



Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

SOBIER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Victor Rodriguez

Counsel for the Respondent:

Maureen Munyolo, AAS/ALD/OHR, UN Secretariat

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Introduction and procedural history

1. The Applicant serves on a continuing appointment at the P-4 level as an Engineer at the United Nations Multidimensional Integrated Stabilisation Mission in Mali (“MINUSMA”). On 14 March 2020, he filed an application before the United Nations Dispute Tribunal in Nairobi to challenge the Respondent’s decision to not roster him following a selection exercise for generic job opening (“GJO”) #94302.

2. On 30 April 2020, the Respondent filed his reply to the application.

3. On 20 October 2020, the Tribunal met the parties for a case management discussion. The Tribunal sought the parties’ views on their willingness to resolve the matter *inter partes*, the need for an oral hearing and whether there were additional matters that needed considering before adjudication of the Applicant’s claims.

4. Both parties took the position that this matter could not be settled *inter partes*. The parties also took the common position that an oral hearing would not be necessary and that the matter could be decided on the basis of their respective written submissions.

5. In respect of their submissions, the Respondent sought leave to file further submissions and additional documentation which was not available to them at the time of the filing of the reply. The Respondent also moved for annex 11 to the application to be made available to them, as it had been filed *ex parte*. The Applicant did not object to either of these requests.

6. The Applicant sought leave to file a response to the reply. The Respondent agreed.

7. The Respondent and the Applicant filed their respective submissions on 28 October and 13 November 2020.

Legal framework

8. Article 101.1 of the United Nations Charter (“Charter”) provides that “[t]he staff shall be appointed by the Secretary-General under regulations established by the General Assembly”.
9. Article 101.3 of the Charter states that “the necessity of securing the highest standards of efficiency, competence, and integrity” is the paramount consideration in the employment of staff and in the determination of conditions of service”.
10. Staff regulation 4.1 confirms that “the power of appointment of staff members rests with the Secretary-General”.
11. Staff regulation 4.2 provides that the paramount consideration in the appointment of the staff “shall be the necessity of securing the highest standards of efficiency, competence and integrity”.
12. ST/AI/2010/3 (Staff selection system) provides in relevant parts as follows:

Section 2

General provisions

- 2.1 The present instruction establishes the staff selection system (the “system”) which integrates the recruitment, placement, promotion and mobility of staff within the Secretariat.
- 2.4 Selection decisions for positions at the D-2 level are made by the Secretary-General when the Senior Review Group is satisfied that the applicable procedures were followed.
- 2.6 This instruction sets out the procedures applicable from the beginning to the end of the staff selection process. Manuals will be issued that provide guidance on the responsibilities of those concerned focusing on the head of department/office/mission, the hiring manager, the staff member/applicant, the central review members, the recruiter, namely, the Office of Human Resources Management (OHRM), the Field Personnel Division of the Department of Field Support, executive offices and local human resources offices as well as the occupational group manager and expert panel. Should there be any inconsistency between the manuals and the text of the present instruction, the provisions of the instruction shall prevail.

13. The Tribunal will be guided by the following principles:
- a. there is a presumption that official acts have been regularly performed¹, which is satisfied once it is minimally shown that an applicant’s candidature was given full and fair consideration. The applicant must then show through clear and convincing evidence that he was denied a fair chance of appointment in order to win the case.²
 - b. the Tribunal does not substitute its own judgment for that of the Secretary-General regarding the outcome of a selection process.³
 - c. the Tribunal is not conducting a “merit-based review, but a judicial review which only involves examining how the decision-maker reached the impugned decision and not the merits of the decision- maker’s decision.
14. In keeping with the Tribunal’s jurisprudence, the Tribunal will review the challenged selection process to determine whether the Applicant received “fair consideration, that discrimination and bias were absent, proper procedures were followed and all relevant material were taken into consideration”.⁴
15. The Applicant bears the burden of proving that:⁵
- a. the procedure laid down in the staff regulations and rules was not followed, and that
 - b. his candidature did not receive full and fair consideration.

Parties’ submissions

¹ *Rolland* 2011-UNAT-122, para. 26.

² *Charles* 2013-UNAT-286, para. 27; *Majbri* 2012-UNAT-200, paras. 30, 35; *Abbasi* 2011-UNAT-110, paras. 23-24, *aff’d*, UNAT-2011-110; *Rolland* 2011-UNAT-122, paras 5, 20-21, 26.

³ *Abbasi* 2011-UNAT-110, para. 24, *aff’d*, UNAT-2011-110; *Rolland* 2011-UNAT-122, para. 20.

⁴ *Toure* 2016-UNAT-660, para. 30.

⁵ *Abbasi* 2011-UNAT-110, para. 23, *aff’d*, UNAT-2011-110.

16. The Applicant's principal contentions may be summarized as follows:
- a. The selection process was ill-administered;
 - b. The selection decision was tainted by improper motives and bias;
 - c. The Respondent failed to fully and fairly consider his candidature with the result that the selection decision violated staff regulation 4.2.
17. The Respondent's principal contentions are that the Applicant received full and fair consideration and that he participated in a competency-based interview ("CBI") during which he did not demonstrate the required competencies.

Considerations

Whether the selection process was ill-administered.

18. The Applicant alleges that there is no evidence to show the procedural steps which were taken to remove the screening question: "Are you a woman?" from the online application for GJO #94302 after the expired posting of the GJO on 7 April 2018. Although fundamental modifications were made to GJO #94302, including extending the posting period and widening the scope of the advertisement to include women *and* men, the Talent Acquisition Section ("TAS") only changed and extended the posting date of the same GJO instead of cancelling and re-advertising it. It was moreover extended for nine weeks (from 7 April 2018 to 9 June 2018), and not three weeks as the Respondent contends.

19. The staff selection process is governed by ST/AI/2010/3 and Manuals issued pursuant to Sec 2.6 of the AI. This Tribunal has, on occasion, pronounced itself on issues relating to administration of a selection process and opined that the steps set out in the Manuals issued under Sec 2.6 are mandatory and form part of the procedures

applicable from “the beginning to the end” of the staff selection process.⁶

20. The Tribunal notes that the Manual for the Hiring Manager on the Staff Selection System quite clearly stipulates that: Changes to a published job opening are not allowed.⁷

21. It is common cause that GJO #94302 was initially published for women only between 7 March – 7 April 2018, and that it was later reposted to expire on 9 June 2018. It is also common cause that the criteria in the Special Notice for GJO #94302 (women only) - that “**the purpose of this job offering is to add more female candidates to an existing mixed male/female roster** of pre-cleared candidates for the positions as Chief of Mission Support P-5” - differed from the Notice in the reposted GJO #94302 for all candidates to apply. The Special Notice for the reposted GJO #94302 stated that:

[T]he purpose of this job opening **is to populate an existing mixed male/female roster** of pre-cleared candidates for positions as Chief of Mission Support P-5 in UN peace operations. Women are particularly encouraged to apply in support of achievement of the United Nations system –Wide Gender Parity Strategy launched in September 2017 [...]

22. The Tribunal agrees with the Applicant that the above changes were fundamental and should have caused the cancellation and re-advertisement of the GJO in keeping with the legal requirements. There is moreover no evidence to show the procedural steps which were taken to remove the screening question from the online application for the GJO after the expired posting of the GJO on 7 April 2018.

23. In view of the above, the Tribunal finds that there were procedural flaws in the selection process.

⁶ *Diatta* 2016-UNAT-640.

⁷ *See, for example*, Section. 6.10.3 of the 2012 Manual.

Whether the selection decision was tainted by improper motives and bias.

24. The Applicant bears the burden of proving any allegation of ill motive⁸, and in keeping with the United Nations Appeals Tribunal (“UNAT/Appeals Tribunal”) jurisprudence, the mental state of the decision-maker usually will have to be proved on the basis of circumstantial evidence and inference drawn from that evidence.⁹

25. The Applicant cited various actions and omissions by the Respondent to support the assertion that the selection decision was tainted by improper motives and bias. The first allegation is that for the Leadership and Managing Performance competencies in which his responses were rated as partially satisfactory, the interview questions and his responses to each of them which were documented in the Interview Worksheet¹⁰ and the Comparative Analysis Report¹¹ do not match what he was actually asked at the interview; which he recorded and provided to the Tribunal as annex 11.

26. The documented question for the Leadership competency as per the Interview Worksheet is:

Tell us what Leadership traits you consider the most important for senior managers in the UN system. Give us an example of when you demonstrated one of these traits, and the results achieved. Give another example of where you did not demonstrate the required traits, and what happened.

27. He maintains that this is not what he was asked at the interview, and that the question he was asked (annex 11) was:

Tell us about a time when you needed to implement a high level strategy, how did you go about it?

28. For the Managing Performance competency, the example documented in the

⁸ *Parker* 2010-UNAT-012; *El Sadek* 2019-UNAT-900.

⁹ *He* 2016-UNAT-686, at para. 39.

¹⁰ Reply, annex R/4.

¹¹ Reply annex R/5.

Comparative Analysis Report as being the Applicant's is:¹²

On Managing Performance, the candidate provided an example when he was managing a team of 20 staff in Gao. The candidate stated that the most important issue was to develop, implement and communicate the work plan of RAO deriving from work plan of Mission Support, to all the staff members. When probed, he remained vague about his role in the process. Despite further probing and guidance from the panel members, the candidate was unable to answer the question to their satisfaction. The panel agreed that the candidate, despite probing, could only meet the following indicator:

Monitors progress against milestones and deadlines.

The candidate met only one of the indicators and therefore is rated as: partially satisfactory.

29. Yet, what the Applicant said, as recorded in his annex 11, was:

While we were preparing for the construction of the accommodation village at Gao Integrated Super Camp (ISC), and the relocation of the staff and the TCC from camp Elevage to the new accommodation which are going to be built, I created the project team from each involved section. The team consisted of the following Team Leaders: The Engineer, Field Technical Services Officer (FTS), Facilities Management and members from the Women Group and Welfare. Each member was given specific role and duties to perform. The Engineer has the duties to cross check the approved plans, ensure availability of material and assets, taskings of engineering company to construct the facilities as per schedule, monitor the progress and report it on weekly basis. The FTS Officer has the duty of construction of ducting and manholes, installation of IT infrastructures, fiber optics and equipment in conjunction with the construction of accommodation. He also must report the progress on weekly basis. While the other groups, i.e. Women Representative and Welfare, were to ensure that their facilities such as female laundry facilities and ablutions, gym and welfare facilities were incorporated into the overall construction process and assess the progress.

The construction began on October 2017. The work started to progress with the engineering work. However, I noticed the FTS Officer was not performing the duties outlined to him. In the weekly progress meetings, he was indicating that FTS infrastructures will not be needed as they will only rely on WIFI network within the accommodation village, but this answer from the FTS officer had raised big concern. From my

¹² Application, annex 14.

previous experience and the scale of the project I was skeptical about the accuracy of his comment and I did a quick research and my concerns were true. I decided to convey the message to him and I called for a meeting to all project team leaders and talked generally about other topics including the network issue and asked them to put a written statement about the remaining activities under their area of responsibility and to highlight the time frames, resource gaps (if any) and the expected quality. After the meeting I asked the FTS officer to stay with me, and then when we were alone I asked him about the expected quality of the network, and he couldn't confirm that it would be OK, then I asked him about who in his team can do this work and he said there is none now, then we agreed to have the support of the HQ on this issue and at the end of the meeting I asked him if you need any support in communicating to the HQ I will be ready and he asked me to talk to the Chief FTS. Informally I talked to the Chief FTS and informed him about our need and the resource gaps we are experiencing and our target completion date for the project and he immediately showed his support and I informed the officer to follow with his HQ colleagues on that. Next weekly progress meeting the FTS officer came with a comprehensive plan with the support of his HQ colleagues they started implementing a new design with mixed (WiFi and cable network). I thanked him on his efforts and professional attitude in front of all his colleagues for the good work. At the end of that meeting I asked him to ensure implementing a phased approach for the networks (that was only him and I were talking) to mitigate any failure and he agreed on that. At the end of each phase it was a success for the mission, FTS and for him and the project went very well. After completion of the project I sat again with the FTS officer and highlighted the fact that: we are located in a very dynamic and one of the dangerous peacekeeping Missions, services are required timely and on urgent basis to evacuate UN personnel who are combating terrorists on daily basis, there was no time or room for any prolonged action regarding the FTS Services and advised him that he needs to develop his capacities personally and his team in the critical service lines (specifically the communication) that his section/unit is responsible for and mutually we agreed to send him to HQ to have the opportunity to be exposed for on the job training exercises and then I spoke to the Chief of Field Technical Services Section at HQ in Bamako into looking at relocating this staff to other functions where he can be exposed to such opportunities. I found the Chief very understanding and he fully collaborated with my request since he sensed the same needs for his staff. Finally, he was relocated to the Quality Control Office in HQ. In my discussion with the staff during his performance, I reiterated these challenges to him and recommended him to undergo classes I management of staff and operations. He agreed and admitted his shortfalls. He promised he will

undertake programs in improving the way he deals with people, clients and consider inputs from various actors”.

30. He maintains that given those differences, the answers and evaluations to the two questions could be totally different.

31. The Tribunal is in agreement with the Applicant that for the Leadership competency a different *question* from the one he was asked as per the Applicant’s annex 11 was documented in the Interview Worksheet (reply, annex R/4). A review of what was documented as the Applicant’s *responses* in the Comparative Analysis Report (reply, annex R/5) and what was recorded in annex 11 however seem to suggest that the differences alluded to by the Applicant are the inevitable result of the fact that the Panel paraphrased his responses to the interview questions in annex R/5 to the reply and included their assessment of relevant indicators in the Comparative Analysis Report. On the other hand, the contents of annex 11 are a verbatim recording of the Applicant’s answers.

32. The fact that for the Leadership competency a different question from the one the Applicant was asked as per his annex 11 was documented in the Interview Worksheet¹³ brings this case into the ambit of the finding in *Chhikara 2017-UNAT-723* - in which the answers attributed to the Applicant in the Interview Assessment Report did not reflect the answers he provided during the course of the interview as recorded on his phone.

33. The Tribunal notes that the Respondent’s submissions to the Tribunal, even after annex 11 was disclosed to him, do not address the differences between the documented questions and what the Applicant recorded. This leaves the Applicant’s assertion that the documented questions are not the ones he was asked uncontroverted, thereby supporting a finding that the Interview Worksheet (reply, annex R/4) was so flawed and inherently unreliable that it cannot be taken as an objectively justifiable

¹³ Reply, Annex 4.

record of the assessment of the Applicant.

34. The Tribunal is in agreement with the Applicant that this could result in a different evaluation and reporting in the procedural documents and the Field Central Review Board (“FCRB”) could have been misled in approving the Rostering exercise. The Tribunal however emphasizes the fact that this finding alone is not sufficient to support the assertion that the selection process was tainted by ill-motive and bias.

35. The Applicant’s second assertion is that when the Respondent broadened the GJO after initial advertisement for women only, they only acted in response to a legal challenge but not in the interest of adhering to staff rights.

36. In this regard the Tribunal recalls the Applicant’s admission that the Respondent’s action is well understood since there is tremendous pressure to meet the gender parity strategic goals and target. This contradicts the suggestion of ill-motive and bias on the part of the Respondent.

37. The Tribunal finds that the TAS’s positive response to criticism, by removing the eliminatory question and posting the GJO for an additional three weeks to allow all candidates (male and female) to apply, speaks of good faith. That a total of 1,163 applications were received for the GJO, 698 of whom were male, and that a total of 35 candidates, including the Applicant, passed the written test and were invited for a CBI is contrary to the assertion that the broadening of the GJO for everybody to apply was not in the interest of adhering to staff rights. The finding that the selection process was procedurally flawed, and that for the Leadership competency a different *question* from the one the Applicant was asked was documented in the Interview Worksheet are not evidence of bias, which is defined as “a strong feeling of favor of or against one group of people... often not based on fair judgement”¹⁴. It may well have been the result of negligence.

38. The third allegation is that the GJO took 15 months to process, which is over

¹⁴ Oxford Advanced Learners Dictionary.

twice the admissible processing time frame. The Tribunal accepts that this was an inordinately long time and would urge the Respondent to do all that is necessary to ensure that selection processes are completed in a timely manner.

39. Be that as it may, the assertion that the long time the processing of the GJO took indicates malfunction of the process, and the intention to manipulate the results to suit certain continued intentions, fails for lack of evidence.

40. The fourth complaint relates to the administration of the written tests. To the extent that the Applicant passed those tests, his complaints that TAS used unauthorised criteria at the stage of processing the GJO to minimize the number of candidates who passed the written assessment, and that the pass rate was erroneously raised, further that the Geographical distribution criteria which is normally used to balance the workforce at the hiring stage but not during the process of evaluation of applicants was used, are moot.

41. Consequently, his request for disclosure by the Respondent of all paper work related to the selection exercise, and in particular the composition of applicants (Internal: female, male; External: female, male) throughout the process of GJO #94302 from the admission of applicants, pre-screening, written assessment, CBI, to final rostering, and of the mark he scored during the written assessment is rejected.

42. The fifth complaint relates to the administration of the CBI. He maintains that his responses in the CBI were fluent and smooth, and that based on his recordings of the CBI, he should have received ratings of satisfactory in relation to the competencies addressed during the CBI. This assertion is rejected because it is tantamount to self-evaluation, and it moreover essentially asks the Tribunal to consider the merits of the Applicant's candidature which is outside the Tribunal's mandate. The Tribunal cannot, and will not, substitute its own judgment for that of the Secretary-General in this regard, which by his submissions, the Applicant is asking it to do.¹⁵

¹⁵ *Abbasi* 2011-UNAT-110, para. 24, *aff'd*, UNAT-2011-110; *Rolland* 2011-UNAT-122, para. 20.

43. That two panel members have recognized the Applicant personally through his achievements with the Organization, and that one panel member was even his Second Reporting Officer (“SRO”) and most of the work-related examples provided during the CBI were under that Panel member’s direct supervision, are irrelevant since the interview exercise was competitive and the Panel members were under an obligation to fairly assess all interview candidates. The Applicant could not have been automatically passed on account of his past performance, and much less on account of his supervisor’s past views of his competence, abilities and performance.

44. The assertion that all the examples he provided were work related, and reflected all the indicators for all competencies, and that it is highly implausible that both the Leadership and the Managing Performance competencies were rated as only partially meeting expectations tend to self-evaluation. The Applicant’s track record to which he draws the Tribunal’s attention is irrelevant; the Tribunal is not called to assess the merits of his candidature.

45. Lastly, the Applicant asserts that the scores awarded to him contradicted the e-PAS which reflects that he did not need improvement in some crucial areas like Leadership and Managing Performance as assessed by the interview Panel.¹⁶ He sought to rely on *Diatta* for the assertion that the scores he was awarded must have been motivated by bias and ill-motive.

46. *Diatta* is however distinguishable from this case for the simple fact that unlike this case, the Tribunal in *Diatta* based its judgment on the applicant’s performance before, during and after the selection process, which removed any doubts as to his competence and abilities.

47. Turning to the issue of bias and ill-motive, Tribunal jurisprudence suggests that existence of ill-motive and bias must be specifically proved. In *Diatta* in which one of the members of the assessment panel did not withdraw from the panel after he made a prior assessment of the applicant, the Tribunal rejected that applicant’s assertions

¹⁶ Application. Annex 12.

regarding the presence of a strong element of bias rooted in the arbitrary conduct of the chair of the selection panel for JO 21524.¹⁷

48. In *Chhikara*, the Tribunal found that Mr. Chhikara's non-selection for the post in question was unlawful in light of numerous procedural irregularities which included the following:

a. The assessment panel was not properly constituted as it did not have two subject matter experts as required by ST/AI/2010/3 (Staff selection system) and, therefore, the Interview Assessment Report ("IAR") produced by the panel was null and void.

b. There were serious issues undermining the substance of the IAR, for instance, in the assessment of Judgment/Decision Making, the factual error of the reference to Mr. Chhikara's service in Afghanistan when he had never been there. This error went unnoticed by the three panel members who signed the IAR and was not drawn to the attention of the Hiring Manager.

c. The IAR revealed two types of anomalies relating to the application of the relevant indicators: (i) assessment of competencies without reference to the specific indicators for that competency while referring to indicators of competencies that were not one of the four competencies for the post; and (ii) inconsistent assessments of the same indicators.

d. For the competency of Professionalism, the panel did not specify which were the competency indicators that Mr. Chhikara had failed to meet; it stated that he had met indicators relating to the competency of Teamwork, which was not one of the competencies for the post. Similarly, the panel used these same indicators to evaluate his competency in Communication but did not refer to any of the indicators for the competency in Communication which they said he had not

¹⁷ *Diatta* UNDT-2015-054, 2016-UNAT-240.

demonstrated. The panel stated that he did not demonstrate most of the key indicators for the competency of Judgement/Decision Making, but the indicators they identified were not indicators for that competency but for Planning and Organizing. In contrast, the panel found him to be fully competent in Planning and Organizing using the same indicators he had failed in Judgement/Decision Making.

49. Even then a finding of bias and ill-motive was not made on account of the identified flaws.

50. The Applicant has not substantiated the allegation that the decision-maker(s) acted in bad faith, and/or that they deliberately intended to favour a particular group of candidates. The Tribunal finds that the assertion that the selection process was tainted by extraneous considerations, ill-motive and bias is not borne out in evidence and is rejected.

Whether the Respondent failed to fully and fairly consider his candidature with the result that the selection decision violated the staff regulations 4.2.

51. The Applicant cites the fact that there were procedural and substantive breaches of process and that the rules governing the selection process were not followed thus his right to be fully and fairly considered for the GJO was not respected.

52. The Tribunal has made a finding that the rules governing the selection process were not entirely followed, and that there were procedural flaws during the selection process.

53. The Tribunal has made a finding that the rules governing the selection process were not entirely followed, and that there were procedural flaws during the selection process. Those flaws were, however, addressed and rectified. The Applicant's candidature failed only at the very end of the process when he did not meet required indicators for the two competencies.

54. The Tribunal has also found that the anomalies in how the interview process was documented was the result of carelessness on the part of the Respondent, but that no bias or ill-motive could be attributed to him.

55. The Tribunal cannot therefore find that the Applicant's right to a full and fair consideration of his candidature was violated.

Remedies

56. The Applicant requested the Tribunal to order the rescission of the selection decision not to roster him and to award him compensation for emotional harm (stress and depression) and career retrogression, and financial damage.

Rescission

57. It is an established principle that the direct effect of an irregularity will only result in the rescission of the decision not to promote a staff member when he or she would have had a significant chance for promotion. Where the irregularity has no impact on the status of a staff member, because he or she had no foreseeable chance for promotion, he or she is not entitled to rescission or compensation.¹⁸ In *Chhikara*, the Appeals Tribunal ordered rescission of the selection decision on the basis of a finding that the IAR was null and void and inherently unreliable and that the panel's assessment of Mr. Chhikara was unlawful. Further, that there was no viable assessment in evidence on which the Tribunal could base a finding that Mr. Chhikara met only two of the five competencies.

58. In this case there is no real way of knowing whether or not there is a direct link between the irregularities and the Applicant's non-selection/not being rostered. The Tribunal is not equipped nor mandated to assess the substantive answers of candidates

¹⁸ *Bofill* 2011-UNAT-174, para. 28.

to an interview process. That is the role of the interview panel. The Tribunal cannot therefore assess if the Applicant's answers would have met the required indicators.

59. The Tribunal is moreover alive to the fact that unlike Mr. Chhikara who was one out of five candidates, the Applicant in the current case was one out of 35 candidates out of whom 15 were found to have met all of the evaluation criteria and recommended for the post. This would not support a finding that the Applicant had a significant chance of being selected/ rostered.

60. In view of the above, there is no basis for a finding that the Applicant's chance for selection was significant, and so an order for rescission of the impugned decision would be out of place.

Compensation

61. The Applicant seeks to be compensated for emotional harm (stress and depression) and career retrogression, and for financial damage being that had he been placed on the P-5 Chief Mission Support roster he would have been appointed Regional Administrative Officer in Kidal, which would have made an increase of at least USD1,000 a month to his salary and a significant financial contribution to his pension by both himself and the Organization.

62. It is a settled principle of law that compensation may only be awarded if it has been established that the staff member actually suffered damage. The Tribunal may thus award compensation for actual pecuniary or economic loss, non-pecuniary damage, stress and moral injury.¹⁹ Moral damages may not be awarded without specific evidence supporting the award.²⁰

63. Article 10.5(b) of the Dispute Tribunal Statute requires that compensation for harm must be supported by evidence. The Applicant has not adduced any evidence to support the claim that he suffered emotional harm (stress and depression). This claim

¹⁹ *Obdeijn* 2012-UNAT-201.

²⁰ *Zhouk* 2012-UNAT-224.

is therefore rejected.

64. The Tribunal agrees with the Respondent that the claim for compensation for career retrogression and for financial damage is speculative since there is no guarantee that the Applicant would have been appointed a Regional Administrative Officer in Kidal even if he had been rostered. Membership on a roster does not entitle a staff member to be selected for any vacant position that may arise in the future; rostered or not since selection is a competitive process.²¹ There is therefore no basis for the Applicant's claim that had he been rostered he would have been appointed a Regional Administrative Officer in Kidal and that there would have made an increase of at least USD1,000 a month to his salary and a significant financial contribution to his pension by both himself and the organization. Further, the Tribunal believed the Respondent's assertion that the Applicant's grade was in fact P-4/11 and not P-5, and that he was only temporarily performing higher level functions and receiving a Special Post Allowance at the P-5 level. In his application (at para. 1) the Applicant in fact states that he is at the P-4 level. The Applicant's assertion that the Senior Administrative Officer position in Kidal would have been a normal lateral move since he temporarily served as an SAO in Gao for the last three years is speculative.

65. There is therefore no basis for the award of compensation to the Applicant.

Conclusion

66. Tribunal finds that the Respondent should have properly re-advertised the post (rather than extending the posting period). This was a procedural flaw. The Tribunal also finds that the flaw was addressed when the pool of invited applicants was broadened, because the Applicant - who is a male candidate - made it to the short shortlist of 35.

67. There is no evidence of bias, discrimination or other extraneous factors.

²¹ *Lemonnier* 2017-UNAT-762, para. 29; *Krioutchkouv* 2016-UNAT-707, para. 29; *Charles* 2014-UNAT-416 para. 28; ST/AI/2010/3, section 7.

68. Of the 35 candidates who were interviewed, only 15 were recommended and therefore placed in the pool of rostered candidates. Without capacity to assess the answers given by the Applicant, the Tribunal cannot say that the Applicant would have been one of the 15 candidates.

Judgment

69. The application is DISMISSED.

(Signed)

Judge Margaret Tibulya

Dated this 29th day of December 2020

Entered in the Register on this 29th day of December 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi