



UNITED NATIONS DISPUTE TRIBUNAL

## Introduction

1. The Applicant, a Record Assistant on a fixed-term contract at the G-4 level receiving Special Post Allowance at the G-5 level since 18 June 2013, contests the decision of the Office of Human Resources Management (“OHRM”) refusing to grant him an exception to sec. 6.1 of ST/2010/3 (Staff selection system) pursuant to staff rule 12.3(b), to enable him to apply for a post two grades higher than his, at the G-6 level with the United Nations Joint Staff Pension Fund (“UNJSPF”).
2. The Applicant seeks rescission of the contested decision so that he may be tested and interviewed for inclusion on the roster, and three months’ salary as compensation for procedural delay. Alternatively, he requests “compensation for the irreversible loss of employability and reskilling attributed to the retaliatory pattern embedded in the original decision, including for the cost of his higher education and professional certification allegedly gone to waste, namely €25,376 [for a Master’s degree in Business and Administration at the ESSEC business school] and €7,227 [for Chartered Financial Analyst, “CFA”]. On the basis that the Respondent has a responsibility to “protect the intangible property of staff”. Should the Tribunal refuse the above remedies, the Applicant requests that the maximum permissible monetary compensation be awarded to him, namely two years of net salary for loss of income as “the Administration is indefinitely preventing the Applicant from acquiring the necessary professional experience to achieve the compensation of CFA Charterholders”.
3. The Applicant had initially, on 31 May 2014, filed an application with the Tribunal which exceeded the prescribed page limit of 10 pages, and included over

4. On 25 July 2014, by Judgment No. UNDT/2014/107, the Tribunal dismissed the second application, Case UNDT/NY/2014/046, concerning the alleged “[f]ailure to investigate the administrative decision impugned in UNDT/NY/2014/045 under ST/SGB/2008/5 (prohibition of discrimination, harassment, including sexual harassment, and abuse of authority)” on the grounds that it was not receivable and ordered costs against the Applicant for abuse of process (Terragnolo UNDT/2014/107).

5. The first matter, namely the present case, forms the subject matter of the application which was served on the Respondent on 9 June 2014. In the reply filed on 9 July 2014, the Respondent submitted the application should be dismissed as the conditions for granting an exception under staff rule 12.3(b) were not met, and further, that the decision was rational and reasonable.

6. Due to the considerable amount of documentation and extensive submissions by the parties, by Order No. 276 (NY/2014) dated 10 October 2014, the Tribunal invited the parties to confirm whether they consented to this case being determined on the papers before it, or to file and serve a reasoned submission not exceeding two pages, why such determination was not possible.

7. On 16 October 2014, the Respondent consented to the matter being determined on the papers, whilst the Applicant filed a three-page response with 52 pages of annexes, requesting a hearing.

8. The parties were thereafter invited to a case management discussion by Order No. 282 (NY/2014) dated 22 October 2014 discuss the further conduct of the proceedings in this matter. At the case management discussion on 6 November 2014, the parties, the Applicant appearing person, presented their final oral submissions, subsequent to which neither party objected to the matter being thereafter determined on the papers.





OHRM states that the ASG/OHRM could not grant an exception to ST/AI/2010/3 without consultations with the UNJSPF whose needs are defined by the Board and implemented by the Chief Executive Officer. OHRM states further that, pursuant to Staff Rule 12.3 (b), any exception must not be prejudicial to the interests of other staff members. OHRM asserts that a formal exception would therefore require: (1) a formal agreement with the UNJSPF on the specific element for which an exception is to be made; (2) a vacancy announcement indicating that the UNJSPF determined a particular eligibility requirement would not apply, based on the operational needs of the UNJSPF; and (3) a proper screening of all candidates eligible under the revised conditions.

...

Obligation of the Administration to consider a request for exception

The MEU had regard to the holding of the UNDT/Hastings UNDT/2009/030, affirmed by 2011-UNAT-109, that:

“A decision maker exercising powers conferred by rules and regulations is obliged to turn his or her mind to the factors which are relevant to the decision to be made.”

...

Discretion of the Administration in granting a request for exception

The MEU noted that the decision to grant or deny a request for exception is within the discretion of the Administration.

...

The Administration considered your request for an exception

The MEU noted that the e-mail [OHRM] of 20 January 2014 did not explicitly refer to having considered the possibility of an exception. The MEU noted, however, that this e-mail was in response to your explicit request for an exception. The MEU further noted that, in your follow-up e-mail of 20 January 2014 thanking [OHRM] for [its] response, you did not question whether your request had been considered but rather invited OHRM to reconsider its decision. The MEU considered that your cases were therefore clearly distinguished from other o,]

OHRM indicated that OHRM considered your request for an exception. The MEU considered that these comments also indicated that OHRM considered that an exception was possible and the circumstances under which a legitimate exception could be made. The MEU concluded that OHRM had considered your request for an exception and had made a discretionary decision to deny your request.

19. Subsequently, in an inter-office memorandum dated 25 April 2014, after the management evaluation, and in response to the Applicant's request for an "investigation" of the impugned decision which he alleged constituted abuse of authority and retaliation, the Assistant Secretary-General of OHRM elaborated on and provided the Applicant with the substantial grounds for denying him an exception to para. 6.1 of ST/AI/2010/3 explaining that:

... It is in the interest of the Organization to maintain the eligibility requirements in Section 6.1 of ST/AI/2010/3. These eligibility requirements recognize the interest of the Organization and its staff members in an orderly career progression through the grades of each category of staff. They also benefit the Organization by ensuring that staff members who are selected to perform at higher grade levels have well-rounded experience within the Organization. Accordingly, staff members holding permanent, continuing, probationary or fixed-term appointments are required to gain progressively responsible experience, and are only eligible to apply for positions that are one level higher than their personal grades. This restriction applies even if a staff member meets the requirements of a job opening two or more grades above his or her grade level.

... I also note the negative impact an exception may have on other staff members. Specifically, it would be prejudicial to other staff members who may meet the requirements of the job opening but would not have been afforded the same opportunity to apply and compete for the job opening. Similarly, granting an exception would not be fair to job applicants who have gained progressively responsible experience in compliance with the eligibility requirements.

## Consideration

### The contested decision

20. The Tribunal must first identify the contested decision before it. The Applicant was informed by OHRM on 20 January 2014 that his request for an exception was denied, whereupon he immediately requested a reconsideration of the decision on the same day. In his request for a management evaluation of 6 February 2014, the Applicant also requested an “investigation” of this decision as constituting retaliation and an abuse of authority. It is only following the management evaluation decision of 11 March 2014 that OHRM, in its communication of 25 April 2014 relating to the Applicant’s request for an investigation, elaborated on the merits upon which the exception had been denied. The decision of 25 April 2014 regarding the “investigation” was the subject matter







the request for an exception; rather it is response to the Applicant's request for an investigation, a matter under the ambit of the previously decided Case No. UNDT/NY/2014/046.

29. Accordingly, the Tribunal finds th



38.

Was the decision ill-motivated, arbitrary, capricious or otherwise unlawful?

42. The Applicant contends that the ~~cost~~ decision was tainted by improper motives, that the refusal to grant an ~~extension~~ was arbitrary, ~~capricious~~ or otherwise unlawful, and that the procedural ~~delays~~ have prejudiced him.

43. There is no doubt that the Applicant is we

could therefore argue that the delay inflicted pecuniary and/or non-pecuniary harm on him.

47. Whilst there appear to be no guidelines as to when a request for an exception should be submitted in these circumstances, it is reasonable to conclude that at the very best, if not made before, it should be made at the time the application for the post is made. Needless to say, a member can only apply for such an exception upon becoming aware of the vacancy announcement. The Applicant applied for the post on 14 December 2013 ~~day~~ before the closing date of 15 December 2013, and only made his request for an exception on 30 December 2013; 15 days after the vacancy announcement for the post had closed. In this instance, the duration of the vacancy announcement being only 30 days, time was of the essence. The Applicant cannot complain about procedural delays, when his request for an exception was also delayed.

48. Furthermore, as otherwise required ~~by~~ ~~Antaki~~, the Applicant has failed to substantiate how the delay in providing him with full reasons caused him any damages. Under ~~Antaki~~, and in the particular circumstances of the present case, the Tribunal therefore finds that there are no grounds for awarding the Applicant any compensation.

#### Excessive filings

49. In fairness to all parties, it is the practice of the Dispute Tribunal to deal with cases in chronological order ~~of~~ ~~filing~~. However, with a view to efficiency and fast tracking of cases, new applications may be dealt with on a priority basis in appropriate circumstances (for example, cases that could be decided on the documents where the facts and legal issues are clear and the law settled, cases which may be susceptible to summary judgment, and cases which may be manifestly inadmissible, not receivable or frivolous).

copious documents, this case was identified by the Tribunal for fast tracking and determination on the papers.

50. The Tribunal observes that the Applicant filed a 29-page application and appended over 800 pages of documents as annexes, including research and editorial articles, many of which bear no direct reasonable relevance to the case. The filing of cumbersome pleadings and irrelevant and immaterial documentation causes obfuscation of the real issues, and is antithetical to judicial economy. Filings that are overly burdensome are costly for all concerned, and also unfair and prejudicial to other applicants who are presently awaiting resolution of their matters in a timely chronological manner. Parties must desist from overburdening the Tribunal with copious documents which are irrelevant to issues at hand, and which, if there is any doubt as to their relevancy, can always be filed subsequently by agreement between the parties or upon application, or following case management.

#### Conclusion

51. The application is dismissed.

(Signed)

Judge Ebrahim-Carstens

Dated this 30<sup>th</sup> day of January 2015

Entered in the Register on this 30<sup>th</sup> day of January 2015

(Signed)

Morten Albert Michelsen, Officer-in-Charge, Registrar, New York