as a “contemporaneous record” of the contested decision in accordance with *Russo-Got*. As such, under the doctrine of presumption of regularity, the Respondent has therefore failed to demonstrate with a minimal showing that the contested decision was lawful.

Did the procedural mistake of not providing an adequate reason substantively impact the contested decision?

The “no difference” principle

14. The Appeals Tribunal has, on several occasions, pronounced the so-called “no difference” principle according to which a procedural error that made no substantive difference in a specific situation does not invalidate a related administrative decision. For instance, in *Wan* 2024-UNAT-1436, it held that (see para. 40, references to footnotes omitted):

... Where an irregularity or error in proceedings is identified, its nature and impact must be weighed in context, with it carefully considered whether a different outcome would have resulted had the irregularity not occurred. This requires that it be found to a high standard, variously been described as an “overwhelmingly clear” or “irrefutable” standard, that the outcome would have been inevitable even if the Administration had acted in a lawful manner. If this is so, the fact of the irregularity will not avail to the benefit of the staff member. Commonly referred to as the “no difference principle”, such an approach may be applied where, despite the irregularity which has arisen, the ultimate outcome is an irrefutable foregone conclusion.

15. In the present case, with reference to the “no difference” principle, the question is therefore whether the Applicant’s non-selection was “an irrefutable foregone conclusion”, in accordance with *Wan*, despite the failure of the Administration in creating and/or maintaining a contemporaneous record of the contested decision. Similarly, the Tribunal notes that in *Russo-Got*, even though the Appeals Tribunal found that the Administration had failed to provide a contemporaneous record of its decision not to select the applicant for the relevant post, it, nevertheless, decided to uphold this decision.

The parties’ submissions on the Applicant’s suitability for the Post

16. As relevant to this part of the judgment, the Applicant’s contentions may be summarised as follows (references to footnotes omitted):

- a. Section 1(f) of ST/AI/2010/3 (Staff selection system) provides that evaluation criteria “must be objective and related to the functions of the generic job profile or the individually classified job description and must

reflect the key competencies that will be assessed”. The “criteria to be used in evaluating candidates must be clearly stated in the vacancy announcement” (referring to *Neault* UNDT/2012/123). To provide “full and fair consideration to staff members”, the Dispute Tribunal has held that “the Administration is bound by the terms of the vacancy announcement that regulates selection exercise” (referring to *Neault* and *Korotina* UNDT/2012/178). As a matter of fairness and transparency, “the vacancy announcement should inform potential candidates clearly and fully of the requirements of an advertised post” (referring to *Stefanizzi* UNDT/2019/042). With reference to *Neault*, “a clear and full statement is all the more imperative with respect to evaluation criteria which will be decisive in the assessment of the candidates' suitability for the post”.

b. The Applicant “met all required and desirable criteria of [the Job Opening], which was clearly and duly reflected [in his job] application”.

c. The “evidence shows that the Administration did not clearly state the criteria to be used in evaluating candidates in the vacancy announcement”. “Not having included in the vacancy announcement the requirement that the candidates must have experiences in all work areas listed in the JO, while ignoring relevant experiences in related areas, and having solicited applications on that basis, the Administration was bound by the terms of the vacancy announcement, which did not include any such requirement”.

d. Regarding the experience requirement of “a minimum of five years of progressively responsible experience in development cooperation, aid coordination, strategic planning or related area”, the HM “argued that [his] listed experience [was] mostly in human rights and humanitarian matters” and did not correspond to the relevant experience. This was incorrect as he “had balanced experience in all work areas (development cooperation, aid coordination and strategic planning or related area), which was duly reflected in [his] application” in which he specified that “under [his] duties as Area Manager at the United Nations Development Programme (UNDP): for two years [he] led programme liaison and coordination with authorities, [non-

governmental organizations, “NGOs”) and [United Nations] agencies; chaired Development Coordination Meetings, DRR [unknown abbreviation]—Rapid Emergency Assessment and Coordination Team (REACT) meetings; coordinated inputs for flash appeals; represented UNDP at cluster/other meetings”. Working for two years with UNDP “clearly reflected [his] experience in development cooperation, aid coordination, strategic planning, represented 40% of required ‘minimum of five years of progressively responsible experience in development cooperation, aid coordination, strategic planning or related area’ for the Post”.

e. The JO did “not require having experience in all listed work areas” but only a “minimum of five years of progressively responsible experience in development cooperation, aid coordination, strategic planning or related area”. A “candidate with minimum of five years of progressively responsible experience in only one of listed areas (i.e. development cooperation, aid coordination, strategic planning) or any other related area should qualify as candidate who meets the JO requirements”. The term “aid coordination ... applies to humanitarian, reconstruction and recovery aid coordination”, and among the Applicant’s listed experiences “were indeed ... humanitarian matters (i.e. aid coordination)”.

f. “The recent publications by [the Resident Coordination Office], including ‘The 2023 [United Nations] Afghanistan Annual Results Report’, demonstrates that [the Resident Coordination Office] and [the United Nations Country Team] are mostly preoccupied with addressing immediate humanitarian and human rights needs, while economics and financing issues are lower at priority and covered by a much smaller fraction of [the Resident Coordination Office’s] activities, receive significantly less funding and overall produce less outputs”.

g. The Applicant’s experience in human rights were relevant for the JO as this “is one of the main pillars of the [United Nations] and [does] not only contribute to implementation of the Sustainable Development Goals [“SDGs”] but implementation of the SDGs themselves rest on promotion and

protection of the human rights, especially in context of Afghanistan, and as such human rights falls under related area”. Further, “all [his] [experience] in human rights [was] closely interlinked with development cooperation and aid coordination” and in his application, he “specifically stated the following under [his] duties as Associate Human Rights Officer at UNAMA: ‘experience with investigation of [international humanitarian law] violations, humanitarian clusters in field, including supporting coordination of humanitarian aid delivery during Kunduz crisis of 2015 (fall of city to Taliban)’”.

h. As a “Human Rights Officer”, the Applicant’s “experience covered wide spectrum of issues in so called ‘related area’ of the JO ([for instance]: aid coordination, work at interagency clusters) and was of relevance to implementation of SDGs and to the Post”. “This applies to all [his] other relevant [experience] (totalling well above required minimum of five years of progressively responsible experience) with known international NGOs: Oxfam and CARE International, [Intergovernmental Organizations]: [the Organization for Security and Co-operation in Europe], and other [United Nations] entities: [Office of the High Commissioner for Human Rights and United Nations Environment Programme], duly reflected in [his] application under work experience entries”.

i. By “ignoring relevant [experience] and implying that candidates should have possessed experiences in all listed work areas (i.e. development cooperation, aid coordination, strategic planning), [the HM] introduced unpublished evaluation criteria (i.e. [requirements] absent in the JO) and illegally eliminated [his] application by applying [those] unpublished evaluation criteria”.

17. The Respondent, in essence, contends that “[t]he hiring manager did not shortlist the Applicant because he did not meet the educational requirement, as well as one of the required criteria for the Position”. As for the latter, the Applicant “did not meet the work experience requirement of ‘a minimum of five years of progressively responsible experience in development cooperation, aid coordination,

strategic planning’ as per the information provided in his Personal History Profile [“PHP”]” (reference to footnote omitted).

The Tribunal’s findings

18. The Tribunal notes that in the JO, it was stipulated that “[a] minimum of five years of progressively responsible experience in development cooperation, aid coordination, strategic planning or related area is required”. This requirement was stated in the exact same words in the alleged extract of a matrix, which the Respondent filed as a contemporaneous reason for the contested decision. Therein, it was also stated that the Applicant did not fulfil this criterion, which is also repeated in the reply, although the prerequisite was stated in slightly different terms as no reference was made to a “related area”.

19. When assessing whether a job candidate possesses a specific qualitative experience, the Tribunal notes that the Appeals Tribunal has held that “when the requirement is qualitative, the Administration enjoys wide discretion in determining what exactly it is looking for and if the applicant fulfils this requirement”. Also, “[s]uch a requirement may stem not only from the explicit mention in the vacancy announcement, but also from the reflections made in various parts of the JO”. (See, para. 59 of *Rao* 2023-UNAT-1390.) To limit the number of candidates on the shortlist, a hiring manager may then undertake a qualitative assessment of the depth and specific relevance of the different candidates’ experiences and not just count the possible years (see paras. 67 and 69 of *Mirella* 2023-UNAT-1334).

20. In the present case, the Tribunal observes that one of the qualitative requirements was that the job candidate must have five years of experience in “development cooperation, aid coordination, strategic planning or related area” (“the experience requirement on development, aid and strategic planning”). In this regard, the Applicant admits that he only worked with UNDP on development cooperation, aid coordination and strategic planning for two years. Whereas he contends that he also had experience in other related areas, he does not specifically relate these areas of experience to the highly detailed description in the JO of the “Responsibilities” of the Post and its “Description of Functions”, which mostly

concerned the SDGs and economics. Rather, he emphasizes that his experience in human rights should be relevant to the Post, but nowhere in the JO is any reference made to any tasks related to human rights (indeed, the term, “human rights” is not even indicated anywhere related to the Post). The Tribunal therefore finds that the Applicant has therefore failed to explain how the cumulation of his different experiences would amount to five years of relevant experience for the experience requirement on development, aid and strategic planning.

21. The Tribunal further notes that the Applicant’s experience with the United Nations has mostly been at the P-2 level (although he did work on a temporary basis at the P-3 level as a Human Rights Officer from August 2022 to April 2023). The Post was, however, at the higher P-4 level, and even if the Applicant has undertaken some tasks during his career relevant to the experience requirement on development, aid and strategic planning, the role of Development Coordination Officer/Economist would necessarily oblige him to perform at a two-level higher professional level than he has ever done before. It could therefore be also argued that the Applicant’s experience did not have the necessary depth.

22. Consequently, the Tribunal finds that the Applicant has failed to establish that the HM exceeded his or her scope of discretion when not shortlisting him for the Post because of his lack of the five years of experience in “development cooperation, aid coordination, strategic planning or related area”. Accordingly, the Applicant’s non-selection was indeed “an irrefutable foregone conclusion” despite the failure of the Administration in creating and/or maintaining a “contemporaneous record” of the contested decision.

23. In principle, the Tribunal therefore does not need to examine the other requirements that the Respondent contends that the Applicant did not fulfil.

Was the contested decision tainted by any ulterior motives?

The onus of proving ill-motivation

24. Under the consistent jurisprudence of the Appeals Tribunal, allegation of ulterior motives “have to be established on the balance of probabilities by the person alleging same” (see, for instance, para. 64 of *Chawla* 2024-UNAT-1423).

The parties' submissions on the motivation behind the contested decision

25. The Applicant's submissions on bias may be summarised as follows:

a. Referring to the Appeals Tribunal in *Sobier* 2022-UNAT-1208, “a decision is not only biased if made by a decision-maker deliberately intending to favour or disadvantage the subject of it for improper reasons” as “[b]ias can also occur unintentionally on the part of the decision-maker if, considered objectively, a neutral, reasonable and informed bystander would conclude that it is likely to have been made to favour or disadvantage improperly the person affected by the decision”. Also, whereas “it may be hard to make an accurate assessment of the subjective mind of the decision-maker to determine whether a decision was infected by bias, an objective consideration of all other relevant factors may help to conclude that bias was established”. It further noted that an “ill-motivated decision includes not only one in which the decision-maker is deliberately motivated to maliciously deprive the staff member of what would otherwise have been the staff member's entitlement: an ill-motivated decision can also include one where the decision-maker's reasons are simply wrong in law, for example by taking into account irrelevant, or failing to take into account relevant, considerations”.

b. “The contested decision was infected by bias and was ill-motivated” because “[t]he Administration's reasons were wrong in law as it did not take into account relevant considerations”. “For instance, in relation to educational requirement by ignoring [the Applicant's] two advanced university degrees in related area ... and in relation to the work experience requirement of ‘a minimum of five years of progressively responsible experience in development cooperation, aid coordination, strategic planning or related area’, by ignoring [his] relevant and qualifying work experiences”.

26. The Respondent, in essence, contends that the contested decision was not ill-motivated.

The Tribunal's findings

27. The Tribunal notes that the mere fact that HM did not short-list the Applicant does not, in and by itself, prove any ill-motivation, and the Applicant has not provided any evidence in support of his claim. Rather, as held above, the Applicant has failed to substantiate that the HM exceeded his or her scope of discretion in any possible manner when excluding the Applicant from progressing in the selection exercise.

28. Consequently, the Tribunal finds that the Applicant has not established that the contested decision was tainted by ulterior motives.

Did the Respondent manifestly abuse the judicial proceedings?

The relevant legal framework

29. Article 10.6 of the Dispute Tribunal's Statute provides that "[w]here the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party".

30. As an Officer of the Court, the duty of Counsel is principally held to the Tribunal. This follows from the Dispute and Appeals Tribunals' "Code of conduct for legal representatives and litigants in person" where it is provided that "[l]egal representatives shall maintain the highest standards of professionalism and shall act in the best interests of the party they represent, *subject always to upholding the interests of justice and ethical standards*" (emphasis added). More specifically, legal representatives (a) "shall maintain the highest standards of integrity and shall at all times act honestly, candidly, fairly, courteously, in good faith and without regard to external pressures or extraneous considerations" and (b) "shall act diligently and efficiently and shall avoid unnecessary delay in the conduct of proceeding" (see arts. 4.1, 4.2 and 4.4.).

31. In practical terms, this means that Counsel must be honest and transparent in his or her communication with the Tribunal and present his or her client's evidence in a complete, truthful and correct manner even if this is not necessarily in the best

interest of his client. Otherwise, this may amount to a manifest abuse of proceedings as per art. 10.6 of the Dispute Tribunal's Statute.

The Applicant's submissions on abuse of proceedings

32. The Applicant's contention may be summarized as follows:

a. The Respondent abused the proceedings by claiming and maintaining that "the HM did not shortlist the Applicant because the Applicant did not meet (a) the educational requirement, as well as (b) one of the required criteria for the Position (i.e. a minimum of five years of progressively responsible experience in development cooperation, aid coordination, strategic planning)". At the same time, the Applicant contends that the alleged evidence submitted by the Respondent shows that the HM also "did not shortlist the Applicant because the Applicant allegedly did not meet ... *not one but two* of the required [experience] criteria" for the Post.

b. By "concealing this important piece of evidence, the Respondent undermined (a) ability of the Applicant to properly and timely challenge the decision, including all relevant reasons behind it; and (b) ability of the Tribunal [in] conducting a judicial review to adequately review the decision and its reasons, effectively misleading the Tribunal and the judicial process". The Applicant further submits that the Respondent did so intentionally because his job "application was disqualified based on irregular selection process as the HM failed to consider [his] highly relevant experience" for the second experience requirement.

c. The Respondent "resorted to repeatedly misrepresenting facts/events and concealing important pieces of evidence from the Applicant and the Tribunal. In doing so, the Respondent engaged in actions aimed at misleading the Tribunal and the judicial process and undermining the ability of the Applicant to properly contest the decision and all reasons behind it.

The Tribunal's findings

33. The Tribunal is confused by the Respondent's submission that the Applicant was not shortlisted since he did not satisfy a certain educational requirement. Thus, in the alleged extract of a matrix that he provided as a "contemporaneous reason" for the decision, no reference is made to the Applicant failing to satisfy any educational requirement for the Post; rather, it is indicated that the Applicant also failed to satisfy the requirement of "[e]xperience in working in complex crisis environments as well as in mission settings".

34. Consequently, it does not follow from this alleged extract of a matrix that the HM found that the Applicant did not fulfil an academic requirement—there is basically nothing indicated in the relevant table regarding academic requirements for the Post. Also, the Tribunal notes that when defining the experience requirement on development, aid and strategic planning, intentional or not, the Respondent failed to mention "or related area" in the reply as otherwise stated in the JO.

35. At the same time, the Tribunal does not find that any of these inconsistencies, on their own or seen together, amount to a manifest abuse of proceedings under art. 10.6 of its Statute, at least in the present case. As such, no procedural harm was caused to the Applicant's case because, as also already stated above, the Tribunal considered and addressed the inconsistencies and found them inconsequential. For future reference, the Tribunal will, however, not exclude that it may find differently should such inconsistencies occur again.

36. Accordingly, the Applicant's request for costs is dismissed.

Conclusion

37. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

(Signed)

Judge Sun Xiangzhuang

Dated this 7th day of August 2025

Entered in the Register on this 7th day of August 2025

(Signed)

Liliana López Bello, Registrar, Geneva