

8. On 18 May 2022, the Human Resources Section (“HRS/OCHA”) informed the Applicant that the review revealed that he does not meet the requirement of a minimum of five years of progressively responsible experience in the required field, and that accordingly the Administration would “not be able to proceed further”.

9. On 19 May 2022, the Applicant wrote to HRS/OCHA enquiring about the reasons for the decision.

Tribunal. In this regard, the Respondent submits that the Applicant did not receive—and thus did not unconditionally accept—a letter of offer outlining the conditions of the appointment, such as the proposed step, salary and entitlements. The Applicant has thus no standing pursuant to art. 3.1 of the Statute of the Dispute Tribunal and pursuant to the jurisprudence of the Appeals Tribunal. Only an unconditional acceptance of a letter of offer, outlining the conditions of the appointment, may create rights for an external candidate, and obligations for the Organization. The communications generated by Inspira inviting him to confirm his continued interest for the post, and confirming receipt of his continued interest, do not constitute a quasi-contract which would allow the Applicant to access the United Nations internal justice system under the exception established in *Gabaldon*.

Legal framework

20. Art. 3.1 of the Dispute Tribunal's Statute provides that access to the Tribunal is limited to staff members and, under certain conditions, former staff members and persons making claims in the name of an incapacitated or deceased staff member.

21. Staff regulation 4.1 provides that a person only becomes a United Nations staff member after they are issued a Letter of Appointment ("LoA"). However, it is jurisprudentially established that, under certain circumstances, a person who has not yet been issued a letter of appointment is entitled to seek recourse within the internal justice system, provided that he/she has accepted unconditionally the terms and conditions of an offer of appointment (*Gabaldon*).

22. Concerning the legal effects of an offer letter, the Appeals Tribunal in *Gabaldon* states as follows (emphasis added):

... However, this does not mean that an offer of employment never produces any legal effects. *Unconditional acceptance by a candidate of the conditions of an offer of employment before the issuance of the letter of appointment can form a valid contract, provided the candidate has satisfied all of the conditions.* The conditions of an offer are understood as those mentioned in the offer itself, those arising from the relevant rules of law for the

appointment of staff members of the Organization, as recalled in article 2, paragraph 2 (a) of the UNDT Statute, and those necessarily associated with constraints in the implementation of public policies entrusted to the Organization.

...

28. On the other hand, a contract concluded following the issuance of an offer of employment whose conditions have been fulfilled and which has been accepted unconditionally, while not constituting a valid employment contract before the issuance of a letter of appointment under the internal laws of the United Nations, does create obligations for the Organization and rights for the other party, if acting in good faith. *Having undertaken, even still imperfectly, to conclude a contract for the recruitment of a person as a staff member, the Organization should be regarded as intending for this person to benefit from the protection of the laws of the United Nations* and, thus, from its system of administration of justice and, for this purpose only, the person in question should be regarded as a staff member.

29. Finding otherwise would mean denying the right to an effective remedy in respect of acts of the Organization that may ignore rights arising from a contract, which was ongoing for the appointment of a staff member.

30. However, in accordance with the aforementioned provisions of the [Dispute Tribunal] Statute, *this opportunity must be understood in a restrictive sense*. Access to the new system of administration of justice for persons who formally are not staff members must be limited to persons who are legitimately entitled to similar rights to those of staff members. This may be the case where a person has begun to exercise his or her functions based on acceptance of the offer of employment. Having expressly treated this person as a staff member, the Organization must be regarded as having extended to him or her, the protection of its administration of justice system. *This may also be the case where the contracting party proves that he or she has fulfilled all the conditions of the offer and that his or her acceptance is unconditional, i.e. no issue of importance remains to be discussed between the parties*.

23. Applying the above to the instant case, the Tribunal finds that the Applicant does not meet the criteria, set out in *Gabaldon*, which would entitle him to seek recourse within the internal justice system.

Case No. UNDT/NY/2022/027

Order No. 051 (NY/2022)

