United Nations Dispute Tribunal

Case No.: UNDT/GVA/2009/18
JAB/2007/108
Judgment No.: UNDT/2009/044
Date: 16 October 2009
English
Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

MUTUTA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Ulrich Garms and Ugo Cedrangolo

Counsel for respondent:
Shelly Pitterman, DHRM/UNHCR

Notice: The format of this judgment has been modified for publication purposes in accordance with article 31 of the rules of procedure of the United Nations Dispute Tribunal.

Application

1. In his appeal to the Joint Appeals Board (JAB), registered on 10 December 2008, the applicant requested it to recommend that:

– The decision of the United Nations High Commissioner for Refugees

session should be rescinded;

– He should be promoted to the P-5 level;

– He should be awarded compensation equivalent to the additional

Promotions Board is required to pay due regard to gender parity. The UNHCR gender policy requires the Board to ensure that, at the grade levels where parity has not been achieved, half of all promotions will be awarded to women, which is in line with the policy advocated by the General

2007.

9. In 2006 women made up only 30 per cent of UNHCR staff at the P-5 level. The approach applied in order to achieve the goal of parity is legitimate and falls within the discretionary authority of the High Commissioner, although he is expected to respect certain parameters in exercising that authority. In particular, women may be given preference

the case in this instance with respect to promotion to the P-5 level, based on performance appraisals.

10. A comparison of the male and female candidates shows that, in terms of competence, the women who were promoted were at least on a par with,

[redacted]

against the Board's decision not to recommend him during the first session does not vitiate his promotion, nor does it vitiate the overall P-5 promotions procedure for the 2007 promotion session, since the High Commissioner has the authority to award promotions once the Appointments, Postings and Promotions Board has issued its recommendations.

17. The applicant alleges that there is no documentary evidence that the Appointments, Postings and Promotions Board assessed his situation on the [redacted]

the goal was to achieve gender parity at all grade levels by 2010 and notes

Board to ensure that, for all grade levels at which parity had not been achieved, the number of female staff recommended for promotion was equal to that of male staff, provided that the women had the required qualifications. Accordingly, the High Commissioner is justified in claiming that the system put in place, whereby equal numbers of women and men would be promoted to the P-5 level in order to achieve gender parity, was

enshrined in the Charter of the United Nations, namely merit-based promotion. Nevertheless, in seeking to achieve that goal, the High Commissioner had a duty to set clear rules for promotion, reconciling the

Administration may choose either to carry out the judge's order to rescind

specified above. In the first case, the High Commissioner will have to