



Judgment No. 2020-UNAT-1000



Counsel for Mr. Ross: Self-represented

Counsel for Secretary-General: Francisca Lagos-Pola

JUDGE MARTHA HALFELD, PRESIDING.

1. Mr. Felix Ross, a former staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR) filed

On 8 March 2016, the Applicant informed the Representative that although he was interested in the position in Djibouti, he was unable to commit due to his family situation. He stated further that he would only go to Djibouti if his wife was also assigned there by her employer, the International Organization for Migration (IOM).

... On 24 March 2016, the Applicant was informed by the Human Resources Staff Services (HRSS)/DHRM by a letter dated 18 March 2016 that since they had not been notified of the extension of his appointment or of his selection for a new post within UNHCR, they would proceed with his separation from service effective 1 April 2016.

... The Applicant accepted the offer of a six-month temporary assignment as a P-4 Senior Protection officer to Djibouti on 29 March 2016.

... On 30 March 2016, the UNHCR Representative in Djibouti informed him that since he was not a staff member in between assignments (SIBA), the operation in

Djibouti is not a staff member in between assignments (SIBA), the operation in

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4. The UNDT dismissed Case No. UNDT/NBI/2016/054 as it found that Mr. Ross had failed to substantiate his claims of a flawed process and improper motives that led to his separation from service. With respect to Case No. UNDT/NBI/2018/040, the UNDT found that the Administration had failed to follow the proper procedures for the placement of adverse material in Mr. Ross' OSF and ordered the immediate removal of the notation contained in his OSF, though the UNDT determined that the decision to exclude Mr. Ross from the selection process at an early stage had been tainted by procedural error and had been unlawful. The UNDT awarded Mr. Ross USD 2,000 for moral harm for this error.

5. On 6 September 2019 tp2 Tw [(a9 -1.73 Tw 0.55e l. (ce)li0 Td.311 4.5 (o)241.5

THE UNITED NATIONS APPEALS TRIBUNAL

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The Secretary-General's Appeal

20. The Secretary-General maintains that the UNDT erred in fact and law in finding Mr

23. The Secretary-General requests the Appeals Tribunal to vacate the UNDT Judgment with respect to Mr. Ross' non-selection application and to dismiss his non-selection application in its entirety.

Mr. Ross' Answer

24. The Secretary-General's appeal con ~~AMCI~~ 0 Td[(c2-~~AMC~~no 0 Tw 6.e)0.6 (al c)-1.1T9 Tc 0.0190 Tc OT

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by the Appeals Tribunal. He apologizes for only submitting this policy at such a late stage of the proceedings because he became aware of it

authority regarding the decision to black-list him and separate him from

40. Therefore, there is no need for a suspension of proceedings at the appeals level based on the possible future considerations or findings of the UNDT in the pending case. However intertwined the situations might be, the claims in each application are clearly distinguishable. Mr. Ross' motion for temporary suspension of proceedings is therefore denied.

41. Given the application still pending before the UNDT, which is related to his complaint of retaliation, harassment and abuse of authority regarding the decision to black-list Mr. Ross and separate him from service, the Appeals T (e)]TJ-e7 (7 Tc ON(7 T6c)8.w (-)TT(e)]1 0.0[(a)0.7 (ssm)0e)]T-36

is not mentioned in the policy, should not be taken into consideration for the granting of a three-year fixed-term appointment. Last

jurisprudence, while there

52. Finally, pursuant to Article

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64. Likewise, it is the established jurisprudence of the Appeals Tribunal that, ordinarily, an FTA carries no expectation of renewal, unless there is evidence of a firm commitment otherwise.⁶ Our jurisprudence has required this commitment to be in writing.⁷ In the present case, there is not a single allusion, not to mention any evidence, of such a firm commitment on the part of UNHCR. The offer of the post in Djibouti by no means constitutes such a commitment, because there was no such mention in the process of negotiation. Mr. Ross, thus, fails in his argument that it was incumbent upon UNHCR to find him a position before separation. UNAT/2020/1000, paras. 17-18, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

66. Finally, Mr. Ross' request for the Organisation to delete the note that had been placed in his personnel file is moot, as this has already been ordered in the UNDT Judgment, which order the Secretary-General has not appealed. Any other note included in his file does not fall within the scope of the original administrative decision and should be challenged by the normal administrative procedure.

67. Mr. Ross's appeal with regard to the non-extension of his FTA must therefore fail.

68. In his appeal, the Secretary-General claims that the UNDT erred in receiving the application challenging the non-selection decision, since Mr. Ross was no longer a staff member at the time the position was advertised, and therefore had no standing to contest the administrative decision. Also, Mr. Ross failed in a timely manner to request a management evaluation of the decision not to select him.

69. According to the record, Mr. Ross applied for the P-4 position in Tunis on 21 July 2017, whereas he had been separated from service since 1 April 2016. The decision not to select him was taken on 14 November 2017, even though this was not communicated to Mr. Ross at that time. Maintaining that he only became aware of this in mid-February 2018, Mr. Ross filed a request for management evaluation on 7 April 2018.

70. The first issue for consideration and determination is thus whether the UNDT was correct in its finding that Mr. Ross had standing to challenge the decision not to select him for an internally advertised post. According to the UNDT, by virtue of the fact that Mr. Ross

Dispute Tribunal Statute broadly sets out those

Special Eligibility Criteria

20. Former UNHCR international professional staff members who were appointed following a UNHCR competitive selection process and who held an Indefinite Appointment or a FTA for an uninterrupted period of at least one year and former NPOs who have served a minimum of four years in this category prior to separation may apply for internally advertised vacancies in the international professional category at their previous grade or equivalent or one grade above for a period of five years following separation for women and for a period of two years following separation for men, unless otherwise prescribed in an agreed termination or voluntary separation.

74. Therefore, while the Appeals Tribunal agrees that the vast majority of cases admitted before the internal justice system comply with the criteria set forth by the Secretary-General, there are certain situations in a “grey area” that merit attention and cannot be excluded from this system. In [redacted],¹⁴ the Appeals Tribunal established that a quasi-contract formed when an offer of employment is unconditionally accepted by the person who fully satisfies the conditions specified within, is sufficient to allow for the person, albeit not yet a staff member of the Organisation, to challenge a decision stemming from such a quasi-contract. The quasi-contract also creates obligations for the Organisation which include behaving in keeping with the principle of good faith (to elucidate the other party on the relevant obligations, to provide assistance, to protect legitimate expectations, etc.), and acting fairly, justly and transparently in its dealings with the person. These aspects and expressions of the principle of good faith supplement, and at the same time, consolidate the terms of the emerging contract of employment. They constitute in their specific application an indispensable part of the parties’ compliance with the “terms of appointment”.¹⁵

75. In the present case, Mr. Ross, a former staff member, has challenged the decision not to select him for a new position for which he was to be considered especially eligible and therefore allowed to apply for the internally advertised vacancy. A degree of equality between former staff members and current staff members was thus established by the aforementioned Policy for the purposes of eligibility criteria. The interpretation suggested by the Secretary-General (to restrict the receivability of a legal application to the justice system to staff members who wish to challenge their respective terms of appointment) would have the consequence of depriving Mr. Rr.

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equated to that of any other internal candidate. That is to say that he was likened to a staff member for the purposes of eligibility for the post advertised, which is sufficient to warrant his standing to challenge before the UNDT any decision stemming from the post advertised. There is hence no error in the UNDT Judgment, which found that the application was receivable

76. The second matter for consideration and determination with regard to the receivability of the application before the UNDT is whether the UNDT was correct in its finding that the filing of the management evaluation request was timely. In this respect, we find that the Secretary-General is correct in his assertion that Mr. Ross had previously acknowledged being aware of the decision not to select him and therefore should have requested management evaluation earlier. In his initial application before the UNDT registered under UNDT/NBI/2018/40, Mr. Ross stated the following in a document dated 27 March 2018 concerning the decision not to select him:

43. In April 2017 the Applicant had applied for the position of Senior Protection Officer, P4, in Tunis. The Applicant had excellent chances to be selected. He had previously worked as a Senior Protection Officer in Morocco. He had thus worked in the same position in an operation which is very similar to the Tunisia operation. In addition the Applicant's wife works with IOM in Tunisia. The Applicant would have thus had to be given preference under UNHCR's procedures regarding appointments.

44. The blacklisting of the Applicant however eliminated the Applicant's chances to be selected for the position. The manager of the position and human resources staff in Tunis immediately must have seen the initial annotation on the Applicant's file when deciding whom to shortlist for the position. The Applicant was therefore probably not even shortlisted for the position. And even if he was shortlisted, DHRM staff in Geneva would have eliminated the Applicant from the selection process because of the annotation in his online personnel file.

45. The selection process was finalized and

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80. Mr. Ross requests this Tribunal to refer for accountability the Director of DHRM, Deputy Director of DHRM and the Deputy High Commissioner. He also seeks USD 20,000 in costs for his legal fees. He claims that several named individuals conspired, abused their authority, harassed and retaliated against him.

Judgment

82. The Secretary-General's appeal is granted in part, and Judgment N