



**Before:** Judge Goolam Meeran

**Registry:** New York

**Registrar:** Hafida Lahiouel

CHOCOBAR

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON WITHDRAWAL AND REFERRAL  
TO THE SECRETARY-GENERAL**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Stephen Margetts, ALS/OHRM, UN Secretariat  
Sarahi Lim Baró, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant filed an application contesting the decision not to select her for a P-4 level Telecommunications Engineer post with the Department of Field Support, located in New York. The post was advertised on 4 February 2013, with the deadline for receipt of applications being 5 April 2013. It was not a generic job opening but a position-specific job opening as it was used for the filling of an individual position at a specific duty station (see ST/AI/2010/3 (Staff selection system)). The Applicant was not on a pre-approved roster of candidates for positions in the telecommunications engineering field. Having applied for the post on 26 March 2013, ten days before the deadline for applications, she was informed on the same day that the post had in fact been filled by a candidate from a pre-approved roster. No interviews or written tests were conducted.

2. The Applicant submitted that the selection of another candidate from the roster, without a proper selection exercise, was unlawful and breached her right to full and fair consideration for the post. The Respondent submitted that the application was without merit as, pursuant to sec. 9.4 of ST/AI/2010/3, the head of department was entitled to select a suitable candidate for the post from the roster of pre-approved candidates, thereby obviating the need for a full selection exercise.

## **Procedural matters**

### *United Nations Dispute Tribunal's judgment in Charles*

3. The legal issue raised by this administrative decision was previously examined in another case—see *Charles* UNDT/2013/040—where the Dispute Tribunal found that an automatic appointment of a roster candidate to a *position-specific job opening* without a selection process that affords other staff members who applied for the position the right to full and fair consideration was contrary to the requirements of art. 101.3 of the United Nations Charter and staff regulation 4.2. It should be noted that the judgment in *Charles* related solely to a position-specific job opening and not to a generic job opening for which different considerations apply.

*Secretary-General's appeal*

4. The Secretary-General appealed *Charles* UNDT/2013/040. By Orders No. 272 (NY/2013) and 313 (NY/2013) the Tribunal stayed all proceedings in the present case pending the judgment of United Nations Appeals Tribunal (“UNAT”) in *Charles* since one of the key issues raised by the Applicant related to the manner in which rosters may be used for position-specific job openings.

*United Nations Appeals Tribunal's judgment in Charles*

5. On 13 May 2014, the United Nations Appeals Tribunal published *Charles* 2014-UNAT-416, finding that there was no requirement in sec. 9.4 of ST/AI/2010/3 for the head of department to first review all non-roster candidates. The Appeals Tribunal found that sec. 9.4 has been amended (from ST/AI/2006/3 to ST/AI/2010/3) specifically to remove such a requirement. The Appeals Tribunal concluded that “the [Dispute Tribunal] erred in law in deciding that the appointment of the roster candidates was contrary to ST/AI/2010/3”.

*Further submissions*

6. On 27 May 2014, the Respondent filed a submission relying on *Igbinedion* 2014-UNAT-410, para. 24, stating that “the Appeals Tribunal judgment is binding and determinative of the central legal issue in dispute” and the Administration was entitled to appoint a candidate from the roster in this case.

7. On 28 May 2014, the Applicant responded with a challenge to the Respondent’s submission, stating that “the Appeals Tribunal judgment is not determinative of the central legal issue in dispute in this case”.

8. On 2 June 2014, the Tribunal issued Order No. 131 (NY/2014), finding that the application, reply and other submissions filed by the parties were sufficient to render a judgment on the papers.

*Withdrawal*

9. On 24 June 2014, the Applicant filed a motion to withdraw the application following a confidential settlement agreement.

10. In light of the Applicant's written notice of withdrawal of her application and there being no matter for adjudication by the Dispute Tribunal, Case No. UNDT/NY/2013/109 is hereby closed and this ends the matter as far as the Applicant's claim is concerned.

11. However, there arises an issue of wider concern for the proper administration of the policy on staff recruitment (ST/AI/2010/3, staff selection system). The Tribunal notes the submission made by the Respondent in this case that "the principle of full and fair consideration does not apply when a staff member is selected from the roster" for position-specific job openings. Such a bold and sweeping statement, without any qualification and without acknowledging the significant difference between position-specific job openings and generic job openings could seriously undermine the Organization's policy and values concerning staff selection.

*Core principles of staff recruitment in the United Nations*

12. Since the claim has been withdrawn this matter is not before the Tribunal for a judicial determination. However, as a matter of urgent priority the Administration needs to address the policy implication of the claim that the "the principle of full and fair consideration does not apply when a staff member is selected from the roster".

13. On the face of it, this submission appears to be inconsistent with art. 101.3 of the United Nations Charter, which states that "the necessity of securing the highest standards of efficiency, competence, and integrity" is the "paramount consideration in the employment of the staff and in the determination of the conditions of service". Staff regulation 4.2 contains similar language. Staff regulation 4.3 further specifies that "[s]o far as practicable, selection shall be made on a competitive basis".

14. That said, the Tribunal recognizes the managerial imperative of reducing the length of time taken to fill vacancies and the concomitant need to improve the effectiveness and efficiency of the Organization's recruitment and selection processes whilst, at the same time, observing the laudable principles enshrined in the Charter and successive resolutions of the General Assembly and various issuances (see General Assembly resolution 61/244).

15. However, any exception on the grounds of efficiency must be narrowly circumscribed so as not to infringe the fundamental tenets under art. 101.3 of the Charter and staff

regulations 4.2 and 4.3, which identify the important policy distinction between a generic job opening on the one hand and a position-specific job opening on the other hand, each designed to meet different organizational needs.

*Generic job openings v. position-specific job openings*

16. The old version of the administrative instruction on staff selection (no longer in force), ST/AI/2006/3, stated (emphasis added):

**Section 7**

**Consideration and selection**

...

7.8 Should an **eligible roster candidate** be suitable for the vacancy, the programme manager may recommend his or her **immediate selection** to the head of department/office, **without reference to the central review body**, as provided in section 9.4.

...

**Section 9**

**Decision**

...

9.4 Candidates included in the roster may be selected by the head of department/office for a subsequent vacancy, **without reference to a central review body**, after the programme manager has **reviewed the applications of new candidates for a vacancy** included in the compendium, together with the pre-approved roster candidates transmitted by OHRM or the local personnel office, subject to the provisions of section 9.2.

17. The new administrative instruction on selection, ST/AI/2010/3, as amended by ST/AI/2010/3/Amend.1, generally referred to in this Order as ST/AI/2010/3, states (emphasis added):

**Section 9**

**Selection decision**

...

9.4 Candidates for **position-specific job openings** up to and including at the D-1 level included in a list **endorsed by a central review body** other than the candidate selected for the specific position shall be placed on a roster of candidates pre-approved for similar functions at the level of the job opening, which shall be drawn from all duty stations for job openings in the Professional and above categories and the Field Service category. Following

the selection decision, roster candidates shall be retained in a roster indefinitely or until such time the present administrative instruction is amended. **Candidates included in the roster may be selected** by the head of department/office for a subsequent job opening **without reference to a central review body**.

9.5 Qualified candidates for **generic job openings** are placed on the relevant occupational roster **after review by a central review body** and may be selected for job openings in entities with approval for roster-based recruitment. The roster candidate shall be retained on an occupational roster indefinitely or until such time the present administrative instruction is amended. **Should an eligible roster candidate be suitable for the job opening**, the hiring manager may recommend his/her **immediate selection** to the head of department/office/mission **without reference to the central review body**.

18. Sections 1(i) and 9.5 of ST/AI/2010/3 state that the option of “immediate selection” is provided only with respect to generic job openings and only with respect to “job openings in entities with approval for roster-based recruitment”, such as various “peacekeeping operations, special political missions and other field operations”, in which urgent deployment is often required in the interests of international peace and security. This exception is clearly limited to generic posts that exist in multiple duty stations.

19. However, with regard to position-specific job openings, no reference is made in sec. 9.4 to “immediate selection”, though candidates may be selected from the roster. This section cannot be read as implying that the standard requirement of “competitive selection” under staff regulation 4.3 does not apply.

20. Given the fact that there are two types of job openings for which different provisions have been made in ST/AI/2010/3, the Administration cannot use its rosters in an identical manner irrespective of whether the job in question is for a position-specific job opening or a generic job opening. The opportunity to opt for “immediate selection” is provided only with respect to *generic* job openings (sec. 9.5 of ST/AI/2010/3) and only with respect to “job openings in entities with approval for roster-based recruitment”, such as various peacekeeping operations, special political missions and other field operations. (However, such entities may also utilize position-specific job openings when they deem it necessary, in which case the policy provisions applicable to those job openings apply (sec. 4.3 of ST/AI/2010/3).)

21. The two relevant provisions of ST/AI/2006/3 (secs. 7.8 and 9.4) were amended in ST/AI/2010/3 to make special provision for the possibility of immediate selection for generic job openings only, and not for position-specific job openings.

22. The rationale for this distinction would appear to be obvious. Only roster candidates can apply for field-based job openings while the public at large may apply for all position-specific job openings. To conflate both processes would be illogical, unfair to staff members and contrary to the intention of the General Assembly which allowed an exceptional and expedited recruitment process when established procedures are in place (General Assembly resolution 61/244, sec. II, para. 12). To ignore the deliberate distinction between sec. 9.4 and sec. 9.5 would mean that whilst position-specific job openings would theoretically be open to all, in practice they could be filled from pre-approved rosters without being subjected to any competitive process whatsoever. Should such a practice gain momentum, it would be very difficult for non-roster candidates to ever become rostered for non-field positions since membership to rosters is now unlimited in time. In addition, it is inconceivable that the legislator intended that there be no difference in filling generic job openings (i.e., field-based posts open only to roster candidates) and position-specific job openings open to all. If this were indeed the case there would have been no need to enact separate provisions.

*Absence of mandate from the General Assembly to disregard the principle of competitive selection for position-specific job openings*

23. Paragraphs 15 and 16 of the Respondent's reply imply that the General Assembly has given either implied or even tacit approval to the notion that "the principle of full and fair consideration does not apply when a staff member is selected from the roster". The Respondent makes a reference to the Secretary-General's report A/65/305. This is an unwarranted gloss on the report. Although para. 53 of the report states that heads of department may select a roster candidate for a job opening at any time during the selection process, the following paragraphs concern the "use of rosters", and while para. 56 specifically mentions that the filling of positions in the field is made through roster-based recruitment, nothing is being said about filling non-field positions through roster-based recruitment. The Secretary-General's statement in para. 53 of the report appears correct with respect to generic job openings (sec. 9.5 of ST/AI/2010/3), but incorrect with respect to position-specific job openings (sec. 9.4 of ST/AI/2010/3).

24. The Secretary-General's report also refers to the General Assembly's resolutions 61/244 and 65/247, which mandate the Secretary-General to make further use of rosters and which recognize that "pre-screened rosters can considerably expedite the recruitment process in the United Nations". However, whilst the General Assembly requests the Secretary-General to promote the full utilization of existing rosters for recruitment and to further elaborate the use of pre-screened rosters, based on the organizational needs, the General Assembly requests that this be done by "taking account the need for transparency, support for the provisions of Article 101 of the Charter and administrative and resource implications, as well as geographical and gender mandates".

25. There is no record showing that the General Assembly has been properly notified of the extraordinary interpretation suggested by the Respondent that "the principle of full and fair consideration does not apply when a staff member is selected from the roster" for position-specific job openings. This interpretation ignores the express mandate to take into account the need for transparency and to ensure that the highest standards of efficiency, competence and integrity serve as the paramount considerations in the employment of staff.

26. It is correct that roster-based recruitment is expeditious for both position-specific job openings (because there is no need to refer the matter to the central review bodies) and even more so for generic job openings, which allow for "immediate selection". However, there appears to be no record that the General Assembly specifically approved or endorsed the filling of position-specific job openings from rosters through "immediate selection" (which is only reserved under sec. 9.5 of ST/AI/2010/3 for generic job openings) and without a proper competitive selection process.

27. Any departure from the fundamental recruitment principles established in the United Nations Charter, General Assembly resolutions, and the Staff Regulations, requires a clear mandate from the General Assembly as it challenges the fundamental principles of staffing as provided for in the United Nations Charter. The Tribunal finds that, contrary to the Respondent's submissions, the issue has not been properly brought to the General Assembly's attention, nor has the Assembly given a mandate endorsing the Respondent's interpretation that "the principle of full and fair consideration does not apply when a staff member is selected from the roster" and that position-specific job openings may be filled from rosters without a competitive selection exercise.



*Referral to the Secretary-General*

28. There would appear to be no formal mechanism by which such a concern may properly be drawn to the attention of the Secretary-General and the General Assembly.

29. Article 10.8 of the Tribunal's Statute provides that "[t]he Dispute Tribunal may refer appropriate cases to the Secretary-General of the United Nations or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability". This provision is not really apposite and cannot be used as a vehicle for conveying such concerns to the appropriate bodies.

30. However, art. 7 of the Tribunal's Statute read together with art. 36 of the Tribunal's Rules of Procedure may be relied upon to meet the particular situation. Article 7 of the Tribunal's Statute provides a list of matters for which provisions shall be made in the Tribunal's Rules of Procedure. The Statute does not specifically list the issue of a referral to the Secretary-General for urgent consideration and action. However, art. 36 of the Tribunal's Rules of Procedure states:

**Article 36 Procedural matters not covered in the rules of procedure**

1. All matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Dispute Tribunal on the particular case, by virtue of the powers conferred on it by article 7 of its statute.

2. The Dispute Tribunal may issue practice directions related to the implementation of the rules of procedure.

31. Therefore, although the case brought by Ms. Chocobar has been withdrawn and the file will be closed, pursuant to art. 36 of the Tribunal's Rules, the Tribunal finds that the issue regarding the proper interpretation of the roster provisions in sec. 9 of ST/AI/2010/3, in and of themselves, and also within the context of the legislative intent behind the policy, require the urgent consideration of the Secretary-General and the General Assembly.

32. The issue raised in this case is of wide application and appears to arise from an incorrect analysis and a flawed interpretation of ST/AI/2010/3. The Tribunal considers that the maintenance of the difference between "immediate selection" under sec. 9.5 and its absence for position-specific job openings under sec. 9.4 was deliberate. It was consistent with the intention of the legislature to facilitate urgent recruitment to meet the needs of

certain entities within the Organization but maintaining the principle of full and fair consideration of all applicants for a position-specific job opening under the staff selection system. Were this not to be the case, there would have been no need to make separate provisions and application procedures for position-specific job openings under sec. 9.4 and generic job openings under sec. 9.5. To conflate the two as the Respondent evidently has done requires confirmation and endorsement by the legislature.

33. This case highlights the risk that appointments to position-specific job openings may now be made in a non-transparent manner shielded behind claims of roster discretion. Even in cases when several roster candidates apply, there is, according to the Respondent's interpretation, no legal requirement reflected in properly promulgated administrative issuances for a competitive evaluation of roster candidates against each other using standard objective evaluation tools, including tests and interviews. Not only is this bold assertion contrary to the requirement of staff regulation 4.2, which specifies that so far as practicable, selection shall be made on a competitive basis among all candidates for a post, but it defeats the policy objective of selecting the best candidate since roster candidates in position-specific job openings may not necessarily meet all the requirements, including desirable requirements, for a specific job opening.

34. The Administration cannot circumvent its own selection rules and procedures—as well as the principles enshrined in the United Nations Charter, relevant General Assembly resolutions, and Staff Regulations—in favour of administrative convenience.

35. The exception for generic job openings is, as explained above, based on sound policy considerations and proper procedural safeguards were put in place to restrict the scope of the exception. Indeed, there are proper safeguards to preserve the rights of candidates for generic job openings: they must as a pre-condition apply for generic job openings in order to have their names included in field mission rosters or have their names already included in a roster. Only then could such roster candidates apply for field-based positions, and a competitive albeit shorter process among roster candidates may take place, if necessary. No such safeguards were established for position-specific job openings since immediate selection is not possible under sec. 9.4 of the policy. To extend the exception of immediate selection to position-specific job openings is therefore in direct contradiction to the Organization's policy on staff selection.

36. This issue requires urgent and immediate attention, including, if necessary, at the appropriate levels of the General Assembly. It undermines the basic tenets upon which the Organization operates, such as transparency, accountability, and the principles in art. 101 of the United Nations Charter, and incurs the risk of arbitrary exercise of power without accountability and insulates from judicial scrutiny those hiring decisions which may reasonably be considered to be of questionable validity. The Secretary-General's interpretation on the use of rosters to fill non-field job openings, as revealed in this case, promotes an unwarranted departure from the principles and inherent safeguards in the staff selection system. Posts at the United Nations are financed through public funds, and they demand transparent and competitive recruitment in compliance with the requirements of the United Nations Charter, relevant General Assembly resolutions, and Staff Regulations.

37. Regrettably, it would appear that these issues, including the relevant sections of ST/AI/2010/3 and the requirements of the UN Charter and Staff Regulations, were not properly addressed by the parties before the Appeals Tribunal in *Charles* 2014-UNAT-416. In particular, the Administration would appear to have failed to have drawn attention to the distinction between secs. 9.4 and 9.5 of ST/AI/2010/3 dealing with position-specific and generic job openings, respectively. Moreover, the Administration has wrongly, and without proper legal justification, extended the ambit of the judgment in *Charles* beyond what is legitimate and permissible.

38. Therefore, the Tribunal deems it necessary to refer this matter to the Secretary-General for urgent consideration, including a referral to the President of the General Assembly, if he deems it necessary to do so.

**Orders**

39. In light of the Applicant's written notice of withdrawal of her application and there being no matter for adjudication by the Dispute Tribunal, Case No. UNDT/NY/2013/109 is hereby closed.

40. The matter is hereby referred to the Secretary-General for urgent consideration of its implications for the staff selection system.

*(Signed)*

Judge Goolam Meeran

Dated this 8<sup>th</sup> day of August 2014