UNITED NATIONS DISPUTE TRIBUNAL

Introduction

1. The Applicant, a Procurement Officer serving at the P-3 level in the Procurement Division, Office of Central Support Services, Department of Management in New York, contests the "filling and/or placement of staff on two regular vacant (P-4) Team Leadership positions … without having issued a job opening". The Applicant seeks monetary compensation and further requests the Tribunal, "irrespective of the outcome of this case", to urge the Administration to exercise its discretionary authority to

meaningless for purposes of these proceedings. On 13 March 2013, the Applicant filed a motion in protest. On 20 March 2013, he filed a response to Orders No. 62 and 63.

6. By Orders No. 82 (NY/2013) and No. 83 (NY/2013), dated 1 and 3 April 2013, the Tribunal directed the Respondent to file and serve appropriately redacted copies of the documents produced on 1 March 2013. The Tribunal further ordered the Respondent to produce the documents requested by the Applicant or to state the reasons why they should not be produced. The parties were ordered to file a joint submission by 30 April 2013, identifying their positions with respect to agreed and disputed legal and factual issues. Order No. 83 further stated that, following the filing of the joint submission, unless the parties agree to attempt informal resolution of the matter, all judicial case management shall be stayed pending further order or the assignment of this case to a judge for further consideration.

7. The Respondent replied to Orders No. 82 and 83 on 9 and 16 April 2013, respectively. In particular, the Respondent produced the documents requested by the Applicant, with the exception of several documents which, according to the Respondent, were either irrelevant or already in the Applicant's possession.

8. On 30 April 2013, the Respondent filed a submission stating that the parties were unable to agree to a joint submission. The Respondent further identified his

a reasoned request for a hearing on the merits. The Tribunal invited the parties to file additional submissions, if any, by 17 October 2013.

11. The Respondent did not file any submissions in response to Order No. 247. In his submission dated 17 October 2013, the Applicant stated that he did not see a need for a hearing in this case and invited the Tribunal to proceed with the consideration of the matter on the papers before it.

Facts

12. The Applicant contests the recruitment process for two P-4 level positions: (i) Team Leader, Infrastructure Support Team ("Position 1"); and (ii) Team Leader, Capital Master Plan ("Position 2"). Both Position 1 and Position 2 were regular posts that became temporarily available for reasons explained below.

Position 1

13. Position 1 was encumbered by Ms. SR. In January 2012, Ms. SR was temporarily assigned, initially for a period of six months (4 January to 30 June 2012), to the office of the Assistant Secretary-General, Office of Central Support Services, Department of Management. However, Ms. SR retained a lien on Position 1. Her temporary reassignment meant that Position 1 became temporarily vacant. Ms. SR's temporary assignment was subsequently extended from 1 July 2012 to 3 January 2013.

14. A temporary vacancy announcement ("TVA"

not explained in his application. The successful candidate, however, declined the position as she was no longer available.

15. On 14 August 2012, the Chief of the Headquarters Procurement and Support Service, Procurement Division, sent an email to several senior staff members in the Procurement Division, stating that since the candidate selected for Position 1 was no longer available, another P-4 staff member (Mr. SD) would be transferred laterally. The email stated:

> Mr. Warren Sach [Assistant Secretary-General, Office of Central Support Services, Department of Management] has decided to move [Mr. SD] out the [Capital Master Plan] Team due to length he has served for the [Capital Master Plan] procurement function and we have agreed with [Mr. MA] to release [Mr. SD] from the [Capital Master Plan] Team as of 30 September 2012. Having explored various positions in PD for [Mr. SD's] new assignment, we have concluded that he would be most suitable for the position of Team Leader of Infrastructure Support Team, whic

18. A TVA was published on iSeek for Position 2, with a deadline for applications of 8 September 2012. According to the Respondent, the TVA was originally published on iSeek on 28 August 2012. The TVA stated that it was for the position of a "Procurement Officer (Team Leader)", Capital Master Plan. On 31 August 2012, all staff members of the Procurement Division, including the Applicant, also received an email advising them that a TVA was issued for Position 2. The email contained a link to the TVA.

19. The Applicant was on vacation when the email was sent. He returned from his vacation on 11 September 2012, after the deadline for applications had passed. According to the Applicant, he only became aware of the TVA issued for Position 2 on 10 September 2012, two days after the application deadline. Accordingly, he did not apply for this TVA.

20. Upon his return, the Applicant sent an email on 11 September 2012 to the former Chief, Procurement Management Section, Procurement Division, stating that he "had no access to iSeek nor the means to submit an application during [his] vacation". He further stated, "I wish that the submission date for applications could have been extended—if only to allow me to take advantage of an equal and fair opportunity to apply". The Applicant suggested attaching a copy of the TVA to future email communications.

21. On 12 September 2012, the Chief, Procurement Management Section, Procurement Division, replied: "I would have been happy to supply you (or any other staff member) with a pdf copy of the TVA had you contacted me while you were on leave indicating that you did not have access to iSeek and hence could not download the pdf for yourself".

22. The Respondent submits that six people applied for Position 2. One of the candidates, Ms. NF, who was a P-3 level staff member, was selected for

the position. Ms. NF was temporarily assigned to Position 2 from 1 October 2012 to 31 December 2012.

23. On 12 December 2012, the Applicant noted in the office organization chart that the position of the Team Leader was now filled by Ms. NF. He inquired of management as to whether a regular job opening had been issued for this position. He states that he was not provided with a response.

24. On 19 December 2012, the Applicant submitted a request for management evaluation of the "placement of staff or filling of two 'regular' supposedly vacant (P-4) Team Leadership positions … (i) without issuing regular job openings [and] (ii) unlawfully issuing [TVAs] to fill regular positions and not allowing sufficient time to respond to the TVA". He also included a number of ancillary claims (see para. 43, below).

25. On 29 January 2013, not having received a response to his request for management evaluation, the Applicant filed the present application.

Applicable law

26. ST/AI/2010/3 (Staff selection system), dated 21 April 2010, states:

> ### Section 2
> ### General provisions
>
> 2.1 The present instruction establishes the staff selection system (the "system"), which integrates the recruitment, placement, promotion and mobility of staff within the Secretariat.
>
> …
>
> 2.5 Heads of departments/offices retain the authority to transfer staff members within their departments or offices, including to another unit of the same department in a different location, to job openings at the same level without advertisement of the job opening or further review by a central review body. …

…

Section 3

Scope

3.1 The system shall apply to the selection and appointment of all staff members to whom the Organization has granted or proposes to grant an appointment of one year or longer … .

3.2 The [staff selection] system shall not apply to the following:

…

(b) Temporary appointments;

(l) Lateral movements of staff by heads of department/office/mission in accordance with section 2.5 above.

…

Section 4

Job openings

4.1 Immediate and anticipated job openings for positions of one year or longer shall be advertised through a compendium of job openings.

27. ST/AI/2010/4/Rev.1 (Administration of temporary appointments), dated 26 October 2011, provides (emphasis added):

Section 1

General

1.1 The purpose of the temporary appointment is to enable the Organization to effectively and expeditiously manage its short-term staffing needs. …

…

Section 2

Use and duration of temporary appointments

…

2.2 A temporary appointment may be granted for specific short-term requirements that are expected to last for less than one year at the time of the staff member's appointment, such as:

…

(c) To temporarily fill a position whose incumbent is on special leave, sick leave, maternity or paternity leave *or on assignment*;

…

2.3 A temporary appointment shall not be used to fill needs that are expected to last for one year or more.

…

Section 3

Temporary job opening, selection and appointment process

Temporary job opening

3.1 When a need for service for more than three months but less than one year is anticipated, a temporary job opening shall be issued by the programme manager.

3.2 While the decision to issue a temporary job opening for a need for service for three months or less is made at the discretion of the programme manager, any extension beyond three months shall require the issuance of a temporary job opening.

Consideration

Scope of the case

28. The Applicant did not apply for the temporary vacancies for Positions 1 and 2 when they were issued. Ordinarily this would mean that the Applicant does not have standing to contest the outcome of the selection processes for these positions. However, the Applicant also submits that both posts should have been advertised as regular fixed-term posts under sec. 3.1 of ST/AI/2010/3 and that he only discovered that they were not advertised as such in December 2012. He also makes a number of ancillary claims relating to the filling of Position 1 through a lateral transfer when the initially selected candidate became unavailable. The Applicant submits, in effect, that the lateral transfer was improper, that Position 1 should have been advertised again, and failure to do so deprived him of an opportunity to apply and compete for Position 1. He also claims that the period during which the TVA for Position 2 was

advertised was unreasonably short, thus precluding him from applying. Therefore, the Tribunal has decided to deal with these contentions on their merits.

Issuance of TVAs for Positions 1 and 2

29. The Applicant submits that the use of TVAs for Positions 1 and 2 was improper. The Applicant is mistaken. Contemporaneous records clearly demonstrate that, although the two posts were regular budget posts, when their incumbents left on temporary assignments while holding lien on the posts, Positions 1 and 2 became available only temporarily. The vacancy announcements clearly indicated the temporary nature of the assignments. Thus, the Applicant's reliance on sec. 4.1 of ST/AI/2010/3, which requires "job openings for positions of one year or longer" to be advertised through a compf job openings, is without foundation. Both positions were available only temporarily when their incumbents left on short-term assignments of several months each, and thus sec. 4.1 of ST/AI/2010/3 did not apply.

30. With respect to Position 1, even if the Applicant's claims regarding the January 2012 selection process for Position 1 were receivable, the Administration was required, under secs. 2.2(c) and 3.1 of ST/AI/2010/4/Rev.1, to issue a TVA as it was clear that the temporary assignment for that position would last more than three months (Ms. SR's initial temporary assignment was for six months).

31. The Tribunal finds that, with respect to Position 2, the initial assignment was for three months exactly (1 October to 31 December 2013). Under sec. 3.2 of ST/AI/2010/4/Rev.1, the issuance of a temporary assignment was at the Administration's discretion; alternatively, the Administration could have filled Position 2 for three months or less through a lateral move (see sec. 2.5 of ST/AI/2010/3). The Administration chose to proceed with a TVA for Position 2. The Tribunal finds that this decision was well within the discretion of the Administration and was not unreasonable or otherwise unlawful.

32. The Tribunal finds that the issuance of TVAs for Positions 1 and 2 was lawful.

Lateral transfer to Position 1

33. The person selected for Position 1 was unable to take up her duties. The Respondent submits that this necessitated the need for a lateral transfer. The Applicant disputes this, claiming that the lateral transfer was improper and in violation of the applicable rules.

34. Section 2.5 of ST/AI/2010/3 (Staff selection system) provides that the Head of Department or Head of Office has the authority to transfer staff members within their department or office, at the same level, without advertisement of a job opening or further review by a central review body.

35. It appears that this case was filed by the Applicant on the basis of his suspicion that Position 1 (which was at the P-4 level) was filled through a lateral transfer of a P-3 level (and not P-4) staff member, which would have been contrary to sec. 2.5 of ST/AI/2010/3, which requires lateral transfers to be done “at the same level”. Contemporaneous records, however, demonstrate that this was not the case. Mr. SD at the time of the lateral transfer was a P-4 level staff member. Therefore, under sec. 2.5 of ST/AI/2010/3, the lateral move was permissible. In any event, the Applicant could not have been laterally transferred to Position 1 because he is a P-3 level staff member.

36. The Applicant alleged that the lateral transfer was procedurally flawed as it was authorized by an official who lacked proper delegated authority. However, the Respondent submits that the decision to move Mr. SD was made by Mr. Warren Sach, NcMr. aaD0 T1(tu, NcMr. a8ubm)ov/en.129, ty to t Tc.25542 foateCj-8.27Supeve Sach, Footer

Designation of Team Leaders

42. The Applicant also takes issue with Mr. SG and Ms. NF being referred to as "Team Leaders" in the office charts of the Procurement Division. He insists that they should be referred to as "Officers-in-Charge" of their respective teams as they were only temporarily assigned to Positions 1 and 2. In view of the clear language of the TVAs for both positions, advertising them as those of Team Leaders, the Applicant's submission is frivolous and devoid of any merit.

Other matters

43. The Applicant has raised various ancillary claims, including general claims of abuse of authority associated with frequent restructuring of the Procurement Division and associated movement of staff. The Applicant also claims that, because he became aware of the contested administrative decisions in this case only after they were implemented, he was deprived of his right to seek suspension of action.

44. The Tribunal does not find the ancillary claims raised by the Applicant substantiated in the context of this case. The present application is based on a number of assumptions and allegations, which, on the record before the Tribunal, are without merit. They appear to arise largely from suspicion based on a breakdown of trust on the part of the Applicant in the capacity of the managers concerned to act fairly. The Applicant is reminded, however, that suspicion alone, without any rational basis, is not enough to substantiate an allegation of unlawfulness.

45. Whilst the Tribunal does not have power in the circumstances of this case to order the Administration to transfer the Applicant laterally from his department as requested by him, the Tribunal notes the extraordinary number of applications filed by the Applicant. This must have an adverse impact both on the Applicant and