

UNITED NATIONS DISPUTE TRIBUNAL





**Parties' Submissions**

*The Applicant*

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a. In n

Case No. UNDT/NBI/2020/102/R1

Judgment No. UNDT/2023/084

form that did not include any justification for the decision to extend



permanent,  
continuing, or fixed-term appointment may apply for positions in the Field

Accordingly, HH was eligible to apply for the position.

e.

of HH on the roster for FS-6 Requisitions Officer. Both she and the Applicant were placed on the roster after successfully applying for the same GJO.

f. The Applicant was not entitled to preferred consideration for the position. He was not the only internal candidate and would not have been entitled to a preference. First, HH was also an internal candidate. She was a GS-5 staff member holding a continuing appointment. Second, the General



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evaluation request is unsubstantiated and a fishing expedition. First, the Applicant has not specified any issue relating to the contested decision that

Evaluation Unit . A party seeking disclosure must provide a degree of specificity to their request. Second, the response to management evaluation is irrelevant and should be disregarded. Third, the review of the

13. In view of the foregoing, the Respondent requests the Tribunal to dismiss the application.

### **Considerations**

14. Pursuant to arts. 16.1 and 19.1 of the UNDT Rules of Procedure, the in the present case are clear and there is no need to conduct a hearing on the merits as the matter can be determined based on the documents on record.

15. The submissions of the parties shall be assessed, considering, the nature of role to substitute its view for that of the Administration.<sup>3</sup> In a selection case the Tribun full and fair opportunity to be selected for the job which was advertised and for which another candidate was process in which the Applicant was involved and the result of that process in which another candidate was chosen for the position advertised.

16. The Tribunal must determine whether the process was lawful, fair and in no way perverse nor unreasonable.<sup>4</sup> It is in this context that the Tribunal intends to subjected to management evaluation.

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<sup>3</sup> *Ljungdell* 2012-UNAT-265, para. 30, citing to *Schook* 2012-UNAT-216, quoting *Sanwidi* 2010-UNAT-084.

<sup>4</sup> *Sanwidi* 2010-UNAT-084, para. 40.

17. The Applicant made assertions that a number of the job openings were unnecessary and unlawful and that the candidate, HH, should never have been appointed consequently to the TJO nor the subsequent fixed-term appointment in the circumstances. The Tribunal treats these assertions as largely rhetorical since there had been no management evaluation of the decisions made in relation to the various job openings which were advertised in relation to the acquisition and requisition jobs namely, GJO# 88622 and TJO# 95616. The challenges to these job offers were therefore,

20. The Applicant also raises the issue that no CRB was involved in ensuring that the advertised job opening was approved by the proper managerial officials. ST/AI/2010/3, under section 1 of definitions, stipulates,

(d) *Central Review bodies*: joint bodies established under staff rule 4.15 which are to ensure that candidates have been evaluated on the basis of approved evaluation criteria and that the applicable procedures have been followed in the process of appointing, selecting and promoting staff up to and including the D-1 level, except for advice on appointment of candidates having successfully passed a competitive examination in accordance with staff rule 4.16. Field central review bodies are established for peacekeeping operations and special political missions for the same purpose;

21. The Applicant also criticizes the temporary appointment of HH pursuant to TJO# 95616. However, it is not a hard and fast rule that a temporary appointment could not be used in this case simply because it was extended beyond the expected one-year mark. In *Ponce Gonzales*<sup>5</sup>, UNAT stated,

However, the Secretary-General rightly asserts that Section 2.2 (d) of ST/AI/2010/4 stipulates, on the issue of use and duration of temporary appointments, that temporary appointments may be granted for specific short-term requirements that are expected to last for less than one year at the time of the staff member's appointment such as to temporarily fill a vacant position pending the finalisation of the regular selection process. There was thus no irregularity in the fact that the Administration had maintained two recruitment exercises for the short period of a few days.

22. UNAT opined chances of selection, then an irregularity could not be relied upon as a basis for the selection process to be declared unlawful.

#### *The Discovery*

23. The Applicant had sought for the disclosure of a number of documents from the Respondent. Some of the documents were not disclosed. The Respondent submitted that the documents which were not disclosed related to the rostering for the post of Requisition Officer, GJO# 88622 (R/11-R15) and those relating to the

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<sup>5</sup> 2023-UNAT-1344, para. 58.

selection in TJO#

selection process.

29. In the circumstances the Application fails to establish that the selection of HH was unlawful.

**Decision**

30. The application is denied. There is no evidence to support an allegation that the selection process of HH was so irregular that it had any impact on the non-selection of the Applicant.

31. The Applicant is not granted any remedy.

*(Signed)*

Judge Francis Belle

Dated this 9<sup>th</sup> day of August 2023

Entered in the Register on this 9<sup>th</sup> day of August 2023

*(Signed)*

Eric Muli, Officer-in-Charge, Nairobi