
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/023

Judgment No.: UNDT/2024/049

Date: 9 August 2024

Original: English

Before: Judge Margaret Tibulya

Registry: New York

Registrar: Isaac Endeley

OKETCH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Jérôme Blanchard, HRLU/UNOG

Camila Nkwenti, HRLU/UNOG

Introduction

1. The Applicant is a Humanitarian Affairs Officer, at the P-4 level, with the

AULO and oversaw its downsizing as well as its re-orientation to a single-footprint entity within the UNOAU. On 11 February 2020, the Applicant was appointed as the OCHA Representative to the African Union in Addis Ababa.

6. On 1 January 2021, the Applicant was reassigned to the External Relations and Partnerships Section at OCHA Headquarters in New York. From there, he continued to serve as Non-Resident Representative to the African Union in addition to other functions.

7. At the African Union Humanitarian Summit and Pledging Conference in May 2022, OCHA informed the African Union that the AULO would be re-established in Addis Ababa and that a new Head of Office position would be created. On 14 October 2022, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief A- updated the African Union Commission on the two-phased approach to re-establish the AULO in Addis Ababa. This entailed the immediate redeployment of the Applicant in his capacity as the OCHA Representat e

19. The Applicant's main submissions may be summarized as follows:

a. While the Administration has the discretionary authority to make the contested decision, its exercise is not unfettered, even in matters of staff selection. The Dispute Tribunal is required to determine whether the contested decision was legal, rational, procedurally correct, and proportionate.

b.

Where the Administration provides justification for its exercise of discretion, such justification must be sufficient to justify the exercise of its discretion.

e. The job opening for this Post was position-specific; it was not advertised as a recruit-from-roster position; and the Administration had not argued at the time that there was any urgent need to fill the Post. The Applicant,

redeployed to Addis Ababa in November 2022 with a mandate to re-establish the Liaison Office there. No urgency has been

Applicant had been performing the functions of the post for years and was able

Thus, there were no additional financial implications as the costs for running the office were already budgeted.

f. Once the job opening was advertised and applications were received, was the duty of the Organization to ensure that the candidates received fair

Yet, after only a few days, the list of applicants was put aside

-competitive appointment of a candidate favoured by the

hiring manager, on the gr

The rationale given for

the abrupt change in the selection process was that there was an urgent need to

ex post facto justification does not stand up to

g. Staff members are entitled to be given full and fair consideration, based on the information submitted in their application and according to the evaluation criteria of the published job opening. isage

This procedural

h. The Tribunal should order the production of all correspondence and documentation relating to the filling of the Post including records involving the decision on filling the post after the closing date of the job opening, and any

i. It is not disputed that the Applicant P-5

By carrying out higher-level functions without receiving any special post allowance,

for equal pay, in violation of basic employment norms While he did not have a right to preferential treatment in the selection process

Given the lack

of transparency by the decision-maker, the presence of bias can be inferred.

j. Finally, under the applicable legal framework, the Applicant was entitled to be placed in a different position since he was not appointed to the Post.

20. The Responde

a. The contested decision concerns a matter of staff selection, an area where the Administration enjoys a broad degree of discretion . Consequently, judicial review by the Dispute Tribunal should be limited to assessing whether the applicable regulations and rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner.

b. Further, as per the principle of presumption of regularity, there is always a presumption that official acts have been regularly performed

In the present case, the

applicable rules were correctly applied, and the Applicant has failed to establish any irregularity or improper motive. The Applicant has failed to meet his burden to prove his allegation that the selection was discriminatory and influenced by extraneous considerations.

c. The plain wording of ST/AI/2010/3 Rev.1 (Staff selection system) unambiguously bestows on the hiring manager the discretion to select a candidate from the roster, and this has been jurisprudence of the Appeals Tribunal.

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22.

28. The Tribunal notes that this was a

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Skourikhine 2014-UNAT-468; *Nwuke* 2015-UNAT-508; and *Nouinou* 2020-UNAT-981).

33.

37.

equal work are outside the scope of the present application and will therefore not be considered here.

38. The Tribunal also recalls that in matters of staff selection and appointment, there is a presumption of regularity concerning the performance of official acts (see *Krioutchkov* 2021-UNAT-1103, para. 29; *Rolland* 2011-UNAT-122, para. 26). Accordingly, in a recruitment procedure, if the Administration can minimally show of proof shifts to the staff member, who must then show through clear and convincing evidence that he or she has been denied a fair chance of promotion (see *Flavio Mirella* 2023-UNAT-1334, para. 61).

39. In the present case, the Applicant has failed to establish through clear and convincing evidence that the selection process for the Post was tainted by any unlawful actions or that he suffered any harm as a result of the contested decision. Accordingly, his application stands to be dismissed and his claim for compensation must be rejected.

Conclusion

40. The Tribunal finds no irregularity affecting the contested decision. The application is therefore dismissed for lack of merit.

(Signed)

Judge Margaret Tibulya

Dated this 9th day of August 2024

Entered in the Register on this 9th day of August 2024

(Signed)

Isaac Endeley, Registrar, New York