



**Before:** Judge Francis Belle  
**Registry:** New York  
**Registrar:** Nerea Suero Fontecha

ROSS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON CASE MANAGEMENT**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
UNHCR

### **Procedural history / Introduction**

1. On 16 August 2016, the Applicant, a former staff member in the United Nations High Commissioner for Refugees (“UNHCR”) at the P-4 level, filed an application in which he contests “[t]he decision to appoint another candidate to the position of Senior Inter-Agency Coordination Officer, P-4 level], Office of Human Resources Management, Nairobi, job opening 57267 [“the Post”]”. The case was registered with the Dispute Tribunal’s Registry in Nairobi under Case No. UNDT/NBI/2016/060 and assigned to Judge Klonowiecka-Milart.

2. On 14 September 2016, the Respondent filed his reply, contending that the application is without merit.

3. By Order No. 161 (NBI/2017) dated 22 September 2017, Judge Klonowiecka-Milart instructed the parties to attend a Case Management Discussion (“CMD”) on 24 October 2017. At the request of the Respondent, the CMD was instead held on 17 October 2019.

4. Upon the Dispute Tribunal’s directions at the CMD on 17 October 2017, the Applicant filed a submission by which he (a) amended his previous pleadings regarding the relief that he sought and (b) requested that “the manager of the position [emphasis omitted] to be heard as a witness with regard to the question whether he knew that [P-4 level] candidates are to be given preference and whether this made a difference in his assessment of the candidates”.

5. Referring to a submission of the Respondent of 14 November 2018 in Case No. UNDT/NBI/2016/033 (Ross) and some exchanges between the parties between 14 and 16 November 2018, by Order No. 177 (NBI/2017) dated 20 November 2017, Judge Klonowiecka-Milart rejected a request of the Respondent to consolidate the present case with “other cases before the other [Dispute Tribunal]”, but agreed to refer the present case to mediation to the Ombudsman, instructing the parties “to advise the Tribunal on status of mediation by ... 31 January 2019”.

6. By email of 21 December 2018, the Ombudsman informed the Nairobi Registry that the mediation efforts had failed.

7. By email of 19 July 2019, the Nairobi Registry informed the parties that, “to rebalance the Registries’ case load, the Nairobi Registry has been directed to transfer ... this case ... to the New York Registry ... with immediate effect”.

8. On 17 October 2019, the case was assigned to the undersigned Judge.

### **Consideration**

#### *Limitation to the judicial review and the principle of regularity*

9. It is trite law that the Dispute Tribunal’s judicial review is limited. In this regard, reference is often made by the Appeals Tribunal to *Sanwidi* 2010-UNAT-084 (para. 42) in which it defined the scope of review as that “the role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate”. The Appeals Tribunal further held that “the Dispute Tribunal is not conducting a “merit-based review, but a judicial review” explaining that a “[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decisionmaker’s decision”.

10. Regarding selection and promotion decisions, in light of the Administration’s broad discretion in such matters, the Appeals Tribunal has held that these types of decisions are governed by the so-called “principle of regularity”. This means that if the Respondent is able “to even minimally show that [an applicant’s] candidature was given a full and fair consideration, then the presumption of law stands satisfied” where after the applicant “must show through clear and convincing evidence that [s/he] was denied a fair chance of promotion” in order to win the case (*Lemonnier* 2017-UNAT-762, para. 32).

*Issues of the present case*

11. The Appeals Tribunal has held that “the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review”. When defining the issues of a case, the Appeals Tribunal further held that “the Dispute Tribunal may consider the application as a whole”. See *Fasanella* 2017-UNAT-765, para. 20, as affirmed in *Cardwell* 2018-UNAT-876, para. 23.

12. Based on the parties’ submissions and the evidence on record, the substantive issues of the present case are defined as follows:

a. To assess the job candidates’ suitability for the Post, was UNHCR’s assessment of the Applicant’s qualifications and professional experience proper, including by concluding that he “does not have the inter-agency experience required for this position”?

b. With reference to the Appeals Tribunal in para. 48 of *Ross* 2019-UNAT-926, were any of the alleged irregularities, procedural and/or substantive, in the assessment process of “such a nature that, had [they] not occurred, [the Applicant] would have had a foreseeable and significant chance for [selection]”?

c. In case the contested decision is found unlawful, what remedies are the Applicant entitled to?

*Case management, including the Applicant’s motion of 17 October 2017 for production of oral evidence of hiring manager*

13. In the motion, the Applicant requests that “the manager of the position [emphasis omitted] to be heard as a witness with regard to the question whether he knew that [P-4 level] candidates are to be given preference and whether this made a difference in his assessment of the candidates”.

14. In light of the definition of the issues above, the Tribunal finds that the case is fully informed and no further submissions or evidence would be necessary for its final adjudication.

15. In light of the above,

IT IS ORDERED THAT:

16. The Applicant's motion of 17 October 2017 is rejected;

17. By **4:00 p.m. on Wednesday, 20 November 2019**, the Applicant is to file his closing statement, which is to be five pages maximum, using Times New Roman, font 12 and 1.5 line spacing. The closing statement is solely to be based on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage;

18. By **4:00 p.m. on Wednesday, 27 November 2019**, the Respondent is to file his closing statement responding to the Applicant's closing statement and maximum be five pages, using Times New Roman, font 12 and 1.5 line spacing. The closing statement is solely to be based on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage;

19. By **4:00 p.m. on Monday, 2 December 2019**, the Applicant is to file any final observations responding to the Respondent's closing statement, which are to be two pages maximum, using Times New Roman, font 12 and 1.5 line spacing.

*(Signed)*

Judge Francis Belle

Dated this 8<sup>th</sup> day of November 2019