

8. YPP replied on the same day informing the Applicant that the Organization had

Consideration

Issue of the case

16. Based on the parties' submissions, the Tribunal identifies the issue in this case to be whether it was lawful for the administration to exclude the Applicant, a General Service staff member, from the selection procedure for the recruitment of a Professional Level position, namely the Post.

The parties' contentions

17. The Applicant submits that the contested decision was unlawful on the following grounds:

- a. Firstly, the decision was issued without a legal basis as it resulted from an incorrect interpretation of the provisions of ST/AI/2012/2/Rev.1 (the Young Professionals Programme);
- b. Secondly, the Administration breached the provisions of the ST/AI/2010/3 (Staff Selection System), in particular, its secs. 6 and 7, since they deemed the Applicant ineligible to apply for the P-2 position and excluded the Applicant from the outset from the selection procedure for the Post by applying eligibility criteria not contained in the provisions of ST/AI/2010/3;
- c. Thirdly, the Administration's decision was arbitrary since the Administration ignored the Applicant's request to allow her to participate in the selection procedure for the Post contrary to the requirements set out in ST/AI/2010/3 and ST/AI/2012/2/Rev.1. Thus, the selection procedure for the Post has been tainted by a procedural error and the Applicant was not given fair and full consideration as a candidate;

e. Accordingly, staff rule 4.16(c) provides that to be recruited to the Professional category after a competitive examination, the Applicant, as a General Service staff member, is subject to mandatory reassignment. Paragraph 7.5 of ST/AI/2012/2/Rev. provides that the Applicant, as a “G to N” candidate, shall accept any position offered for her initial assignment, even if such position requires her to move to a different duty station;

f. On 10 May 2021, the Applicant failed to accept her YPP placement. By refusing her YPP placement, the Applicant forfeited her placement on the list of successful candidates as per para. 7.9 of ST/AI/2012/2/Rev.1. Accordingly,

20. As the Appeals Tribunal reiterated in *Lemonnier* 2017-UNAT-762, citing *Rolland* 2011-UNAT-122, “the starting point for judicial review is a presumption that official acts have been regularly performed”, at least when adjudicating non-selection cases. The Appeals Tribunal held in *Rolland* that if the management is able to minimally show that the applicant’s candidature was given a full and fair consideration, the burden of proof shifts to the applicant who then must show through clear and convincing evidence that he or she was denied a fair chance of selection.

21. The Applicant’s essential argument is that she was not given fair and full consideration for the Post. The Applicant states that the Administration violated ST/AI/2010/3 by deeming her application ineligible and excluding the Applicant from the selection procedure for the P-2 position. The Applicant argues that the Administration unlawfully introduced a new eligibility criterion from ST/AI/2012/2/Rev.1, in order to exclude the Applicant from the selection process.

22. The Tribunal notes that staff rule 4.16 provides that recruitment of General Service staff to the Professional category “shall be made exclusively through competitive examination.”

23. Regarding removal from the YPP roster, para. 7.9 of ST/AI/2012/2/Rev.1 states that:

Should a successful candidate refuse to participate in the placement exercise, which includes, but is not limited to declining a position after being selected, declining a formal written offer of appointment, withdrawing an application in Inspira, putting an application on hold in Inspira without prior approval from the Office of Human Resources Management, or failing to respond to e-mails or phone calls from hiring managers within a reasonable time period, he or she shall be considered to have withdrawn his or her candidacy from the young professionals programme and shall be removed from the list of successful candidates indicated in section 6 above of the present instruction. Selected candidates will be expected to report for duty within 90 calendar days of their acceptance of the written offer of appointment.

24. Section 7.13 of ST/AI/2012/2/Rev.1, expressly states that only “successful candidates” may apply to positions in the Professional category:

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from the list, “completely disregarding her request for a short deadline extension to reply to an offer”.

30. The Tribunal finds little merit to this line of argument. Firstly, ST/AI/2012/2/Rev.1 does not provide for any possibility of extension of deadline. Section 7.9 of ST/AI/2012/2/Rev.1 expressly states that “[s]elected candidates will be required to accept the offer within seven calendar days of the receipt of the written offer of appointment”.

31. Secondly, a request for an extension of deadline does not, in and by itself, reset or delay the deadline. This is only so if the requested is granted, which it was not in the present case. The Applicant failed to confirm her continued interest and availability for the YPP position by the deadline, and only made a request for an extension of deadline on 10 May 2021, the day the deadline lapsed. As no extension was granted in this case by the Hiring Manager, the Administration correctly had to deem that the Applicant declined the YPP placement. The legal consequence of the Applicant declining the YPP placement offered to her was that she was removed from the list of “successful candidates”.

32. The Applicant further argues that the contested decision concerns a position that was not earmarked for the YPP Programme and, on this basis, argues that even if she is no longer regarded as a successful YPP candidate, she should be eligible to apply for a non-YPP Professional level position.

33. The Applicant contends that by excluding her candidature, the Administration violated secs. 6 (Eligibility requirements) and 7 (Pre-screening and assessment) of ST/AI/2010/3 governing the Staff Selection System.

34. The Tribunal finds that the Applicant’s argument is unfounded based on the current legal framework. Section 3.2 (c) of ST/AI/2010/3 explicitly limits its scope as follows (emphasis added):

3.2 The system shall not apply to the following:

Under- (a) Appointments at the Assistant Secretary-General and

37. Based on the above, the Tribunal finds the contested decision lawful.

Conclusion

38. The application is rejected.

(Signed)

Judge Joelle Adda

Dated this 13th day of January 2023

Entered in the Register on this 13th day of January 2023

(Signed)

Morten Michelsen, Officer-in-Charge, New York