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JUDGE ARTHA ALFELD RESIDING

1. At the material time, Mr. Ponce-Gonzalez was Chief, Budget and Finance Officer at the P-4 level with the United Nations Interim Security Force for Abyei (UNISFA). He filed an application contesting the failure to afford full and fair consideration to his candidacy for a position, alleging abuse of authority in cancelling the recruitment process, and considering him disqualified before the opening of a new selection exercise.

2. In Judgment on Receivability, the Dispute Tribunal rejected his application as not receivable, considering that the cancellation of the former recruitment exercise was a preparatory step in the selection process, and as such it may be challenged only in the context of an appeal against the outcome of the process.

3. On appeal, the Appeals Tribunal has found that the circumstances of the case warrant allowing Mr. Ponce-Gonzalez to challenge the decision to disqualify him from the selection process, since it cannot be regarded as a mere continuation of the eventually cancelled selection exercise. Mr. Ponce-Gonzalez's appeal is upheld, the UNDT Judgment is set aside and the case is remanded for adjudication on the merits.

4. On 25 September 2018, UNISFA circulated a temporary job opening (TJO 104314) for Chief, Operations and Resource Management (CORM) at the P-5 level. The TJO 104314 was for an initial period of six months and the selected candidate would report directly to the Chief of Mission Support (CMS), UNISFA.

5. According to the Management Evaluation Unit (MEU), which was later to review Mr. Ponce-Gonzalez's request for management evaluation, UNIFSA lacked the delegated authority to select and appoint staff at that time and, upon the advice of the former Field Personnel Division (FPD) at Headquarters, UNIFSA cancelled TJO 104314 and published a recruit from roster job opening (RFR 104637) for the same P-5 CORM position on 9 October 2018. Mr. Gonzalez timeously applied for the RFR position as a rostered candidate.



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13. After he had submitted a request for management evaluation, on 26 March 2019, !  
Mr. Ponce-

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21. Mr. Ponce-Gonzalez maintains that the Dispute Tribunal erred in law and in fact resulting in a manifestly unreasonable decision in rejecting his application as not receivable on the basis of its misunderstanding that the cancellation of RFR 104637 was the sole contested decision; that RFR 104637 was not cancelled but merely adjourned and TJO 109862 gave him an opportunity to be considered again; and that the recruitment process for the CORM position was on-going. In addition to challenging the cancellation of RFR 104637, he had contested the Hiring Manager's failure to accord him full and fair consideration during the assessment and alleged his abuse of authority in cancelling RFR 104637 following the unlawful disqualification of his candidacy. The UNDT erred in fact by confusing the two distinct processes for the same post and treating RFR 104637 and TJO 109862 as one continuous process. The regular recruitment process for RFR 104637 was not resumed; instead it was replaced by a different process for a temporary position.

22. The UNDT erred and failed to exercise its jurisdiction when it failed to examine the initial reasons for cancelling RFR 104637. By declaring Mr. Ponce-Gonzalez's application not receivable, the Dispute Tribunal contradicted its own Order No. 46 (NBI/2019), in which the UNDT recognized the issue of full and fair consideration to be receivable.

23. According to paragraph 10.4 of Administrative Instruction ST/AI/2010/3, the Hiring Manger should have recommended the CORM position to be advertised in the compendium after no rostered candidate had been found to be suitable. There was no explanation as to why this procedure had not been followed in the present case. The issuance of TJO 109862 was in effect an abuse of the newly delegated authority on staff selection.

24. The Dispute Tribunal erred in concluding that the cancellation of RFR 104637 was a preparatory step and was patently incorrect in inferring that the issuance of TJO 109862 was the culmination of the same selection process as RFR 104637. That consideration defies logic, because TJO 109862 was circulated 10 days

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Hiring Manager's Manual, in the present case, RFR 104637 was not cancelled before the assessment exercise; it was cancelled after the candidates had been identified. The outcome rejecting Mr. Ponce-Gonzalez's candidacy was the final step of that recruitment process and as such it remains receivable.

25. Mr. Ponce-Gonzalez then identifies and explains in detail the irregularities in the recruitment process for RFR 104637 in support of his position that the Hiring Manager had improperly cancelled the RFR 104637 recruitment process on the basis of a false determination that he was not a suitable candidate.

26. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Ponce-Gonzalez's appeal and affirm the UNDT Judgment.

27. The Secretary-General submits that the Dispute Tribunal correctly found that Mr. Ponce-Gonzalez's application was not receivable, as it has no jurisdiction to review preparatory steps leading to an administrative decision. The UNDT Judgment is consistent with the jurisprudence of the Appeals Tribunal. The cancellation of RFR 104637 carried no direct legal consequences for Mr. Ponce-Gonzalez's terms of employment. All the consequences that Mr. Gonzalez alleges are speculative and not supported by any evidence.

28. The Secretary-General also submits that all the submissions that Mr. Ponce-Gonzalez makes in respect of TJO 109862 are outside of the scope of the present case. In his request for management evaluation, Mr. Ponce-Gonzalez did not challenge any decision related to TJO 109862; his claims were limited to the RFR 104637 selection exercise. The Dispute Tribunal rejected his application for suspension of action on TJO 109862 as not receivable.

29. The Secretary-General further submits that Mr. Ponce-Gonzalez's claims about the internal legal framework are incorrect, as the legal framework (Section 2.2(d) of ST/AI/2010/4) allows a hiring manager to issue a TJO and decide whether to cancel a selection exercise. His allegations of irregularities surrounding RFR 104637 are a repetition of the arguments that he made in his UNDT application, but they do not show how the alleged errors led the UNDT to reach a manifestly unreasonable decision.





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single continuous selection exercise. Here, it is indisputable that there was cancellation of the former selection exercise and the launch of a new one under a different legal framework.

37. The UNDT also cited *Kawamleh*

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43. Moreover, as correctly shown by the UNDT

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47. The appeal is upheld and Judgment No. UNDT/2020/079 is hereby vacated. T

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