UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/036
Judgment No.: UNDT/2025/113
Date: 16 December 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:**
Camila Nkwenti, HRLU/UNOG

## Introduction

1. The Applicant, a staff member of the Office of the United Nations High Commissioner for Human Rights ("OHCHR"), contests his non-selection for the P-3 position of Humanitarian Affairs Officer/Reporting and Analysis, in the Office for the Coordination of Humanitarian Affairs ("OCHA") 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 19 January 2024, the Applicant applied for the Post, which was advertised under Job Opening No. 225821 ("the Job Opening", or "JO").

5. After having reviewed all the job applications for the Post, the Hiring Manager ("HM") first included the Applicant on a long list of suitable job candidates (110 candidates) and then further added him to a short list (59 candidates). The HM then conducted a desk review of the remaining job applications. It was found that the Applicant was not the best-suited candidate, and someone else was instead recommended for the Post.

6. On 4 April 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, the Appeals Tribunal in *Lemonnier* 2017-UNAT-762, paras. 30-31 and *Toson* 2022-UNAT-1249, para. 27, and similarly, in its seminal judgment in *Sanwidi* 2010-UNAT-084, paras. 38-42).

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 and evidence for the contested decision?*

9. The Applicant submits that the "Comparative Analysis Matrix" ("the Matrix") submitted by the Respondent as evidence for the contested decision "fails to meet [the] parameters of contemporaneous written record of the decision" (*Russo-Got* 2021-UNAT-1095). The document "lacks indication of its origin, or its date of creation, lacks the identification of [the] maker of the contested administrative decision, has no indication that it was a part of [the] alleged two desk reviews conducted by the HM, and exhibits signs of being *ex post* facto evidence".

10. The Applicant further contends that "the list of irregularities continues as, *inter alia*, (a) document contains all 169 applicants who were released to the HM and it means that it may reflect only the first round of alleged desk review as [his] candidacy was allegedly disqualified only on the second round of desk review which should have included only 59 shortlisted candidates, (b) document shows [his] candidacy as 'suitable' and having met all JO requirements, (c) document has no indication of [his] candidacy being assessed against 'humanitarian access' as falsely claimed by the Respondent, (d) on row 88 it absurdly states Yes and No for candidate meeting one of the JO requirements, (e) under last column it has irregular 'comments' with 'not relevant' comment being listed next to [his] assessment,

(f) and finally it does not show how many candidates were shortlisted or recommended for the Post".

11. 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,* 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).

12. It is noted that since the Matrix is undated and does not state its author, it cannot be characterized as a contemporaneous written record of the contested decision. Also, it follows from the Matrix that the Applicant was deemed "suitable" for the Post as he satisfied all three required and four desired selection criteria. In the last column of the Matrix regarding the Applicant, it is nevertheless noted, "not relevant", without any further stipulations. Referring to the Matrix, the Tribunal therefore cannot ascertain why the Applicant's candidature was rejected.

13. In an email of 1 May 2024, which was submitted by the Applicant in evidence, upon a request from a Human Resources Business Partner from OCHA to "elaborate why [the Applicant's experience] is 'not relevant'" as per the Matrix, another United Nations staff member stated that:

> [The Applicant's personal history profile] underwent review, and a comment stating "not relevant" was made regarding its suitability for developing, analyzing, and reviewing humanitarian access reports, which were deemed unrelated to the key responsibilities of the position outlined in the advertisement. This feedback was specifically related to access analysis, and it has nothing to do with

> [the Applicant's] strong professional track record on other areas such as human rights ...

14. The Tribunal, however, notes that the explanation was produced a long time after the assessment of the Applicant's application and likely for the purpose of the management evaluation in the present proceedings, which was issued on 7 June 2024.

15. Accordingly, the Tribunal finds that the documentation on file 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

16. 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.

17. 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

18. As relevant to this part of the judgment, the Applicant's contentions may be summarised as follows (emphasis in original omitted):

a. The Respondent's "use and administration of [fixed-term appointment] ("FTA") limited modality was in violation with provisions 4, 5 and 6 of the Policy Guideline on Administration of FTA limited—OHR/PG/2024/03 ["Policy Guideline—Administration of fixed-term appointment limited ('FTA-limited')" dated 1 November 2025] as [i] Decision to administer FTA-limited appointment modality was taken by the HM during selection exercise and not by the Head of Entity prior to posting JO as required by the Guideline; [ii] A special note to indicate that the appointment was limited was not included in the JO. Instead, the JO contained a vague general note, indicating only a potential possibility of applying FTA limited modality if an external candidate was selected; and [iii] The note was in violation [of] the Guidelines requirements, as in addition to indicating only its possible post factum application towards external candidates only, it was also not applicable in case of [his] candidacy as [he] was a staff member who met the definition of an 'internal candidate' in line with staff rule 4.10";

b. The Respondent's "use and administration of evaluation mechanisms for assessing shortlisted candidates for meeting technical requirements and competencies of the JO were in violation [of] related provisions of ST/AI/2013/1 [Administration of fixed-term appointments], ST/AI/2010/3/Rev.2 [Staff selection system] and OHR/PG/2024/03. In a nutshell, the HM substituted a mandatory assessment required to determine

whether shortlisted candidates meet the technical requirements and competencies of the JO with the second desk review, which was redundant … and did not explain how it met the requirement of provision 7.4 of ST/AI/2010/3/Rev.2, especially in relation to assessing candidates for meeting technical requirements and competencies. Further, while claiming that the HM allegedly conducted two rounds of desk reviews, the Respondent failed to produce any evidence substantiating its claims as it produced only one comparative matrix as alleged evidence for the entire selection exercise for the Post";

c. The Respondent's "claims on its alleged use and administration of evaluation criteria absent in the JO were in violation of related provisions of ST/AI/2010/3, specifically section 1(f). As per existing jurisprudence, it also follows that the criteria to be used in evaluating candidates must be clearly stated in the vacancy announcement (*Neault* UNDT/2012/123), that in providing full and fair consideration to staff members the Administration is bound by the terms of the JO announcement that regulates selection exercise (*Neault*; *Korotina* UNDT/2012/178), and that it is a matter of fairness and transparency that the JO announcement should inform potential candidates clearly and fully of the requirements of an advertised post (*Stefanizzi* UNDT/2019/042)"; and

d. "It is important to note that in its submissions the Respondent repeatedly claimed that the HM allegedly eliminated [his] application by assessing [his] candidacy against (new and unpublished) evaluation criteria requiring experience in developing, analyzing and reviewing reports related to humanitarian access … and that the HM also allegedly claimed that humanitarian access … was one of the key responsibilities of the Post. However, the evidence demonstrates that the Respondent's claims were false, as the HM did not apply evaluation criteria requiring experience in developing, analyzing and reviewing reports related to humanitarian access in his assessment and did not claim that humanitarian access was one of the key responsibilities of the Post, as the HM did the exact contrary of what is

> claimed by the Respondent … This is also substantiated by the fact that under 15 different job responsibilities of the Post, humanitarian access is vaguely mentioned only under three responsibilities out of 15".

19. The Respondent, in essence, contends that "[t]he selection process adhered to Article 101.3 of the UN Charter, Staff Regulation 4.2, and ST/AI/2010/3/Rev.2 governing staff selection" as the Hiring Manager "followed the prescribed steps: pre-screening, longlisting, shortlisting, and evaluation of candidates based on the Job Opening criteria".

The Tribunal's findings

20. Firstly, the Applicant challenges the use of an "FTA-limited modality" allegedly in violation of OHR/PG/2024/03, which is a set of policy guidelines, concerning a particular process by which a candidate is selected but not reviewed by a Secretariat review body as per sec. 2.2(b) of ST/AI/2013/1. Based on the applicable legal framework for the selection system at the United Nations Secretariat and the Applicant's submissions, the Tribunal, however, fails to understand how any breach of OHR/PG/2024/03 could have impacted the decision not to select him due to his work experiences not being relevant for the Post.

21. Secondly, the Applicant objects to the selection decision being based on a desk review rather than by using evaluation methods such as written tests and/or interviews. It, however, explicitly follows from sec. 7.4 of ST/AI/2010/3/Rev.2 that when undertaking the mandatory assessment of whether the shortlisted candidates "meet the technical requirements and competencies of the job opening", this "*may* include a competency-based interview and/or other appropriate evaluation mechanisms" (emphasis added). The use of the word "may" specifically indicates that the HM is provided with a choice on whether or not to use written tests and/or interviews when assessing the relevant candidates—this is not a requirement. As such, no violation was committed by the HM when deciding not to recommend the Applicant for selection based on a desk review of all applications of the shortlisted candidates (similarly, see the Appeals Tribunal in *Kucherov* 2016-UNAT-669, para. 29).

22. Thirdly, the Applicant contests that the HM applied an unpublished selection criterion when rejecting his job application. The Tribunal notes that the Appeals Tribunal in *Anand* 2024-UNAT-1473 held that due to the Administration's broad discretion in selection decision, it may look beyond requirements listed in JO to decide on relative factors of importance (see para. 36, references to footnotes omitted):

> … In the same vein, we stated in [*Khan* 2022-UNAT-1199, para. 38] that "in exercising its discretion to make a selection, the Administration is not restricted to factors or considerations explicitly listed in any governing legal instruments. It may consider all relevant factors, as long as such factors are not arbitrary, irrational or capricious." Therefore, the Hiring Manager had the discretion to look beyond the requirements listed in the job opening. …

23. In the present case, in the JO, the "work experience" requirements were described as follows:

> A minimum of five (5) years of progressively responsible experience in humanitarian affairs, emergency preparedness, crisis/emergency relief management, rehabilitation, development, or related area is required.
>
> Humanitarian experience in the field (actual setting where a mission and/or project is being implemented) in emergency situations (complex emergency or natural disaster) is required.
>
> Experience in developing, analyzing and reviewing reports for senior management is desirable.
>
> Experience with crisis communications and social media is desirable.
>
> Experience in the Asia-Pacific is desirable.

24. The Respondent submits that the Applicant "lacked demonstrable experience in developing, analyzing, and reviewing reports *related to humanitarian access*, a key responsibility of the position" (emphasis made in the reply).

25. Whereas the Tribunal agrees with the Applicant that experience in humanitarian access is not explicitly stated among the listed "work experience"

requirements in JO, it is, however, stated in description of the "responsibilities" of the Post. In this description, among the key duties of incumbent of the Post, is stated that he or she is to "[m]onitor access constraints faced by the population in need, including gap in assistance, lack of access to humanitarian assistance …", "[p]rovide leadership and support to the access working group members"; and "[p]repares or contributes to the preparation of various written reports, documents and communications, e.g. drafts sections of studies, background papers, policy guidelines, parliamentary documents, briefings, case studies, presentations, correspondence, etc".

26. When perusing the Applicant's personal history profile submitted along with his job application for the Post, the Tribunal notes that he does not refer to any experience in working with "humanitarian access".

27. Consequently, the Tribunal finds that the Applicant has failed to establish that the hiring manager exceeded his or her scope of discretion when determining that his work experience was not relevant to the Post, also considering the Secretary-General's broad discretion in selection decisions as per *Lemonnier* and *Toson* and the inherent limitations to the Tribunal's judicial review in accordance with *Sanwidi*. Accordingly, the Applicant's non-selection was indeed "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.

*Was the contested decision tainted by any ulterior motives?*

The onus of proving ill-motivation

28. Under the consistent jurisprudence of the Appeals Tribunal, allegations 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

29. The Applicant submits that the contested decision was "infected by bias and therefore was ill-motivated". The Respondent's reasons "were wrong in law as it

considered irrelevant considerations stemming from administration of unpublished evaluation criteria. It failed to consider relevant considerations, for instance listed experiences on humanitarian aid coordination through clusters which by its virtue implies work on access issues".

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

The Tribunal's findings

31. The Tribunal notes that the mere fact that the hiring manager did not select the Applicant does not, in and by itself, prove any ill-motivation, and he has not provided any evidence in support of his claim. Rather, as held above, the Applicant has failed to substantiate that the hiring manager exceeded his or her scope of discretion in any possible manner when not selecting the Applicant.

32. 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

33. 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".

34. 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 proceedings" (see arts. 4.1, 4.2 and 4.4.).

35. 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 or her 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

36. With his closing statement, the Applicant also filed a "motion to award costs against the Respondent". Therein, the Applicant submits that "the actions of the Respondent may amount to a manifest abuse of proceedings. In addition, failure of the Respondent, intentional or not, to file its *ex-parte* submissions in line with applicable rules and regulations … as well as failure to timely respond and make *ex parte* filings available, also may have contributed to manifest abuse of proceedings as its actions unreasonably prolonged the judicial review and undermined the Applicants ability to timely cross-examine and comment on all important evidence related to a contested decision".

37. The Applicant's additional submissions on the Respondent's alleged "manifest abuse of proceedings" relate to the substance of his claim that the contested decision was unlawful. They mainly refer to the email correspondence of 1 May 2024 between the Human Resources Business Partner and the United Nations staff members, by which a reason was provided for why the Applicant's candidacy was not deemed relevant for the Post.

The Tribunal's findings

38. The Tribunal does not find that the Respondent's filing of annexes *ex parte*, alleged lack of timeliness, or provision of a reason for the contested decision, amounts to a manifest abuse of proceedings under art. 10.6 of its Statute. No procedural and/or substantive harm was caused to the Applicant's case.

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

**Conclusion**

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

*(Signed)*
Judge Sun Xiangzhuang
Dated this 16th day of December 2025

Entered in the Register on this 16th day of December 2025
*(Signed)*
Liliana López Bello, Registrar, Geneva