



Before: Judge Joelle Adda

Registry: New York

Registrar: Morten Michelsen, Officer-in-Charge

BLYTHE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Yehuda Goor, AS/ALD/OHR, UN Secretariat

Introduction

1. On 22 December 2020, the Applicant, a staff member in the Department of Management, Strategy, Policy and Compliance (“DMSPC”), appealed (a) the rejection of his candidature for the post of Secretary of the Board of the United Nations Joint Staff Fund (“the Pension Fund”), and (b) his subsequent reassignment to a temporary post in DMSPC.
2. On 21 January 2021, the Respondent replied stating that the application is partly non-receivable and, in any event, without merit.
3. For the reasons set out below, the application is rejected.

Background and Procedural history

4. The Applicant holds a permanent appointment in the Secretariat of the United Nations. He joined the Pension Fund on 3 November 2002 as Chief, Financial Services Section (at the P-5 level).
5. On 1 June 2008, the Applicant was promoted to the position of Chief of Operations (at the D-1 level). On 1 August 2008, the Applicant was reassigned to the position of Chief of the Geneva Office (at the D-1 level).
6. On 30 December 2019, the acting Chief Executive Officer (“CEO”) of the Pension Fund notified the Applicant that the post he was encumbering in the Geneva Office will be relocated to New York pursuant to General Assembly resolution 74/263 (Special subjects relating to the proposed programme budget for 2020). As a result of this, the Applicant would be temporarily reassigned to the position of Secretary of the Board. The CEO’s letter stated as follows:

As you may know, the Board and the General Assembly in Resolution A/74/263 have approved the establishment of the Pension Board Secretariat. In this context, and pursuant to the delegated authority

granted to me under ST/SGB/2019/2, I wish to notify you that the Chief of Office, D-1 post (# 30500493) which you are encumbering in the Geneva Office will be relocated to New York and will become the Secretary of the Pension Board, D-1 post heading the Pension Board Secretariat, effective 1 January 2020. You will report to the Chair of the Pension Board. I wish to reiterate that in accordance with the General Assembly Resolution A/74/263, paragraph 11, your reassignment will be a temporary arrangement, while the Succession Planning Committee of the Pension Board, in accordance with the relevant staff regulations and rules, makes a permanent selection decision. We hope this advance notification will allow ample time for you to consider and plan for your relocation to New York no later than 01 February 2020. Should you need to discuss a later relocation date, please do not hesitate to consult with me. [...].

7. On 13 May 2020, the Applicant submitted his application for the D-1 level post of Secretary of the Board of the Pension Fund.
8. On 28 July 2020, the Applicant was informed that his application was not successful.
9. On 3 August 2020, the Chief, Business Partner Service of DMSPC advised the Applicant of a decision to reassign the Applicant to a temporary position of Principle Finance Officer, at the D-1 level, in the Office of Programme Planning Finance and Budget (“OPPFB”), DMSPC. The Chief stated in his email to the Applicant that:

Reference is made to the meetings that [name redacted] Under Secretary-General [sic] for Management Strategy, Policy and Compliance [“the USG/DMSPC”], and [name redacted] Assistant Secretary General for Human Resources [“the ASG/OHR”] had with you on 24 and 30 July 2020 informing you of the outcome of the recruitment process for the position of Secretary of Pension Board, D1 (post#30500493) advertised through Job Opening 20-ADM-UNJSPF-132990-R-NEW YORK (O) and against which you have been serving on temporary assignment since 1 January 2020. As regrettably you were not the successful candidate for the position, your temporary assignment against the position of Secretary of Pension Board, D1 ended on 31 August 2020. As discussed with [the USG and the ASG], you will be temporarily re-assigned to a temporary position of Principle Finance Officer, D1, in the Office of Programme Planning Finance and Budget (OPPFB), in the Department of Management Strategy, Policy and Compliance (DMSPC) for a period of one year effective 1 September

2020 through 31 August 2021 (draft Terms of Reference attached). During the one-year period you are encouraged to apply and compete for any position [sic] you consider suitable. [...].

10. On 4 August 2020, the Applicant responded by email to the USG/DMSPC, and the ASG/OHR expressing his views with respect to his proposed assignment, and stating:

[...] I have been told by you both that if I take the above-mentioned proposed temporary position, I would be more marketable at the end of a year's experience on the GTA [General temporary assistance] funded position and that it is for me to continue to apply for other posts (even outside of [the United Nations]). As I stated above, I am willing to entertain this approach although I have serious concerns [...].

11. On 13 August 2020, the ASG/OHR responded to the Applicant's email, undertaking to meet periodically with the Applicant and to reassess his situation near the end of the one-year period.

12. On 21 August 2020, the Applicant wrote to the Controller, Assistant Secretary-General for OPPFB to say that he looked forward to discussing the terms of reference of his new assignment upon return from leave. The Applicant reported to his new assignment upon returning from leave on 28 September 2020.

13. On 17 September 2020, the Applicant submitted a request for management evaluation.

14. On 22 December 2020, the Applicant filed his application with the Dispute Tribunal.

15. On 21 January 2021, the Respondent replied stating that the application is partly non-receivable and, in any event, without merit.

16. On 14 July 2021, by Order No. 64 (NY/2021), at the parties' request, the Tribunal referred the present case to the Mediation Division of the United Nations Ombudsman and Mediation Services, and the proceedings were suspended. The suspension of proceedings was extended at the parties' requests until 18 February 2022.

17. On 13 January 2022, the Applicant was reassigned to the post of Chief of Client Services (at the D-1 level) in the Pension Fund in New York.

18. On 15 February 2022, the Mediation Division informed the Tribunal that the parties were unable to resolve the case and therefore the case is referred back to the Tribunal.

19. On 22 and 29 July 2022, pursuant to Order No. 062 (NY/2022) dated 15 July 2022, the parties respectively filed further submissions, informing the Tribunal, *inter alia*, that the case may be decided on the papers. The Applicant requested leave to file additional documentation, which the Tribunal grants and has added those submissions to the case record.

Consideration

Issues of the case

20. Based on the parties' submissions, the Tribunal identifies the issues in this case as below:

- a. Was the 28 July 2020 decision not to select the Applicant for the D-1 level post of Secretary of the Board of the Pension Fund lawful?
- b. Was the 3 August 2020 decision to reassign the Applicant to a temporary position of Principle Finance Officer, at the D-1 level, in the OPPFB, DMSPC for a period of one year lawful?
- c. In respect of the 30 December 2019 decisions to: (a) redeploy the post financing the position of Chief of the Geneva Office (at the D-1 level) in the Pension Fund to the position of Secretary of the Board (at the D-1 level) within the Pension Fund, and (b) to laterally reassign the Applicant from the position of Chief of the Geneva Office (D-1) to the position of Secretary of the Board on a temporary basis pending the finalization of the selection exercise for that

position the Tribunal notes that, although the Applicant does not directly challenge the 30 December 2019 decisions, he does refer to their alleged illegality as one of the main grounds to argue that the non-selection decision was unlawful. The Tribunal will, therefore, first check the receivability of challenging these decisions.

The receivability of the 30 December 2019 decisions

21. The Tribunal notes that the Respondent raises the issue of receivability in respect of the 30 December 2019 decisions.

22. The Respondent states that the Applicant's claims in relation to the decisions conveyed in the 30 December 2019 email from the acting CEO are time-barred as the Applicant did not request management evaluation of those decisions within the 60-day statutory period of staff rule 11.2(c). The Applicant has not responded to this argument raised by the Respondent.

23. The Tribunal notes that on 30 December 2019, the CEO of the Pension Fund notified the Applicant that: (a) the post financing his position of Chief of the Geneva Office would be redeployed to finance the position of Secretary of the Board, and (b) the Applicant would be reassigned to that position on a temporary basis pending the finalization of the selection exercise for that position. The Applicant tries to rely on the unlawfulness of these decisions to challenge the decision not to select him for the D-1 level post of Secretary of the Board of the Pension Fund.

24. Staff rule 11.2(c) provides that a request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

25. Under art. 8.3 of the Tribunal's Statute, the Tribunal may not suspend or waive the deadline for management evaluation.

26. The record shows that the Applicant submitted his request for management evaluation of the 30 December 2019 decisions on 17 September 2020. The 60-day statutory deadline for requesting management evaluation of the two 30 December 2019 decisions expired on 28 February 2020. Therefore, the Applicant missed the 60-day statutory deadline to request management evaluation by over six months.

27. The Tribunal concludes from the above that the Applicant's claims in relation to the 30 December 2019 decisions are not receivable and therefore cannot be reviewed further by the Tribunal as a ground for invoking the illegality of the subsequent decisions.

The 28 July 2020 decision to not select the Applicant for the D-1 level post of Secretary of the Board of the Pension Fund

Legal framework

28. The basic principle on staff selection is set out in art. 101.3 of the United Nations Charter and reflected in staff regulation 4.2 that, "The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity".

29. Under art. 7 of the Pension Fund's Regulations, staff of the Pension Fund are appointed by the Secretary-General in accordance with requirements of the Pension Board, which makes recommendations to the General Assembly on the Pension Fund's annual budget, including staffing and organizational structure.

30. The General Assembly directed in resolution 74/263 that the Secretary shall be selected and evaluated by the Succession Planning Committee of the Board in accordance with relevant staff regulations and rules.

31. It is well established that the Secretary-General has broad discretion in matters of staff selection. 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). The Appeals Tribunal has further held that the role of the Tribunals is “to assess whether the applicable regulations and rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals’ role is not to substitute their decision for that of the Administration” (see, for instance, *Kinyanjui* 2019-UNAT-932).

32. As the Appeals Tribunal reiterated in *Lemonnier* 2017-UNAT-762, citing *Rolland* 2011-UNAT-122, “the starting point for judicial review is a presumption that official acts have been regularly performed”. The Appeals Tribunal held in *Rolland* that if the management is able to minimally show that the applicant’s candidature was given a full and fair consideration, the burden of proof shifts to the applicant who then must show through clear and convincing evidence that he or she was denied a fair chance of selection.

33. In *Verma* 2018-UNAT-829, the Appeals Tribunal further held that, “Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection/promotion”.

The parties’ contentions

34. The Applicant submits that the decision to not select him for the D-1 level post of Secretary of the Board of the Pension Fund was unlawful on the following grounds:

- a. Despite the Applicant's being considered by the acting CEO of the Pension Fund to be fully qualified, competent and suitable for the position of Secretary, the post was put up for external recruitment. Although he was recommended to the Succession Planning Committee as fully suitable for the position of Secretary of the Board and reassigned with his post to serve as temporary Secretary and moreover has been praised for his successful contribution in fulfilling that role *ad interim*, including the successful

completion of the Board's first ever virtual Board Session the selection process rejected his candidacy in preference for an external candidate;

b. It remains unexplained how an encumbered post could be re-designed and advertised as a vacancy with no written justification or notice;

c. By re-purposing the D-1 level post of Chief of Geneva Office to create a Secretary to the Board position, the D-1 level post was in effect abolished. With the decision to appoint an external candidate to the now permanent position of Secretary to the Board, the Applicant was denied the priority consideration to which he was entitled, as a permanent appointment holder;

d. It is unclear on what basis the Board decided to recommend an external candidate in violation of staff regulation 4.4. A decision was taken without consultation removing the Applicant from the Pension Fund entirely, placing him on temporary assistance funding and putting the burden on him to find a post. In addition to curtailing his rights under the Staff Rules, this demonstrates a degree of prejudice in not selecting him for the permanent post to which he applied and was suitable. Moreover, the Respondent has acted in a manner prejudicial to the Applicant in placing him in a position where, unexpectedly, in the latter part of his career, he is expected to compete for a senior position when he will be at a considerable disadvantage because of his age and his specialization with the Pension Fund during his UN career. The interruption of a hitherto smooth career path, which had been a logical and coherent progression, is prejudicial.

e. The General Assembly in its resolution 74/263 directed that the Secretary of the Board was to be selected "in accordance with relevant staff regulations and rules". The Pension Fund Secretariat is subject to the same Staff regulations and Rules and Tribunal jurisprudence as the rest of the United Nations Secretariat. The process has not been transparent. There is no indication that the broader duties of the Chief of the Geneva Office or the office itself have

disappeared. There was no formal indication that the post has been abolished and no programmatic justification for its elimination.

f. In the absence of adherence to established procedures or of a clear record of the reasons for the contested decisions, an improper motive can be inferred.

35. The Respondent states in response that the decision not to select the Applicant the D-1 level post of Secretary of the Board of the Pension Fund was lawful as the Applicant received full and fair consideration for the position.

Was the non-selection decision lawful?

36. Having reviewed the record, the Tribunal notes that following the Applicant's application for the D-1 level post, the Succession Planning Committee recommended the Applicant for further consideration of the Pension Board, along with three other shortlisted candidates. On 9 July 2020, each of the four shortlisted candidates participated in an interview with the Pension Board. On 20 July 2020, at the sixty-seventh session of the Pension Board, the four candidates, including the Applicant, made a presentation and responded to questions from the Board. After consideration of the candidates' presentations, documented experience, and discussions within the Constituent Groups (Governing Bodies, Executive Heads, and Participants), the Board decided by consensus to recommend another candidate to the Secretary-General for selection.

37. On 28 July 2020, the Secretary-General approved the appointment of the candidate recommended by the Pension Board.

38. The Applicant's essential argument is that he should have been given the D-1 level position without a competitive process, because the post he encumbered should not have been "re-designed and advertised as a vacancy with no written justification or notice" and replaced by the post of Secretary of the Pension Board.

39. The Tribunal notes that the decision to re-design and advertise the post was the result of the General Assembly resolution 74/263 dated December 2019. Resolution 74/263 approved the Pension Fund's budget proposal to restructure by redeploying the post financing the position of Chief of the Geneva Office (at the D-1 level) to the position of Secretary of the Board (at the D-1 level). Resolution 74/263 clearly stated "decides that the Secretary shall be selected and evaluated by the Succession Planning Committee of the Board in accordance with relevant staff regulations and rules, while noting the redeployment of the D-1 [level post] from the Geneva Office as a temporary arrangement beginning in January 2020, requests the Board, through the Committee, to expedite the selection and nomination process".

40. Decisions of the General Assembly do not constitute reviewable administrative decisions. The Appeals Tribunal has held that "[t]he General Assembly is the ultimate decision-making organ in the Organization and its decisions are not subject to challenge in the internal justice system" (see *Kagizi* 2017-UNAT-750).

41. It follows that the Applicant's objection to General Assembly's decision to restructure the D-1 level position and to submit the selection of the Secretary of the Board to a competitive process by the Succession Planning Committee is not reviewable by the Tribunal.

42. Regarding the Applicant's contention that he had a right for priority consideration for the D-1 level post, without going through a competitive process, the Applicant relies on his status as a permanent appointment holder. He states that under staff rule 9.6 (termination) and 13.1 (permanent appointment), if the D-1 post was in fact abolished, as a permanent appointment holder, he should have been given priority consideration for placement in any suitable vacancy on a non-competitive basis.

43. Staff Rule 9.6 provides, in part (emphasis added):

(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. (...)

44. Staff Rule 13.1(d) provides, in part (emphasis added):

(d) *If the necessities of service require abolition of a post or reduction of the staff* and subject to the availability of suitable posts for which their services can be effectively utilized, staff members with permanent appointments shall be retained in preference to those on all other types of appointments, provided that due regard shall be given in all cases to relative competence, integrity and length of service. ...

45. The Tribunal notes that these two articles refer to situations in which “*appointments of staff members be terminated as a result of the abolition of a post or the reduction of staff*” and therefore are not applicable to the Applicant’s situation as his appointment was not terminated. Furthermore, there has been no abolition of a post or reduction of staff at the Pension Fund. The post that funded the Applicant’s prior position was redeployed, not abolished.

46. The Applicant tries to rely on the Dispute Tribunal’s judgment in *Nugroho* UNDT/2020/032; affirmed by the Appels Tribunal in *Nugroho* UNAT-2020-1388. However, for the same reason, the Tribunal finds that *Nugroho* is not analogous to the present case. Whereas the applicant’s appointment was terminated in *Nugroho*, this was not the case for the Applicant. Instead, the Administration found the Applicant another position in New York. He was therefore retained in service. The Tribunal finds that the Administration, in fact, precisely complied with *Nugroho*, offered the Applicant another position to ensure that he was kept in employment.

47. It follows that the Applicant had no right for priority consideration for the D-1 level position or to be offered the position without a competitive recruitment process. The jurisprudence cited by the Applicant on termination of appointment therefore does not support his claim.

48. The Applicant claims that an external candidate should not have been selected for the position of Secretary of the Board. The Tribunal finds no substantive submissions to support this claim. There is no legal or factual basis for the Applicant's suggestion that internal candidates enjoy priority for selection under the Staff Regulations and Rules. Consistent with staff regulation 4.2, the Board recommended the candidate it considered the most suitable for the position.

49. The Applicant further contends that he was the most suitable candidate for the D-1 position as he is experienced with the Pension Fund and that he has been serving on temporary assignment since 1 January 2020, as the Secretary of the Pension Fund. The Applicant may indeed have had relevant experience for the D-1 position, However, it is within the discretion of the Administration to select the candidate that was found to be the most suitable for the position. In this regard, the Applicant does not demonstrate, nor even alleges that the selected candidate did not meet the requisite qualification for the position.

50. The Applicant does however seek to rely on evidence, consisting of a personal email from Mr. J he filed in his submission of 21 March 2022 to demonstrate that the selection decision was unlawful. The evidence is a two-line email sent to the Applicant's Gmail account by Mr. J—who served as First Vice-Chair of the Board representing the Participants' Representatives Constituency Group from July 2020 to July 2021—stating the following: “We should chat sometime. Clearly, knowing something about the Fund—almost anything—could not have been a factor in the selection process”.

51. The Tribunal considers the evidentiary weight of this email exchange to be very low. The email was a very short and cryptic email in a private, personal exchange

between the Applicant and Mr. J, who was providing a personal opinion without any context. Mr. J was not acting in his official capacity when sending this email to a personal account. In addition, Mr. J did not have authority to act officially on behalf of the Board. The personal opinion of a third party as to a selection process conducted by the Organization has no probative value. Nor does such personal opinion have any relevancy to the disputed issues in this case.

52. Lastly, the Applicant's allegations of an improper motive are without merit. The Applicant bears the burden of proving such allegations. He has presented no evidence to that effect.

53. Based on the above, the Tribunal finds that the Applicant was afforded full and fair consideration and the non-selection decision was lawful.

The 3 August 2020 decision to reassign the Applicant to a temporary position

Legal framework

54. Article 101.1 of the United Nations Charter stipulates that “[t]he staff shall be appointed by the Secretary-General under regulations established by the General Assembly”. Regarding the Administration's authority to transfer or reassign staff member, staff regulation 1.2(c) provides that “[s]taff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations”.

55. In line herewith, the Appeals Tribunal has held that the Administration enjoys a “broad discretion in staff management, including reassignment or transfer”, but also affirmed that “such discretion is not unfettered” and that the “principle of good faith and fair dealings still applies”. This means that a “reassignment decision must be properly motivated, and not tainted by improper motive, or taken in violation of mandatory procedures”, and such decision can “be impugned if it is found to be arbitrary or capricious, motivated by prejudice or extraneous factors, or was flawed by procedural irregularity or error of law”. See *Chemingui* 2019-UNAT-930.

56. The Appeals Tribunal has recently summarized its long-standing jurisprudence in *Dieng* 2021-UNAT-1118, where it held (paras. 54 and 55):

... Undoubtedly, as per our jurisprudence, cited to about, it is within the Administration's discretion to reassign a staff member to a different post at the same level. We have also stated that, an accepted method for determining whether the reassignment of a staff member to another position was proper is to assess whether the new post was at the staff member's grade; whether the responsibilities involved corresponded to his or her level; whether the functions to be performed were commensurate with the staff member's competence and skills; and, whether he or she had substantial experience in the field. In this respect, it falls squarely within the management's discretion to assign a staff member to a different place of work, or assign him or her to different functions as deemed appropriate, taking into account the Organization's best interests, the staff member's adaptability and skills as well as other factors.

... However, our jurisprudence does not provide a blanket endorsement for the reassignment of staff members by the Administration. As pointed out, the exercise of the discretionary authority of the Administration to reassign staff members has to pass all of the relevant tests governing it, namely such a reassignment is lawful if it is reasonable in the particular circumstances of each case and causes no economic prejudice to the staff member. It must also respect the procedural and substantive rules of law and must not be arbitrary.

The parties' contentions

57. The Applicant contests the 3 August 2020 decision to reassign him to a temporary position of Principle Finance Officer, at the D-1 level, in OPPFB, DMSPC for a period of one year.

58. The Applicant's primary contention in regard to this decision is that the temporary position was not commensurate with his competence and skill, and that it was outside his recognized area of expertise, namely the Pension Fund. The Applicant claims that the reassignment "represents a severe professional dislocation and a negative mark on his otherwise unblemished professional reputation". In effect, the Applicant states that he is "being led to the door, which is the apparent intention of the

decision makers”. The Applicant further complains that the reassignment obliged him to look for another job.

59. The Respondent submits that the reassignment was lawful. The Respondent states that the USG/DMSPC in consultation with the Chief Executive of Pension Administration lawfully temporarily assigned the Applicant to his current position of Principal Finance Officer, at the D-1 level in the OPPFB. Following the selection of another candidate to the position of Secretary of the Board, there remained no vacant position at the Applicant’s D-1 level within the Pension Fund. As the Applicant holds a permanent appointment with the United Nations Secretariat without limitation to the Pension Fund, the USG/DMSPC and the Chief Executive of Pension Administration considered whether the Applicant could be assigned to a position within United Nations Secretariat.

60. Following consultations with the Controller, the USG/DMSPC concluded that OPPFB/DMSPC required on a temporary basis a Principal Finance Officer (at the D-1 level) to serve in an advisory and technical capacity in the OPPFB. The Principal Finance Officer would assist OPPFB with pursuing the International Public Sector Accounting Standards sustainability plan approved by the Secretariat’s Management Committee in 2015, which includes the strengthening of internal controls and the introduction of the Statement of Internal Control.

61. The USG/DMSPC subsequently obtained the consent of the Pension Fund for the temporary assignment of the Applicant, and for the financing of the position from the Pension Fund’s budget for a one-year period. Following consultations with the Applicant, the USG/DMSPC temporarily assigned the Applicant to the position of Principal Finance Officer (at the D-1 level) in DMSPC, effective 1 September 2020.

Was the assignment decision lawful?

62. The Tribunal notes that based on the Applicant’s documented skill and experience, the USG/DMSPC concluded that the Applicant could successfully fulfill

the requirements of the Principal Finance Officer position during the project's current phase. The USG/DMSPC considered that the Applicant had the requisite professional certifications; accounting, leadership, and policy skills, and experience with IPSAS. The Applicant does not dispute this but asserts that his recognized area of expertise was the Pension Fund. It is true that the Applicant had expertise in the Pension Fund, but that fact does not negate that his professional skills are transferable to other roles outside of the Pension Fund, especially since there was no position at the D-1 level in the Pension Fund.

63. The Tribunal notes that in order, to comply with *El Kholly* 2017-UNAT-730, the Administration has the obligation to find the Applicant "who held a permanent appointment, to find another suitable post". The Administration had to do this very quickly because the Applicant was already from 1 January 2020 reassigned under "a temporary arrangement", according to the General Assembly resolution, "while the Succession Planning Committee of the Pension Board, in accordance with the relevant staff regulations and rules, makes a permanent selection decision". Therefore, as the Applicant was not selected for the post as Secretary of the Pension Fund, he no longer had a post and needed one urgently. Thus, the Tribunal considers that the reassignment was made in good faith by the Administration with the intention to ensure the Applicant's continued employment in the given circumstances. The fact that the Applicant would have preferred a position in the Pension Fund is not a relevant factor.

64. The USG/DMSPC therefore lawfully assigned the Applicant to a suitable position in the Secretariat in order to retain his employment at the D-1 level position. The Tribunal also notes that it is undisputed that at all times the Applicant has remained employed by the Organization at the D-1 level and received all the respective benefits and entitlements, including those applicable to relocation. The Applicant has therefore not suffered any detriment from the assignment.

65. Moreover, the Tribunal also notes that on 13 January 2022, the Applicant was reassigned to the post at the D-1 level of Chief of Client Services in the Pension Fund in New York. The Applicant currently serves in this position and is part of the Pension

Fund's senior management team. The Applicant is therefore now working at the Pension Fund, which he indicated was his preference.

66. Based on the above, the Tribunal finds the assignment decision lawful.

Conclusion

67. The application is rejected.

(Signed)

Judge Joelle Adda

Dated this 8th day of November 2022

Entered in the Register on this 8th day of November 2022

(Signed)

Morten Michelsen, Officer-in-Charge, New York