



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NY/2013/109  
Order No: 233 (NY/2014)  
Date: 8 August 2014  
Original: English

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**Before:** Judge Goolam Meeran

**Registry:** New York

**Registrar:** Hafida Lahiouel

CHOCOBAR

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON WITHDRAWAL AND REFERRAL  
TO THE SECRETARY-GENERAL**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Stephen Margetts, ALS/OHRM, UN Secretariat  
Sarahi Lim Baró, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant filed an application contesting the decision not to select her for a P-4 level Telecommunications Engineer post with the Department of Field Support, located in New York. The post was advertised on 4 February 2013, with the deadline for receipt of applications being 5 April 2013. It was not a generic job opening but a position-specific job opening as it was used for the filling of an individual position at a specific duty station (see ST/AI/2010/3 (Staff selection system)). The Applicant was not on a pre-approved roster of candidates for positions in the telecommunications engineering field. Having applied for the post on 26 March 2013, ten days before the deadline for applications, she was informed on the same day that the post had in fact been filled by a candidate from a pre-approved roster. No interviews or written tests were conducted.

2. The Applicant submitted that the selection of another candidate from the roster, without a proper selection exercise, was unlawful and breached her right to full and fair consideration for the post. The Respondent submitted that the application was without merit as, pursuant to sec. 9.4 of ST/AI/2010/3, the head of department was entitled to select a suitable candidate for the post from the roster of pre-approved candidates, thereby obviating the need for a full selection exercise.

## **Procedural matters**

### *United Nations Dispute Tribunal's judgment in Charles*

3. The legal issue raised by this administrative decision was previously examined in another case—see *Charles* UNDT/2013/040—where the Dispute Tribunal found that an automatic appointment of a roster candidate to a *position-specific job opening* without a selection process that affords other staff members who applied for the position the right to full and fair consideration was contrary to the requirements of art. 101.3 of the United Nations Charter and staff regulation 4.2. It should be noted that the judgment in *Charles* related solely to a position-specific job opening and not to a generic job opening for which different considerations apply.

*Secretary-General's appeal*

4. The Secretary-General appealed *Charles* UNDT/2013/040. By Orders No. 272 (NY/2013) and 313 (NY/2013) the Tribunal stayed

10. In light of the Applicant's written notice of withdrawal of her application and there being no matter for adjudication by the Dispute Tribunal, Case No. UNDT/NY/2013/109 is hereby closed and this ends the matter as far as the Applicant's claim is concerned.

11. However, there arises an issue of wider concern for the proper administration of the policy on staff recruitment (ST/AI/2010/3, staff selection system). The Tribunal notes the submission made by the Respondent in this case that "the principle of full and fair consideration does not apply when a staff member is selected from the roster" for position-specific job openings. Such a bold and sweeping statement, without any qualification and without acknowledging the significant difference between position-specific job openings and generic job openings could seriously undermine the Organization's policy and values concerning staff selection.

*Core principles of staff recruitment in the United Nations*

12. Since the claim has been withdrawn this matter is not before the Tribunal for a judicial determination. However, as a matter of urgent priority the Administration needs to address the policy implication

regulations 4.2 and 4.3, which identify the important policy distinction between a generic job

the selection decision, roster candidates shall be retained in a roster indefinitely or until such time the present administrative instruction is amended. **Candidates included in the roster may be selected** by the head of department/office for a subsequent job opening **without reference to a central review body**.

9.5 Qualified candidates for **generic job openings** are placed on the relevant occupational roster **after review by a central review body** and may be selected for job openings in entities with approval for roster-based recruitment. The roster candidate shall be retained on an occupational roster indefinitely or until such time the present administrative instruction is amended. **Should an eligible roster candidate be suitable for the job opening**







*Referral to the Secretary-General*

28. There would appear to be no formal mechanism by which such a concern may properly be drawn to the attention of the Secretary-General and the General Assembly.

29. Article 10.8 of the Tribunal's Statute provides that "[t]he Dispute Tribunal may refer appropriate cases to the Secretary-General of the United Nations or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability". This provision is not really apposite and cannot be used as a vehicle for conveying such concerns to the appropriate bodies.

30. However, art. 7 of the Tribunal's Statute read together with art. 36 of the Tribunal's Rules of Procedure may be relied upon to meet the particular situation. Article 7 of the Tribunal's Statute provides a list of matters for which provisions shall be made in the Tribunal's Rules of Procedure. The Statute does not specifically list the issue of a referral to the Secretary-General for urgent consideration and action. However, art. 36 of the Tribunal's Rules of Procedure states:

**Article 36 Procedural matters not covered in the rules of procedure**

1. All matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Dispute Tribunal on the particular case, by virtue of the powers conferred on it by article 7 of its statute.

2. The Dispute Tribunal may issue practice directions related to the implementation of the rules of procedure.

31. Therefore, although the case brought by Ms. Chocobar has been withdrawn and the file will be closed, pursuant to art. 36 of the Tribunal's Rules, the Tribunal finds that the issue regarding the proper interpretation of the roster provisions in sec. 9 of ST/AI/2010/3, in and of themselves, and also within the context of the legislative intent behind the policy, require the urgent consideration of the Secretary-General and the General Assembly.

32. The issue raised in this case is of wide application and appears to arise from an incorrect analysis and a flawed interpretation of ST/AI/2010/3. The Tribunal considers that the maintenance of the difference between "immediate selection" under sec. 9.5 and its absence for position-specific job openings under sec. 9.4 was deliberate. It was consistent with the intention of the legislature to facilitate urgent recruitment to meet the needs of

certain entities within the Organization but maintaining the principle of full and fair consideration of all applicants for a position-specific job opening under the staff selection system. Were this not to be the case, there would have been no need to make separate provisions and application procedures for position-specific job openings under sec. 9.4 and generic job openings under sec. 9.5. To conflate the two as the Respondent evidently has done requires confirmation and endorsement by the legislature.

33. This case highlights the risk that appointments to position-specific job openings may now be made in a non-transparent manner shielded behind claims of roster discretion. Even in cases when several roster candidates apply, there is, according to the Respondent's interpretation, no legal requirement reflected in properly promulgated administrative issuances for a competitive evaluation of roster candidates against each other using standard objective evaluation tools, including tests and interviews. Not only is this bold assertion contrary to the requirement of staff regulation 4.2, which specifies that so far as practicable, selection shall be made on a competitive basis among all candidates for a post, but it defeats the policy objective of selecting the best candidate since roster candidates in position-specific job openings may not necessarily meet all the requirements, including desirable requirements, for a specific job opening.

34. The Administration cannot circumvent its own selection rules and procedures—as well as the principles enshrined in the United Nations Charter



**Orders**

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