



## **Introduction**

1. The Applicant contests three decisions made by the Economic and Social Commission for Asia and the Pacific (“ESCAP”):

a. The decision not to select her for a temporary P-3 level vacancy advertised in November 2010, which became available when the incumbent went on special leave without pay (“SLWOP post”);

b. The decision not to select her for a temporary P-3 level vacancy advertised in March 2011, which became available when the incumbent went on maternity leave (“maternity leave post”);

c. The decision to temporarily place an external candidate on the maternity leave post prior to advertising it.

2. The Applicant agreed at a case management discussion held on 15 January 2013 that, although she maintained her complaints in relation to all three decisions, her primary claims were in regard to the failure to advertise the maternity leave post prior to March 2011 and the propriety of the subsequent selection exercise. At the substantive hearing held on 25 January 2013, the Applicant reiterated this contention. The Applicant seeks financial compensation in the amount of 10 months’ net base salary.

3. The Respondent submits that the Applicant received full and fair consideration for both positions, adding that she was interviewed but did not demonstrate during the interviews the requisite competencies up to the standard expected and was therefore not recommended for either position. The Respondent leadent





14. However, after some discussions it became clear that Ms. Carter, whose appointment with her office was due to expire on 31 March 2011, would not be released to SDD. Mr. Clarke testified that, in large part due to the delays associated with Ms. Carter's unavailability, SDD felt the need to proceed with finding an alternative solution quickly. Accordingly, by memorandum dated 17 January 2011, Mr. Clarke proposed the recruitment of an external candidate, Ms. Rikke Pedersen, for the temporarily available maternity leave post "for a period of up to three months". Mr. Clarke explained in his memorandum to Mr. Bradley of 17 January 2011 that "Ms. Pedersen is fully qualified to undertake the duties of the post, and has had prior work experience at ESCAP". Mr. Clarke explained to the Tribunal that Ms. Pedersen was a well-qualified candidate with relevant experience and was available immediately.

15.





28.



### Merits of the Applicant's claims

31. Section 3 of ST/AI/2010/4 (Administration of temporary appointments), applicable at the time, provided that temporary needs for up to three months could be filled without a temporary vacancy announcement. Specifically, it stated:

#### **Section 3**

#### **Selection process for the granting of a temporary appointment**

##### *Temporary vacancy announcement*

3.1 When a need for service for more than three months but less than one year is anticipated, a temporary vacancy announcement shall be issued by the programme manager.

3.2 While the decision to issue a temporary vacancy announcement for a temporary appointment of less than three months is made at the discretion of the programme manager, any extension of three months or more shall require the issuance of a temporary vacancy announcement.

32. ESCAP was aware that Ms. Okada would be absent for almost eight months. In the circumstances, the Respondent's decision not to issue a vacancy announcement and to appoint an external person without an interview required an explanation. It is entirely understandable that the Applicant found the circumstances to be suspicious. However, having examined the evidence, the Tribunal is satisfied that it was reasonable for SDD to take into account its operational needs and determine initially that it needed a replacement for a shorter period of time, i.e., until 31 March 2011. It adjusted its determination in early March 2011, and, upon determining that further replacement was required beyond three months, advertised the post.

33. The Tribunal accepts Mr. Bradley's evidence that no replacement was hired after Ms. Pedersen's departure on 30 June 2011 and until Ms. Okada's eventual return in October 2011. This point lends support to the Respondent's contention that the absence of a staff member does not necessarily translate into the need to find a replacement for the exact period of the staff member's absence.

34. The Applicant also submits that the





fairly and adequately, and this entitlement was satisfied. The two decisions not to select her were lawful.

46. The Tribunal further finds that the decision of ESCAP to employ Ms. Pedersen on the maternity leave post, prior to advertising the vacancy, for the initial period of 1 February to 31 March 2011 and for one more month subsequently, while the selection process for the maternity leave post was ongoing, was lawful.

47. The application is dismissed.

*(Signed)*

Judge Goolam Meeran

Dated this 12<sup>th</sup> day of February 2013

Entered in the Register on this 12<sup>th</sup> day of February 2013

*(Signed)*

Hafida Lahiouel, Registrar, New York