



Case No.: UNDT/NY/2010/032/
UNAT/1670

Order No.: 315 (NY/2010)

Date: 2 December 2010

Introduction

1. In Order No. 262 (NY/2010) of 4 October 2010, the UN Dispute Tribunal (“UNDT”), *inter alia*, directed the Parties as follows:

2. By 15 October 2010, the applicant is to file and serve a written submission containing the following:

- a. A listing of all specific administrative decision(s) the applicant is appealing under art. 2.1 of the Statute. The applicant is to make a precise identification of each of these decisions by date, decision-maker, and document in which the decision was recorded; the applicant is not to state or repeat any contentions made in connection with the administrative decision(s) being contested.
- b. Based on the Joint Appeals Board report, note which facts are disputed or those which are additionally sought to be established.
- c. A list of witnesses the applicant would seek to call at the hearing of the matter (including herself), if any, along with a brief statement, along e

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following as “all”

concludes that the only remaining issue before it is the adequacy of the compensation for irregularities in relation to the Applicant's candidature for the two G-5 posts in accordance with art. 2.1 of the UNDT Statute.

Inadequate identification of administrative decisions, particularly those listed in para. 2(b) and (c)

10. In its jurisprudence, the UNDT has required applicants to clearly identify the administrative decision(s) which is/are being appealed, otherwise the application is not receivable. The UNDT in *Planas*

supposes JAB intended to refer to DPA] with the vacancy announcements: “VA#403331” and “VA#407297”, and

ii. the reference to “... and ignoring the larger nefarious context of this case described by the Joint Appeals Board” is simply incomprehensible;

b. the exact date is only indicated regarding one decision;

c. no documents are mentioned regarding any of the decisions; and

d. two of decision-makers are not specifically identified (“the DPA authorities” and “the [Name] inner-circle”).

12. The application and the Applicant’s 15 October 2010 submission do not identify a specific decision taken by the Organization that has directly impacted the Applicant’s legal rights or which has produced direct legal consequences to the legal order.

13. Concerning the Applicant’s reference to the alleged administrative decisions on her return to her liened post in EAD/DPA (i.e., the decisions recited above in paras. 2(b) and (c)), the Applicant’s return to her regular position in EAD merely seems to be the logical, direct consequence of her not being selected for the two G-5 positions (i.e., the decision recited in para. 2(a)) and the end of her temporary assignment with the APD in DPA—and not the result of any other administrative decision(s). This finding is based on the Applicant’s application to the former Administrative Tribunal (particularly para. 8), the account of facts of JAB report No. 1958 (paras. 3-5) and the Interoffice Memorandum of 25 August 2006 from Administrative Officer (DPA) to Legal Officer (Administrative Law Unit, Office of Human Resources Management) (para. 2).

14. Furthermore, the applicable Administrative Instructions provided the Applicant with the option of returning to her former post and in exercising this option, the Applicant was merely exercising rights accorded to her, which did not involve an appealable administrative decision.

No remedy available for the administrative decision listed in para. 2(a) other than financial compensation

15. As to the Applicant's original appeal to JAB, the Respondent subsequently *affirmed* the JAB finding that "[the Applicant's] right to full and fair consideration for the two vacancies was violated":

The Secretary-General has examined your case in the light of the JAB's report and all the circumstances of the case. The Secretary-General agrees with the finding of the JAB that your right to full and fair consideration for the two vacancies was violated. Accordingly, the Secretary-General has decided to accept the JAB's recommendation that you be compensated for the violation of your rights but such

(c) be compensated for the aggravation to Appellant's emotional state caused by the Administration in returning her to her former post without considering the implications and consequences for Appellant and the workplace environment (...) in the amount of six months net salary in effect on 1 December 2004.

18. The relief of placing the Applicant on a G-5 level roster is not available to the Applicant under the UNDT Statute, art. 10.5, with the result that the only remaining remedy available to the Applicant is that of financial compensation.

The scope of the administrative decision listed in para. 2(d)

19. The outstanding administrative decision, th

Facts

22. The Applicant, through her Counsel, did not produce any sensible additions or comprehensible objections to the account of facts in the JAB report, which therefore are to be adopted as agreed upon by both Parties.

Witnesses

23. Regarding witnesses to be called at a merits hearing, the witnesses identified by the Applicant would yield testimony on issues that the Tribunal has found within this Order to be irreceivable. The only remaining witness to testify will therefore be the Applicant, since the remaining witnesses referred to in the Applicant's submissions are not properly identified.

IT IS ORDERED THAT—

1. The legal issue in this case is determined as:
 - a. the adequacy of the Applicant's compensation of six months net base salary at the rate in effect on 30 November 2005 for the Respondent's errors in connection with the selection processes for two G-5 positions (assumed to be the positions as Social Sciences Assistant in APD/DPA and DPA with the vacancy announcements: VA#403331 and VA#407297) for which the Applicant was not selected.
2. By 20 December 2010, the Respondent is to file and serve all documents relevant to the two selection processes, including: the vacancy announcements; the evaluation criteria; the written records of the interview panel and the Central Review Board;cemberess to049D-.0002 Tc.066

3. By 20 December 2010, each of the Parties is to file and serve any additional documents on which they wish to rely.
4. A hearing on the merits is set for 5 January 2010 at which the Applicant is to give testimony.
5. Subsequent to the hearing, the Parties will be required to file and serve a closing statement containing *all* their relevant contentions.

(Signed)

Judge Marilyn J. Kaman

Dated this 2nd of December 2010