



**Before:** Judge Teresa Bravo

**Registry:** Geneva

**Registrar:** René M. Vargas M.

MUNYAN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Bettina Gerber, UNOG

Cornelius Fischer, UNOG

## **Introduction**

1. By application filed on 1 February 2017, the Applicant contests the decisions not to select him for the position of Humanitarian Affairs Officer (Financial Tracking Service) (P-3) in the Office of Coordination of Humanitarian Affairs (“OCHA”), advertised under Job Opening No. 54262, and not to place him on a roster of pre-approved candidates for openings with similar functions at the same level.

## **Facts**

2. The Applicant is an Economic Affairs Officer at the United Nations Conference on Trade and Development (“UNCTAD”), who holds a continuing appointment at the P-2 level. Since 1 October 2014, he is on a temporary assignment at the P-3 level as an Economic Affairs Officer, UNCTAD, for which he receives a special post allowance.

3. On 14 January 2016, Job Opening No. 54262 was advertised in *Inspira*. It required “[a] minimum of five years of progressively responsible experience in humanitarian affairs, emergency preparedness, crisis/emergency relief management, rehabilitation, development, or other related area”. In addition, the vacancy announcement provided that “extensive experience with humanitarian financial tracking, humanitarian pooled funds, accounting and reporting systems, project information management, and humanitarian response plans (HRPs)/appeals” was “highly desirable”. The Applicant applied for the position on 25 January 2016.

4. Pursuant to a memorandum dated 16 June 2016 from the hiring manager to the Central Review Committee (“CRC”), 122 candidates were screened eligible for the hiring manager’s assessment, 14 of which were from the roster. Fifteen candidates were initially deemed not suitable by the hiring manager, 93 were long listed, and 13 were short-listed, including the Applicant.

5. All short-listed candidates were invited to take a written test, which took place on 29 April 2016. After having passed the test, the Applicant and four other candidates were invited to a competency-based interview. The Applicant's interview took place on 20 May 2016.

6. Following the interview, the Applicant was placed on the list of recommended candidates, along with the four other candidates. The list was submitted to the CRC on 16 June 2016 for approval.

7. At its meeting on 23 June 2016, the CRC concluded that it "was not in a position to endorse the list of recommended candidates, at this stage". The CRC noted that the Applicant and another candidate "[did] not seem to meet [the] minimum requirements for the job opening, i.e. 'five years of relevant experience in humanitarian affairs'". The CRC "request[ed] that the hiring manager provide more clarifications as to how these candidates were deemed eligible and found to be fulfilling the criterion stated above".

8. Following the CRC's request, the hiring manager changed the assessment of the Applicant's candidacy and that of the other candidate to "not suitable", without any further assessment or providing any explanation.

9. On 1 July 2016, the hiring manager transmitted a revised memorandum to the CRC, which indicated that three candidates met all the evaluation criteria and were therefore placed on the list of recommended candidates. This list did not include the Applicant. On 13 July 2016, the CRC endorsed the three recommended candidates.

10. On 21 July 2016, the successful candidate was selected for the position and the two other recommended candidates were placed on the roster.

11. On 22 July 2016, the Applicant was informed of his non-selection for the post.

12. On 15 September 2016, the Applicant requested management evaluation of the decisions not to recommend him for the post and not to place him on the roster of pre-approved candidates for openings with similar functions at the same level.

13. On 3 November 2016, the Under-Secretary-General for Management informed the Applicant that the Secretary-General had decided to uphold the contested decisions.

14. On 1 February 2017, the Applicant submitted his application to the Tribunal.

15. By Order No. 65 (GVA/2017) of 7 March 2017, the Tribunal referred the case for mediation to the Mediation Division in the United Nations Ombudsman and Mediation Services, and suspended the proceedings until 8 May 2017, at the request of the parties. By Order No. 108 (GVA/2017) of 9 May 2017, the proceedings were further suspended until 8 June 2017.

16. The Respondent submitted his reply on 14 June 2017, as authorised by the Tribunal in Order No. 121 (GVA/2017) of 8 June 2017.

17. On 6 February 2018, the Respondent submitted additional documents, as directed by the Tribunal in Order No. 29 (GVA/2018) of 1 February 2018.

18. On 16 February 2018, the Applicant responded to the Respondent's reply and submitted an additional document.

19. In their submissions of 6 and 16 February 2018, both parties agreed for this case to be decided on the papers.

### **Parties' submissions**

20. The Applicant's principal contentions are:

a. The contested decisions were vitiated by procedural flaws, since the evaluation criteria in respect of the required experience were changed at the final stage of the selection process by *de facto* excluding "development or related experience" as relevant fields of experience;

b. He was not given the opportunity to demonstrate his qualifications under the revised criteria;

c. He was removed from the final selection to “speed up the process”, whilst the hiring manager, the OCHA Human Resources and the assessment panel all found that he met the requirements for the post;

d. The Applicant requests the Tribunal to:

i. Rescind the contested decisions and restore his placement on the list of recommended candidates;

ii. Place him on a roster of pre-approved candidates for openings with similar functions at the same level;

iii. Award him material damages in the amount of USD10,000 for loss in pension contributions and retirement benefits and denial of career opportunities; and

iv. Award him moral damages in the amount of USD5,000 for the distress suffered due to the irregularities committed.

21. The Respondent’s principal contentions are:

a. The Applicant’s candidacy received full and fair consideration and the proper procedures set out in ST/AI/2010/3/Amend.1 (Staff Selection System) were adhered to up to the request for clarification by the CRC;

b. The Respondent acknowledges that the hiring manager did not follow the proper procedures by removing the Applicant from the list of recommended candidates without further re-examining his qualifications;

c. However, he argues that this procedural flaw did not change the outcome of the selection exercise as the Applicant was not eligible for the post and should not have been shortlisted in the first place, given that he did not have the required work experience nor the highly desirable one, which was also required to be short-listed. In particular, the Applicant does not have an advanced university degree so he was required to have a total of seven years of relevant work experience, which he does not;

d. As to remedies, the Respondent argues that the Tribunal cannot place the Applicant on the roster as CRC approval is required in this respect;

e. Furthermore, the Applicant did not suffer any material damage as he currently occupies a post at the P-3 level on a temporary basis, nor has he demonstrated any moral damage; and

f. Consequently, the Respondent requests the Tribunal to reject the application in its entirety.

### **Consideration**

22. The Applicant challenges two administrative decisions resulting from his removal from the list of recommended candidates following questions raised by the CRC about his fulfilling the minimum experience requirement for Job Opening No. 54262, namely: the decision not to select him for the post and the decision not to place him on the roster of pre-approved candidates for openings with similar functions at the same level.

23. It is well established that the Secretary-General has broad discretion in matters of appointment and promotions. When reviewing such decisions, the Tribunal shall examine “(1) whether the procedure as laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration” (*Abbassi* 2011-UNAT-110; *Majbri* 2012-UNAT-200; *Ljungdell* 2012-UNAT-265).

24. The Appeals Tribunal further ruled in *Rolland* 2011-UNAT-122 that official acts are presumed to have been regularly performed. Accordingly, in a recruitment procedure, if the Administration is able to even minimally show that a staff member’s candidature was given full and fair consideration, the burden of proof shifts to the candidate, who must then be able to show through clear and convincing evidence to have been denied a fair chance. As the Appeals Tribunal recently held in *Ngokeng* 2017-UNAT-747, “the Secretary-General bears the overall onus to prove the justifiability of the decision on promotion”.

25. Finally, the Tribunal's power to review discretionary decisions was defined in *Sanwidi* 2010-UNAT-084 as follows:

When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

26. Against this background, the Tribunal will examine whether the removal of the Applicant's name from the list of recommended candidates constituted a procedural flaw in the selection procedure and whether his candidacy was fully and fairly considered.

#### Legal framework and selection procedure

27. The selection procedure is detailed in ST/AI/2010/3/Amend.1. In essence, candidates are first "pre-screened on the basis of the information provided in their application to determine whether they meet the minimum requirements of the job opening" by OHRM or the local human resources office and released to the hiring manager together with the names of pre-approved eligible candidates (secs. 7.1 and 7.2). The hiring manager "prepare[s] a short list of those who appear most qualified for the job opening based on a review of their documentation" (sec. 7.4). Shortlisted candidates are then "assessed to determine whether they meet the technical requirements and competencies for the job opening" (sec. 7.5) by an assessment panel (sec. 1(c)). Following the panel's assessment, the hiring manager "shall prepare a reasoned and documented record of the evaluation of the proposed candidates against the applicable evaluation criteria to allow for review by the central review body and selection by the head of the department/office" (sec. 7.6) and "transmit his/her proposal for one candidate or, preferably, a list of qualified, unranked candidates" (sec. 7.7).

28. As to the CRC, its role is defined in sec. 8.1 of ST/AI/2010/3/Amend.1 as follows:

The central review bodies shall review proposals for filing a specific position job opening ..., made by the department/office or mission concerned, to ensure that applicants were evaluated on the basis of the corresponding evaluation criteria and that the applicable procedures were followed in accordance with sections 5.2 to 5.6 of ST/SGB/2011/7.

29. Sec. 4.6 of ST/SGB/2011/7 (Central review bodies) further provides that:

In so doing, the central review bodies shall consider whether:

(a) The recommendation of candidates is reasoned and objectively justifiable based on evidence that the pre-approved evaluation criteria set out in the job opening were properly applied;

(b) The record indicates that there was no mistake of fact or mistake of procedure, prejudice or improper motive that could have prevented a full and fair consideration of the candidates' requisite qualifications;

(c) The record contains a fully justified analysis of each of the competencies listed in the job opening, which must be evaluated during the competency-based interview and/or other assessment methodologies for all short-listed candidates.

30. Pursuant to sec. 4.8 of ST/SGB/2011/7:

When the central review body has questions or doubts regarding the proper application of the evaluation criteria and/or the applicable procedures, it shall request the necessary information from the head of department/office, the hiring manager or the ex officio member representing the Office of Human Resources Management, the local human resources office or the ex officio member representing the Department of Field Support, as appropriate. Once the questions are answered to the satisfaction of the central review body, that body shall proceed as provided in section 4.6 of the present bulletin.

31. If the central review body finds that the evaluation criteria were properly applied and that the procedures were followed, it "recommends that the head of department/office approve the proposed candidate(s) for selection or placement on a roster" (sec. 4.7). If "after obtaining additional information" it finds otherwise, it

shall so inform the Assistant Secretary-General for Human Resources Management (sec. 4.9). Pursuant to sec. 8.2 of ST/AI/2010/3/Amend.1, “[a]uthority to make a selection decision with respect to a particular job opening shall be withdrawn when a central review body finds that the evaluation criteria have not been properly applied and/or the applicable procedures have not been followed”.

32. The selection decision for positions up to and including at the D-1 level is ultimately made by the head of department/office “on the basis of the proposals made by the responsible hiring manager when the central review body finds that the candidates have been evaluated on the basis of approved evaluation criteria and the applicable procedure has been followed” (secs. 9.2 and 9.3 of ST/AI/2010/3/Amend.1).

Initial recommendation by the hiring manager

33. In the instant case, OCHA Human Resources found that the Applicant met the minimum eligibility requirements, which include an experience requirement, pursuant to secs. 7.1 and 7.2 of ST/AI/2010/3/Amend.1. The Applicant was also found to be among “those who appear most qualified for the job opening based on a review of their documentation” by the hiring manager, pursuant to sec. 7.4 of the same administrative instruction.

34. In particular, the hiring manager considered that the Applicant had “an experience of 11 years and 10 months in humanitarian affairs, development and other related areas (Economic analysis)”. He further wrote the following about the Applicant in his comparative analysis of the candidates:

- Fluent in English, Fluent in French, Fluent in Chinese; - Bachelor in Life Science with more than 2 years of qualifying experience; -
- The candidate has an experience of 11 years and 10 months in humanitarian affairs, development and other relate[d] areas. [The Applicant’s] relevant experience includes 6 years and 9 months in the UN as an Economic Affairs Officer (UNCTAD), assisting investment promotion agencies and Field Project coordinator (UNIDO) in charge of linking local industries and companies with international and domestic investors. [The Applicant] also has more than 2 years as an Associate in the Bank industry in charge of analyzing audit results and managing business planning and more than a year as Management Analyst for the US Government in

charge of monitoring and analysing budgetary data and developing new methodologies and data tracking system. The candidate's overall experience is focused on Economic issue, covering several areas such as economic research, coordination of intergovernmental meetings, project management, economic data analysis. The candidate has experience with accounting and reporting system when in charge of analyzing payroll and budgetary data to provide reports for the US Department of Justice. As management analyst (US Department of Justice) the candidate also assisted in developing methodologies and an efficient data tracking system and has experience in database development and management. The candidate has experience at HQ and Field level and has knowledge of the UN System.

35. In light of the foregoing, the Applicant was invited to and successfully passed the assessment process, during which the assessment panel evaluated his technical skills and competencies through a written test and a competency based interview, pursuant to sec. 7.5 of ST/AI/2010/3/Amend. 1. As a consequence, the Applicant was placed on the list of recommended candidates by the hiring manager for review by the CRC, pursuant to secs. 7.6 and 7.7 of ST/AI/2010/3/Amend. 1. Both parties agree that this evaluation process was conducted in accordance with the applicable procedures.

#### Review by the CRC

36. In reviewing the selection process, the CRC expressed doubts as to whether the Applicant possessed the minimum experience for the position and, therefore, asked further information to the hiring manager, pursuant to sec. 4.8 of ST/SGB/2011/5.

37. In this connection, the Tribunal notes that the CRC, whilst it quotes the experience requirement set out in the job opening, stated that the Applicant “[did] not seem to meet [the] minimum requirements for the job opening, i.e. ‘five years of relevant experience in humanitarian affairs’”, which suggests that the CRC assessed the Applicant only against his experience in “humanitarian affairs”. The Respondent did not adduce any evidence to the contrary.

38. The Tribunal notes that the job opening was much broader in describing the relevant experience as “[a] minimum of five years of progressively responsible experience in humanitarian affairs, emergency preparedness, crisis/emergency relief management, rehabilitation, development, or other related area”, thereby leaving a wide margin of discretion to the hiring manager. It is further noted that the position, which was located in the Financial Tracking Service, clearly had an economic or financial dimension, which may render experience in this field relevant to the post. Therefore, the CRC’s request for further information does not appear to have been based on a proper consideration of the experience requirement defined in the job opening.

39. In any event, at that time, the CRC did not make any determination about whether the Applicant indeed met the minimum experience requirement but only asked for clarification as to how the hiring manager applied the experience requirement. As acknowledged by the Respondent, it was incumbent upon the hiring manager to provide the information requested to allow the CRC to complete its review.

#### Removal from the list by the hiring manager

40. Instead of providing the requested information and explaining how he had assessed the Applicant’s candidacy, the hiring manager decided to remove his name from the list of recommended candidates without re-examining his qualifications. According to the Respondent, “[the hiring manager] believed that the CRC considered the Applicant not suitable and would not endorse the list of recommended candidates if the Applicant remained on the list”.

41. In so doing, the hiring manager abdicated her duty to respond to the CRC’s query and deprived the Applicant of the opportunity to have his candidacy fully and fairly considered. The Tribunal stresses that even if the hiring manager was of the view that other recommended candidates would be preferred to the Applicant, she was not entitled to remove him from the list at this stage. In this respect, it is recalled that the hiring manager is not the one making the selection decision, his or her role being limited to recommending suitable candidates to the head of office/department, who has been delegated the authority to take the selection

decision on behalf of the Secretary-General. The decision-maker may well have had a different preference than the one expressed by the hiring manager.

42. Furthermore, the role of the CRC is not only to verify that candidates recommended for a position meet the requirements but also to ensure that the candidates “were evaluated on the basis of the corresponding evaluation criteria and that the applicable procedures were followed”, thereby ensuring that all candidates receive full and fair consideration. By removing the Applicant and the other candidate for which the CRC had raised doubts instead of explaining how the experience criteria had been applied, the hiring manager prevented the CRC from properly reviewing the selection process, as was its duty pursuant to sec. 8.1 of ST/AI/2010/3/Amend.1.

43. Moreover, in changing the terms of the memorandum to the CRC, by modifying the Applicant’s assessment and that of another candidate to “not suitable”, the hiring manager incorrectly described the selection process. As a consequence, the final endorsement by the CRC was based on an inaccurate description of the procedure followed. Indeed, for instance, the revised memorandum of 1 July 2016 indicates that 11 candidates were subject to a substantive assessment, while in fact 13 were.

44. The Respondent argues that this procedural flaw had no effect on the contested decisions, as the Applicant did not meet the minimum requirements for the position, nor the highly desirable ones, which were required to be shortlisted. In effect, the Respondent asks the Tribunal to substitute itself to the hiring manager in evaluating whether all of the Applicant’s 11 years and 10 months of professional experience are relevant for the position and even to contradict the conclusion he reached. This the Tribunal cannot do, as consistently recalled by the Appeals Tribunal (see, e.g. *Abbassi* 2011-UNAT-110, para. 24). It would also be particularly inappropriate in the present case, where the broad definition of the experience requirement left a wide margin of discretion to the hiring manager as discussed above.

45. In the exercise of its judicial review, the Tribunal can, however, examine whether in the different phases of the process, the persons involved in the present selection exercise lawfully exercised their discretion (see para. 25 above). There is no indication that the OCHA Human Resources and the hiring manager abused their discretion or exercised it in an unreasonable way when they first found that the Applicant met the minimum eligibility requirements, and when the hiring manager found that the Applicant also met the highly desirable experience criteria. The hiring manager clearly expressed that he considered that all of the Applicant's 11 years and 10 months of professional experience were relevant for the post under "development or other related area", namely Economic analysis. Given the position's focus on financial aspects of humanitarian development, this assessment does not appear unreasonable. Therefore, the Respondent's argument that the procedural irregularity identified above (see paras. 40 and 42) did not affect the outcome of the selection process is rejected.

46. In view of the foregoing, the Tribunal finds that the decision not to recommend the Applicant for the position, which led to the decisions not to select him nor to place him on the roster, was procedurally flawed and that the Organization has not minimally shown that the Applicant's candidacy for the post was fully and fairly considered. Consequently, the decisions not to select the Applicant for the post and/or not to place him on the roster were unlawful.

#### *Remedies*

47. Art. 10.5 of the Tribunal's Statute, as amended by General Assembly resolution 69/203 adopted on 18 December 2014, delineates the Tribunal's powers regarding the award of remedies providing that:

As part of its judgement, the Dispute Tribunal may only order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific

performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation, and shall provide the reasons for that decision.

#### Rescission of the contested decisions

48. Having found that the selection decision for the contested post was unlawful, and considering that the Applicant had a significant chance to be selected for it, as more amply discussed below, the Tribunal rescinds it. The Tribunal also rescinds the decision not to place the Applicant on the roster, which was equally unlawful.

49. Since the selection decision concerns a promotion/appointment, the Tribunal is mandated by art. 10.5(a) of its Statute to set an amount of compensation that the Respondent may elect to pay as an alternative to the rescission of the contested decision.

50. Pursuant to the jurisprudence of the Appeals Tribunal, in determining the amount for compensation under art. 10.5(a) of its Statute in appointment or promotion cases, the Dispute Tribunal must take into account the nature of the irregularities on which the rescission of the contested decision was based, and the chances that the staff member would have had to be selected had those irregularities not been committed (*Appleton* 2013-UNAT-347). However, the determination of the "compensation in lieu" must be done on a case-by-case basis and ultimately carries a certain degree of empiricism (see *Mwamsaku* 2011-UNAT-265).

51. In respect of decisions denying promotions, the Appeals Tribunal held that "there is no set way for a trial court to set damages for loss of chance of promotion, and that each case must turn on its facts" (*Sprauten* 2012-UNAT-219, para. 22; see also *Niedermayr* 2015-UNAT-603). The Appeals Tribunal also held that in calculating such compensation, on the basis of the probability for an Applicant to be appointed to a post at a higher level but for the procedural breach, the period of the difference in salary between an Applicant's grade and that of the contested post

that can be taken into account should be limited to a maximum of two years (*Hastings* 2011-UNAT-109).

52. In *Niedermayr* 2015-UNAT-603, the Appeals Tribunal awarded USD10,000 for loss of chance of promotion as compensation in lieu of rescission, in a case where it found that the particular circumstances rendered the assessment more complicated than usual. The Appeals Tribunal concluded that it “had to assess the matter in the round and arrive at a figure that [was] deemed by [it] to be fair and equitable, having regard to the number of imponderables”.

53. In the present case, the Tribunal rescinded the decision not to select the Applicant for the contested post on the basis of a procedural irregularity, namely the failure of the hiring manager to provide the clarifications requested by the CRC as to the application of the work experience requirement to the Applicant’s candidacy, as well as a failure to fairly and adequately consider the latter.

54. With respect to the Applicant’s chances to be selected, the Tribunal finds that the fact that the Applicant was initially recommended for the post by the hiring manager and that there was no irregularity committed until that point indicates that he had a significant chance to be selected for the post. In this respect, the expressed view of the hiring manager that the Applicant was not the preferred candidate is of limited value since he was not the decision-maker, as recalled above.

55. In view of the fact that five candidates were initially recommended for the post prior to the procedural irregularities being committed in the course of the CRC’s review, the Tribunal evaluates the Applicant’s chances to be selected to the position at 20 percent had the irregularities not been committed (see, e.g., *Chhikara* 2017-UNAT-723).

56. The Tribunal notes that the Applicant’s appointment to the contested post would not necessarily entail an increase of salary as he is currently assigned to a post at the P-3 level and in receipt of a special post allowance. However, this assignment is only of a limited duration (see, e.g., sec. 7 of ST/AI/1999/17 (Special post allowance) and may not be extended in the future. The Applicant is, therefore, currently not guaranteed to continue receiving a salary at the P-3 level. Further, the

Applicant, who currently receives a special post allowance at the P-3 level, is not entitled to all the benefits attached to a fixed-term appointment at that level, such as pension benefits (see sec. 9.3 of ST/AI/1999/17). Most importantly, the Applicant was deprived of the opportunity to be offered a fixed-term appointment at the P-3 level, which represented an important step forward for his career development. In view of the foregoing, the Tribunal finds it reasonable to set the amount of compensation in lieu of rescission at the equivalent of two months net base salary at the P-3 level, step 1.

57. The Tribunal notes that it is not required to set an alternative compensation for the rescission of the decision not to place the Applicant on the roster, as this decision does not concern an “appointment” (see, e.g., *Farr* 2013-UNAT-350; *Gusarova* UNDT/2013/072). Indeed, a placement on the roster solely entails pre-approval for selection to future similar positions without having to go through the selection process again.

58. However, the Tribunal cannot order the Respondent to place the Applicant on the roster, as the latter requests. Pursuant to sec. 9.4 of ST/AI/2010/3/Amend.1, placement on a roster requires the endorsement of the CRC and the Tribunal would exceed its power if it were to take a decision in its stead. As a consequence of the rescission of the decision not to place the Applicant on the roster, the CRC will have to make this determination, based on the clarification to be provided by the hiring manager and the experience criteria as set out in the job opening.

#### Compensation for harm

59. The Applicant claims material damages in the amount of USD10,000 for pecuniary damages, namely loss in pension contributions and retirement benefits and denial of career opportunities. He also claims moral damages in the amount of USD5,000 for stress caused by the impugned decisions.

60. The Tribunal may, pursuant to art. 10.5(b) of its Statute, award compensation for harm suffered as a result of a contested decision, if such harm has not been compensated by the rescission. For such compensation to be awarded, the Applicant must identify the harm suffered. The Tribunal notes that art. 10.5(b) of its Statute was amended by the General Assembly on 18 December 2014 to require that compensation for harm be supported by evidence.

61. In this case, the Applicant did not identify any specific material damage for which he requests compensation. In any event, the Tribunal considers that the Applicant's loss of chance to be appointed to a post at the P-3 level and, therefore, to benefit from an increase of salary, is fully compensated by its decision above under art. 10.5(a) of the Tribunal's Statute.

62. Turning to moral damages, the Tribunal notes that the Applicant claimed moral damages in his application without identifying any specific harm. In his additional submission of 16 February 2018, the Applicant merely asserted that "the unfairness of the selection process for the post has demoralized him, caused him to lose faith in justice and the integrity of the staff selection system, and induced stress, loss of sleep, and lower quality rest. These vague allegations, unsupported by any evidence, are insufficient in the circumstances of this case to meet the standard of proof required by the Appeals Tribunal to award moral damages (*Kallon* 2017-UNAT-742).

63. In view of the foregoing, the Applicant's claim for damages under art. 10.5(b) of the Tribunal's Statute is rejected.

### **Conclusion**

64. In view of the foregoing, the Tribunal DECIDES:

- a. The selection decision for the position of Humanitarian Affairs Officer (Financial Tracking Service) (P-3) in OCHA, advertised under Job Opening No. 54262, is hereby rescinded;

- b. Should the Respondent elect to pay financial compensation instead of effectively rescinding the decision, he shall pay the Applicant the equivalent of two months net base salary at the P-3 level, step 1; and
- c. All other claims are rejected.

*(Signed)*

Judge Teresa Bravo

Dated this 26<sup>th</sup> day of February 2018

Entered in the Register on this 26<sup>th</sup> day of February 2018

*(Signed)*

René M. Vargas M., Registrar, Geneva