



UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NBI/2020/084

Judgment No.: UNDT/2021/159

Date: 23 December 2021

Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

YOUNIS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicants:

Self-represented

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Maureen Munyolo, AAS/ALD/OHR, UN Secretariat

Introduction and procedural background

1. On 20 October 2020, the Applicant, P-5 Chief of Section, Transport, with the United Nations African-Union Mission in Darfur (“UNAMID”), filed an application contesting the decision not to select him for the position of P-5 Chief of Section, Transport, with the United Nations Support Office in Somalia (“UNSOS”) in Mogadishu advertised through Position-Specific Job Opening (“PSJO”) No.122057.
2. The Respondent filed a reply to the application on 23 November 2020.
3. The Tribunal held a case management discussion (“CMD”) on 6 October 2021. At the CMD, the Tribunal proposed, and the parties agreed that they could try to resolve the dispute informally, failing which, the case could be determined based on the parties’ written submissions and supporting documents. The attempts at informal resolution of the dispute was unsuccessful.
4. On 24 November 2021, the Respondent filed supplementary closing submissions. The Applicant filed a rejoinder to the supplementary closing submissions on 7 December 2021.

Summary of the relevant facts

5. The Applicant joined the Organization on 12 July 2003. He serves on a continuing appointment as P-5 Chief of Section, Transport, with UNAMID.¹
6. On 29 October 2019, UNSOS issued PSJO No.122057.² The position was advertised on the United Nations online recruitment platform, *Inspira*, from 29 October 2019 to 28 November 2019. On 30 October 2019, the Applicant applied for the position.³
7. On 14 August 2020, the Applicant received notification from UNSOS that his

¹ Application, section II.

² Reply, annex R/3.

³ Reply, para. 6 and application, section V.

application was unsuccessful.⁴

8. On 31 August 2020, the Applicant sought management evaluation of the non-selection decision.⁵

9. On 12 November 2021, the Assistant Secretary-General for Human Resources (“ASG/OHR”) approved the reassignment of the Applicant from the position of P-5 Chief Transport Officer (“CTO”), UNAMID, to the position of P-5 CTO, MONUSCO, Goma.⁶

10. On 16 November 2021, the Applicant was officially notified that UNSOS had cleared, rostered and selected another candidate for PSJO No.122057.⁷

Parties’ submissions

Applicant

11. The Applicant’s case is summarized below:

a. There was a violation of the Under-Secretary-General, Department of Operational Support’s (“USG/DOS”) guidelines about absorbing qualified staff from downsizing missions. The USG/DOS’s code cables clearly stated that priority be given to downsized staff.

b. He meets and exceeds the required skills highlighted in the vacancy announcement for PSJO No.122057 and is on the roster for CTO, P-5, has a continuous appointment contract, and he is from a downsizing Mission. He is an engineer by profession, holds doctoral degree in Business Administration, has had continuous appointments with more than 23 years’ experience with the United Nations. He has served in nine different missions.

⁴ Application, annex 10.

⁵ Application, annex 12.

⁶ Respondent’s supplementary closing submissions, annexes R/11-R/12.

⁷ Application, section V, para. 8.

c. The UNSOS hiring manager disregarded the CTO P-5 roster and the USG/DOS's guidelines to select a candidate who is not on the roster, does not have the required skills, never managed the transport section in any mission, and not from a downsizing mission.

d. United Nations Headquarters ("UNHQ") and UNSOS key players were notified about the violation but did nothing. UNSOS is forcing through the selection process by gaining time to make it appear as an "ex-post facto" case.

Applicant's rejoinder to the Respondent's supplementary closing submissions

12. In response to the Respondent's supplementary closing submissions, the Applicant filed the following response.

a. UNSOS and the Management Evaluation Unit ("MEU") deliberately decided to ignore the United Nations core values pertaining to professionalism, fairness, and transparency to the degree that they have insisted on their position even when their favourite candidate left the position after a few months of his recruitment. The selected candidate joined UNSOS in November 2020 and left in May 2021.

b. UNSOS advertised the post again and he applied on 18 July 2021. UNSOS decided to ignore UNHQ guidelines about absorbing suitable staff from downsizing mission.

c. Contrary to what has been stated by the Respondent, the restructuring of UNAMID and the abolishment of his position were implemented. Luckily, the mandate of the mission was extended due to COVID 19 following which he was selected to lead Supply Chain Management Services.

d. Although he was on a Special Post Allowance ("SPA") at the D-1 level, he had to work harder and lead many sections at the same time. Furthermore, he lost his mobility allowance which is more than the SPA allowance.

Additionally, the unfairness and constant discriminatory action of UNSOS have resulted in severe stress that affected his relationship with his family and ended with a heavy divorce support package. The divorce has resulted in the doubling of his expense and a one-time payment request that amounts to more than USD500,000 which is still under judicial review.

e. The fact that he was selected to work for another mission does not erase the fact that UNSOS manipulated the system by falsifying his experience and disqualified other candidates to clear and select their preferred candidate.

Remedies

13. The Applicant requests the Tribunal to award him the following reliefs.
 - a. To revoke and reverse the current selection process for the post of CTO and guide UNSOS to comply with the essence of the USG/DOS guidelines pertaining to placing staff from downsizing missions. UNAMID is downsizing and there are not many missions that have a vacant senior transport position at the P-5 level. Hence, he would like to be assigned as CTO, P-5 in UNSOS.
 - b. To order UNSOS to commence an official investigation to verify why it was allowed to advertise a PSJO when suitable candidates were available on the roster, and why his request was not considered despite the frequent reminders.
 - c. To revoke all clearances and rosters given as a result from these violations and to order the discipline of those who were involved.
 - d. To ensure that there will be no retaliation from the hiring manager and other UNSOS senior leaderships.
 - e. To order the issuance of an apology in writing for the discrimination against him and other candidates to clear, hire, and recruit a favoured individual.

- f. To award him “adequate compensation” to relieve stress and financial losses, that is, two years’ salary.

Respondent

14. The Respondent’s case is summarized as follows:

- a. The Applicant was given full and fair consideration for the position. UNSOS reviewed the Applicant’s Personal History Profile (“PHP”) as uploaded on COSMOS and found him unsuitable. The Position required 10 years of progressive responsibility in motor vehicle transport operations, movement control, multimodal transportation, or logistics management. The Applicant had only seven and a half years of the required experience in transportation or logistics management. UNSOS did not consider the Applicant’s experience in facilities management to meet the JO requirements.

- b. The Applicant had been included on the Senior Transport Officer P-5 roster as a result of his application for a Facilities Manager and Chief, Transport position. However, the requirements of the position did not include experience in facilities management.

- c. The position also required at least four years in a supervisory position directly related to the coordination of complex surface transport operations in the international environment or a United Nations entity. The Applicant did not meet this requirement as he only had two years of the required supervisory experience.

- d. Contrary to his allegations, staff rule 9.6(e) does not apply to his case. Under staff rule 9.6(e), the Organization must make reasonable efforts to retain staff members where there has been a decision to terminate the staff member’s appointment due to the abolition of a post or the reduction of staff. There has been no decision to terminate the Applicant’s appointment nor has his appointment been affected by a reduction of staff.

e. The obligation under staff rule 9.6(e) was not triggered merely by the anticipated closure of UNAMID at some date in the future. UNAMID had uploaded all UNAMID staff members' profiles in COSMOS in October 2019 in anticipation of its closure in June 2020 even if the staff members had not actually been notified that they would be separated due to the mission closure or downsizing. Subsequently, the closure did not occur. The Applicant's profile has not been uploaded onto the new *Horizons* platform since there has been no decision to terminate his appointment and since he has received no notice of separation. Even if the Applicant had received a notice of termination of his appointment, he still had to be fully competent to perform the core functions and responsibilities of the position, which he was not.

f. Contrary to the Applicant's allegations, the selected candidate was suitable for the position. The selected candidate had 24.5 years of progressive responsible experience in motor vehicle transport operations, movement control, multi-modal transportation, or logistics management. He also had seven years of the required supervisory experience.

g. Neither the Applicant's roster status nor his service as UNAMID Chief, Transport gave him a right to be selected for the position. Membership on a roster does not entitle a staff member to be selected for any job opening that may be advertised in the future.

h. The contested decision was in line with art. 101.3 of the Charter and the Staff Selection Administrative Instruction. It was rational and legal. UNSOS gave the Applicant full and fair consideration for the position. However, the Applicant did not meet the PSJO requirements. UNSOS selected the candidate whom it deemed most suitable for the position. The Applicant has not produced clear and convincing evidence to the contrary.

Respondent's supplementary closing submissions

15. The Respondent submits that on 12 November 2021, the ASG/OHR approved the reassignment of the Applicant to the position of P-5 CTO, MONUSCO, Goma and that this evidence is relevant to the Applicant's claim that the Organization did not meet its obligation under staff rule 9.6(e). Although staff rule 9.6(e) does not apply to this case, the new evidence demonstrates that even if it did apply, the Organization has fulfilled its obligation to make reasonable and good faith efforts to assist the Applicant to find an alternative position.

16. The Respondent further submits that the Applicant's retention on the alternative position is relevant to the remedies requested by the Applicant. His retention in the new position establishes that the contested decision did not adversely affect the Applicant. As a result of the 12 November 2021 placement, the Applicant will remain with the Organization as a CTO.

17. In view of the foregoing, the Respondent submits that the Applicant is not entitled to the relief he requests. He received full and fair consideration for the position. He has not demonstrated any procedural or substantive breach of his rights nor has the Applicant presented evidence of any harm as required by art. 10.5(b) of the Dispute Tribunal's Statute. He serves on a continuing appointment at the same P-5 level as the position. His appointment does not expire until 31 March 2038.

Considerations

18. The jurisdiction of the Tribunal is confined to determining:
- a. Whether the procedure laid down in the Staff Regulations and Rules was followed;
 - b. Whether the applicable Staff Regulations and Rules were applied in a fair, transparent and non-discriminatory manner.
 - c. Whether the Applicant was given full, fair and adequate consideration

for PSJO No. 122057.

19. In determining these issues, the Tribunal will be guided by the following principles; there is a presumption that official acts have been regularly performed.⁸ Following a minimal showing by the Administration that the candidacy of a staff member was given full and fair consideration, the burden of proof shifts to the applicant, who must show through clear and convincing evidence that he or she was denied a fair chance of appointment.⁹ The Tribunal's role is not to substitute its decision for that of the administration.¹⁰

Whether the procedure laid down in the staff Regulations and Rules was followed.

20. The Applicant asserts that:

- a. The requirements of staff rule 9.6(e) were not complied with. Since he was in a downsizing mission and the only one from such mission who applied for the job, and he had a continuous appointment and is on the roster of CTO, P-5, the position should not have been advertised but should have been just offered to him.
- b. He meets and exceeds the requisite skills and qualifications for the position as announced in the vacancy announcement.
- c. The candidate who was offered the position did not have the requisite qualifications.

The alleged failure to comply with the requirements of staff rule 9.6(e).

21. Staff rule 9.6(e) provides in the relevant part as follows:

Termination for abolition of posts and reduction of staff

⁸ *Rolland* 2011-UNAT-122, para. 26.

⁹ *Charles* 2013-UNAT-286, para. 27; *Majbri* 2012-UNAT-200, paras. 30, 35; *Abassi* 2011-UNAT-110, paras. 23-24, *aff'd*, 2011-UNAT-110; *Rolland, op. cit.* paras. 5, 20-21 and 26.

¹⁰ *Ljungdell* 2012-UNAT-265; *Savadogo* 2016-UNAT-642.

(e) Except as otherwise expressly provided in paragraph (f) below and staff rule 13.1, if the necessities of service require that appointments of staff members be terminated as a result of the abolition of a post or the reduction of staff, and subject to the availability of suitable posts in which their services can be effectively utilized, provided that due regard shall be given in all cases to relative competence, integrity and length of service, staff members shall be retained in the following order of preference:

- (i) Staff members holding continuing appointments;
- (ii) Staff members recruited through competitive examinations for a career appointment serving on a two-year fixed-term appointment;
- (iii) Staff members holding fixed-term appointments...

22. The Applicant's case is partially premised on two Code Cables (annexes 2 and 3 to the application) which drew the attention of responsible officers to the Organization's positive obligations under staff rule 9.6(e) "to make reasonable efforts on good faith to find alternative placement on suitable vacant posts across the Secretariat..." for specified categories of "staff members whose posts have been abolished" (emphasis added).

23. While it is true that the Applicant had a continuous appointment and is on the roster of Senior Transport Officer , P-5, consistent jurisprudence lays down the principle that the mere fact that a staff member is on a roster does not entitle them to be selected for any job opening that may be advertised.¹¹ The assertion that the Applicant was entitled to automatic appointment since he had a continuous appointment and was on the roster for Senior Transport Officer, P-5 is without basis.

24. Secondly, the Respondent maintains (and the Applicant admits)¹² that at the time of the contested decision, there had been no decision to terminate his appointment only an anticipation of the closure of UNAMID by 30 June 2020. The Tribunal agrees with the Respondent that the obligation under staff rule 9.6(e) is only triggered where there has been a decision to terminate a staff member's appointment due to the

¹¹ *Lemonnier* 2017-UNAT-762, para. 29; *Charles* 2014-UNAT-416, para. 28; section 7 of ST/AI/2010/3 (Staff selection system).

¹² Applicant's rejoinder to the Respondent's supplementary closing submissions, para. 11 and reply, annex R/5.

“abolition of a post or the reduction of staff.”¹³

25. There is no evidence of a decision to terminate the Applicant’s appointment or that his appointment has been affected by staff reduction. This removes the Applicant’s claim from the ambit of staff rule 9.6(e). The assertion that the Mission was later downsized does not overcome the fact that it had not been downsized at the time material to this application. The complaint that the PSJO should not have been advertised, and that it should have just been offered to the Applicant since he was the only one from a downsizing Mission who applied for the job opening clearly ignores the above facts.

26. The Applicant’s application for the PSJO could have only been considered (as it was) under the circumstances specified in paragraph 4 of annex 2 to the application (Code Cable from the USG/DOS to Heads of all Departments, Offices, Regional Commissions, Offices away from Headquarters and Field Missions). In that Code Cable, the responsible officers were requested to consider “the applications of UNAMID staff members applying to job openings..., provided that no other downsized staff is found suitable...” This request was indeed granted. The Applicant’s application was given priority consideration, but according to the Respondent, the Applicant failed the suitability test. The suitability review which was conducted by the Chief Service Delivery (the Hiring Manager) and endorsed by the Head of UNSOS allowed the PSJO recruitment process to continue without further considering the Applicant.¹⁴

27. Regarding the issue of whether the requirements of staff rule 9.6(e) were complied with, the Tribunal finds that the provisions of staff rule 9.6(e) were not applicable to the circumstances of this case and could therefore not be complied with. The Respondent rightly advertised the vacancy.

¹³ *Timothy* 2018-UNAT-847, paras. 30-38; *El-Kholy* 2017-UNAT-730, paras. 25, 31; *Andrysek* UNDT/2020/190, para. 87.

¹⁴ Reply, annexes R/4 and R/6.

Whether the applicable Regulations and Rules were applied in a fair, transparent and non-discriminatory manner.

28. The Applicant maintains that he meets and exceeds the requisite skills and qualifications for the position as announced in the vacancy announcement but the responsible officers manipulated the system by falsifying his experience in order to clear and select their favorite candidate.

29. According to the vacancy announcement, the required work experience for the position is “[a] minimum of ten (10) years of progressively responsible experience in motor vehicle transport operations, movement control, multimodal transportation, logistics management including at least four (4) years in a supervisory position directly related to the coordination of complex surface transport operations in the International environment or a UN entity...” (emphasis added).

30. According to the suitability review dated 11 December 2019, the Applicant did not meet the required criteria related to work experience. It was explained that,

the Job Opening calls for 10 years progressive responsible, relevant experience. In reviewing his PHP, he appears to have at best seven and a half years of experience that could, possibly be considered. This includes the period he spent as CTO in UNAMID (1 November 2017 to present), time spent as a Regional Operations officer in Gao, Mali (October 2014-May 2016), Chief Integrated Support Services (“CISS”) in Cyprus July 2019-Oct 2014), and as Chief Logistics Services at the United Nations Mission in Nepal (“UNMIN”) (January 2009-May 2010). The remainder of his experience is unrelated. He does have two years of supervisory experience directly related to the coordination of complex surface transport operations in the current post, however the JO calls for four years minimum...¹⁵

31. The total number of years of experience for each criterion was arrived at by assessing the roles which the Applicant indicated that he executed during the given periods. This was aimed at determining whether those roles relate to the relevant criteria. The number of years for which the Applicant executed relevant roles was

¹⁵ Reply, annex R/6, the suitability review.

computed.

32. Upon perusing the Applicant's PHP (whose contents are summarized in attachment 9 to the Applicant's rejoinder), the Tribunal agrees with the Respondent's assessment of the Applicant's work experience with regard to criteria one, i.e., that the Applicant's stated roles (in his PHP) did not have any bearing to work experience relevant to criteria one (i.e., A minimum of **ten (10) years of progressively responsible experience in motor vehicle transport operations, movement control, multimodal transportation, logistics management...** (emphasis added).

33. The Applicant for example describes his roles between May 2016 to Oct 2017 as having been;

UNAMID, OIC DDMS/Chief COE and Property Management Officer (SPA D1). The position involves supervisory role for COE, PCIU, FTS, MSC, and SMSOs. It also involves planning and coordinating the arrival of assets and inventory, from the time they arrive to the mission until they finish their useful lifetime and disposed of. The section has two warehouses, one for R&I and the other one for PDU. The sections also coordinate and plan all assets reduction and inventory activities with self-accounting units under logistics section, security, CMU, and procurement. Furthermore, the section plans relevant COE plans for travels, verifications, and coordination with UNHQ and reps from Troops and Police contributing countries. The FTS is a full technical and logistics section, and same for The Senior Mission Support Officers (SMSO), and Mission Support Center (MSC) to coordinate and plan all relevant missions' activities". Clearly these roles have no bearing to the required work experience for "progressively responsible experience in motor vehicle transport operations, movement control and multimodal transportation.

34. A cursory perusal of the details relating to the Applicant's stated roles between May 2011 to July 2013, February 2011 to May 2011, May 2010 to Feb11, July 2007 to December 2008, November 2006 to July 2007, April 2006 to November 2006, December 2005 to April 2006, July 2005 to December 2005, July 2003 to March 2004, November 2011 to June 2003, June 2007 to November 2001, and August 2004 to June 2009 leads to the same conclusion.

35. While it might be correct to say that the Applicant's stated roles in his PHP¹⁶ (whose contents are summarized in attachment 9 to Applicant's rejoinder) generally relate to logistics management, the same cannot be said of their relationship with the requisite work experience of "progressively responsible experience in motor vehicle transport operations, movement control and multimodal transportation...".

36. In his closing submissions, the Applicant draws the attention of the Tribunal to documents including Terms of Reference ("TORs") of the respective positions he had held and appraisals and achievements for those periods, and requests the Tribunal to verify his duties and responsibilities of CISS positions at the United Nations Peacekeeping Force in Cyprus ("UNFYCIP") and UNMIN with the Office of Human Resources Management ("OHRM") at the United Nations Headquarters in New York to confirm that these positions were indeed directly responsible for the coordination of surface transport operations in both United Nations entities.

37. All that information, even if the Tribunal were to gather it would be irrelevant to this decision. This is because the information was not part of what the decision maker based his decision on. The impugned decision was based on what the Applicant presented in his PHP.

38. With regard to criterion one, based on the information which was before the decision-maker at the time, the Tribunal finds no evidence that the Applicant meets and exceeds the requisite skills and qualifications for the position as announced in the vacancy announcement. Further, that there is no evidence that the responsible officers manipulated the system by falsifying the Applicant's experience in order to clear and select their favorite candidate.

39. About the second criterion; ("at least four (4) years in a supervisory position directly related to the coordination of complex surface transport operations in the International environment or a UN entity..."), the Tribunal notes that the Applicant seems to only challenge the Respondent's assessment of his experience between July

¹⁶ Reply, annex R/9.

2013 and October 2014, and between January 2009 and May 2010.

40. The Applicant's roles between July 2013 and October 2014 are stated to be;

UNFICYP, Chief Integrated Support Services (Special Post Allowance at the P-5 level)

The position entails direct supervision for all logistics sections, namely Transport, Engineering, Supply, Medical, Movcon and logistics. My responsibilities for Transport among others included overall management and coordination of UNFYCIP surface transport operations of its owned and leased vehicle fleet, as well as formulation of policies controlling the use and safety of the fleet within UNFYCIP area of operation. The total number of Transport staff members I supervised were 18 who were overseeing the maintenance and services for UN and leased vehicles.

41. The Applicant's role between January 2009 and May 2010 was;

UNMIN, Chief Logistics Services, (P-4):

The position entails direct supervision for all logistics services namely Transport, Movcon, Engineering and Supply. My responsibilities for Transport among others included overall management and coordination of UNMIN surface transport operations of its vehicle fleet, as well as formulation of policies controlling the use and safety of the fleet within UNMIN area of operation. The total number of Transport staff members I supervised were 17 SM to manage more than 200 vehicles.

42. It is noted that the required experience related to "complex surface transport operations". The vacancy announcement does not qualify the word "complex", and so applicants were not guided about the nature/level of "complexity" required for one's work experience to fit in that definition, which is problematic. It was left to the Respondent to determine whether an applicant's work experience fit the definition. This is a shortcoming which the Respondent should rectify in future.

43. Be that as it may, the information provided by the Applicant to the decision-maker does not indicate the complexity of the roles which the Applicant executed. For this reason, the Tribunal agrees with the Respondent's assessment of the Applicant's experience in this regard.

44. On the whole, the Tribunal finds no evidence that the Applicant meets and exceeds the requisite skills and qualifications for the position as announced in the vacancy announcement. And, there is no evidence that the responsible officers manipulated the system by falsifying the Applicants experience in order to clear and select their favorite candidate. Thus far, the applicable Staff Regulations and Rules were applied in a fair, transparent and non-discriminatory manner.

45. The Applicant maintains that the successful candidate doesn't meet the mandatory evaluation criteria of "a minimum of 4 years in a supervisory position directly related to the coordination of complex surface transport operations in the international environment or a UN entity". He seeks to rely on information in the selected candidates PHP¹⁷ (as summarized in attachment 9 to the Applicant's rejoinder), which shows that the selected candidate scored zero in criteria two.

46. The Respondent is positive that the selected candidate was suitable for the job since he has 24.5 years of progressive responsible experience in motor vehicle transport operations, movement control, multi-modal transportation, or logistics management. And, that he also had seven years of the required supervisory experience (annexes R/7, R/8 and R/10).

47. Appellate jurisprudence¹⁸ supports the view that a short-listed candidate has a chance of selection and therefore has standing to challenge the qualifications of the selected candidate in support of his own interest in the vacancy.

48. The suitability review indicates that the selected candidate meets all required criteria in the job opening. Further that,

he has approximately 20 years of directly relevant experience both as a MovCon officer in the UN and as a transportation manager for the Government of Guyana. According to his PHP he also meets the requirement for 4 years in a supervisory post directly related to the coordination of complex surface transport operations...

¹⁷ Reply, annex R/8.

¹⁸ *Verma* 2018-UNAT-829.

49. The information in the selected candidates PHP (reply, annex R/8/attachment 9 to the Applicant's rejoinder) however contradicts the above statements. The selected candidate is shown to have scored zero in criteria two and so he cannot be said to have met all the required criteria in the job opening.

50. To compound the problem, the recommendation for the selection of the candidate was, *inter-alia*, based on the fact that "he has particularly relevant skills in dealing with military clients which is very important for the job..." (reply, annex R/7) a criterion which was not in the vacancy announcement. The selection decision was therefore partly based on an inappropriate criterion which supports the Applicant's complaint, at least in this regard, that the applicable Staff Regulations and Rules were not applied in a fair, transparent and non-discriminatory manner.

51. There is no evidence however, that the identified flaws were deliberate and that they were geared to supporting the candidature of the selected candidate. The Tribunal finds that the flaws were the result of error of judgment.

52. Closely related to the above complaint is the claim that the selection process was tainted by ulterior motive. The Applicant maintains that his assessment was manipulated with a view to enabling the preferred candidate to get appointed to the position.

53. The Tribunal recalls that the burden of proving any allegations of ill motivation or extraneous factors rests with the Applicant. The Applicant however failed to substantiate the allegation of ulterior motive. His assertions therefore only remain speculative.

54. The Tribunal agrees with Respondent that the claim that there were other more qualified job applicants who should have been selected for the Position is not receivable pursuant to arts. 2 and 3(1) of the Dispute Tribunal's Statute. The Applicant can only challenge his non-selection for the Position because it affects his terms of

appointment.¹⁹ There is no statutory provision or law which gives the Dispute Tribunal jurisdiction to entertain claims brought by the Applicant on behalf of other staff members.

Remedies

55. The identified flaws notwithstanding, (i.e., the fact that the selected candidate did not meet the second required criteria in the job opening and that an inappropriate criterion was applied in the selection decision) the Tribunal finds that there is no sufficient ground for granting any of the remedies which the Applicant seeks. As has been found, the Applicant did not meet both required selection criteria for the JO, and therefore had nil chance of selection as he was not on the list of candidates recommended for selection. There is no relevant causality between the identified flaws and the remedies he seeks.

56. On the other hand, in addition to the fact that the selected candidate met at least one of the required criteria and therefore received a better assessment than the Applicant in that regard, he came out with a “superior performance during the interview compared to the other candidates”. The vacancy announcement moreover indicates that “evaluation of qualified candidates may include an assessment exercise which may be followed by competency-based interview” (emphasis added), meaning that besides and/or in addition to the required minimum work experience other factors could determine the selection of a candidate.

57. These factors support the position that based on the information before the hiring manager, the selected candidate was the better candidate of the two regardless of the identified flaws. All factors considered, the Tribunal finds no merit in this application.

¹⁹ *Faye* 2016-UNAT-657, paras. 31-39.

Decision

58. The application dismissed in its entirety.

(Signed)

Judge Margaret Tibulya

Dated this 23rd day of December 2021

Entered in the Register on this 23rd day of December 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi