



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2024/039  
Order No.: 83 (NBI/2024)  
Date: 5 July 2024  
Original: English

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**Before:** Judge Sean Wallace  
**Registry:** Nairobi  
**Registrar:** René M. Vargas M., Officer-in-Charge

RUDOLF JOCONDO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON A REQUEST FOR  
CORRECTION OF AN ORDER  
UNDER ART. 31 OF THE TRIBUNAL'S  
RULES OF PROCEDURE**

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## Introduction

1. By Order No. 71 (NBI/2024), issued on 18 June 2024, the Tribunal denied the Applicant's application for suspension of action pending management evaluation.
2. On 19 June 2024, the Applicant filed "an application for correction of judgment" seeking correction of para. 13 of the above-mentioned Order pursuant to art. 31 of the Tribunal's Rules of Procedure ("ROP").

## Consideration

3. In his 19 June 2024 submission, the Applicant substantiates his request for correction in the following terms:

5. The Applicant submits that para.13 of the Order is unfairly critical of the Applicant when it states that "*the Applicant is confusing implementation of the decision and the effective date of assuming office*". The Applicant did not confuse anything. There have been varying approaches taken by different judges in the past regarding the date of implementation of a selection decision when the selected candidate is an internal staff member, and the selection decision results in a promotion. All the Applicant did was cite directly on point jurisprudence issued by different judges of this Tribunal that established and supported his position that a selection decision selecting an internal candidate where it results in a promotion is not implemented until the first day of the month following the selection decision. The Respondent cited jurisprudence in his 13 June 2024 Reply in support of his position that the decision had already been implemented (emphasis in the original).

6. Juxtaposed against this, the Applicant finds it unusual that the Order did not specify any jurisprudence upon which it relied in reaching its decision, nor did it acknowledge that different seats of the Tribunal have taken differing approaches to this confusing issue; instead, it unfairly placed the confusion at the door of the Applicant.

7. The Applicant submits that para. 13 of the Order should be corrected to replace references to the Applicant being "confused" with a similar reference to the varying approaches taken in the past as cited by the Respondent in *Passarelli*, Order No. 57 (NY/2020), paras. 16-20.

4. Article 31 of the Tribunal's ROP (Correction of judgments) provides that the Tribunal may "at any time" correct "[c]lerical or arithmetical mistakes, or errors arising from any accidental slip or omission". No such mistakes or errors were, however, made in Order No. 71 (NBI/2024).

5. The above notwithstanding, the Tribunal recalls that the matter before it at the time of issuance of Order No. 71 (NBI/2024) was an application for suspension of action that had to be disposed of expeditiously and, as such, the Order used summary language instead of a more thorough explication.

6. Accordingly, as a matter of exception, the Tribunal is inclined to grant the Applicant's request for correction to more completely set out its analysis. However, this should not be interpreted as art. 31 of the Tribunal's ROP being an avenue to seek "correction" of issuances when a party is dissatisfied with judicial language used.

7. In view of the foregoing, the Tribunal replaces paras. 13 and 14 of Order No. 71 (NBI/2024) with the paragraphs below:

13. Section 10.2 of the AI clearly states that a selection decision is "implemented upon its official communication to the individual concerned". The AI then sets forth that if the "selection entails promotion to a higher level, the earliest possible date on which such promotion may become effective shall be the first day of the month following the decision".

14. This language has been viewed in two ways by this Tribunal. On the one hand, a handful of orders from 2016 held that a selection decision that entails a promotion, cannot be implemented until the first day of the following month. See, e.g., *Farrimond* Order No. 113 (GVA/2016), paras. 15-16; *Finniss* Order No. 116 (GVA/2016) paras. 14-17; *Wilson* Order No. 147 (NY/2016) paras. 27-33; and *Wilson* Order No. 276 (NY/2016), paras. 38-42.

15. On the other hand, several cases have examined the language and reached a different conclusion. See, e.g., *Passarelli* Order No. 57 (NY/2020), paras. 13-19; *Kennedy* Order No. 114 (NY/2018), paras. 18-21; and *Al-Midani* Order No. 309 (NY/2014), paras. 20-21.

16. The latter cases, adopting a more in-depth analysis based on general principles of contract law, find that the employment contract is formed upon the successful candidate's unconditional acceptance of the job offer. Thus, the cases conclude that "the implementation of the contested selection decision and the timing of when the resultant promotion becomes effective are two different matters". See *Passarelli* para. 16. The Tribunal finds the analysis in these cases to be more persuasive than that of the 2016 cases and to be dispositive of this case.

17. Thus, the selection decision was implemented on 6 June 2024, when the selected candidate was notified of their selection and accepted the position. Therefore, the Tribunal cannot provide effective and meaningful injunctive relief since the selection process has been concluded, and the application for such relief is not receivable.

8. As a result of the above inserted language, the paragraph number in the "Conclusion" section of Order No. 71 (NBI/2024) now reads "18" instead of "15".

### **Conclusion**

9. In light of the above, IT IS ORDERED THAT the Applicant's request for correction of Order No. 71 (NBI/2024) is granted in part as to only paras. 7 and 8 above. However, the conclusion remains the same as originally set out.

*(Signed)*

Judge Sean Wallace

Dated this 5<sup>th</sup> day of July 2024

Entered in the Register on this 5<sup>th</sup> day of July 2024

*(Signed)*

René M. Vargas M., Officer-in-Charge, Nairobi