

# **UNDT/2015/033, Simmons**

## **UNAT Held or UNDT Pronouncements**

The staff selection system versus lateral moves: This Tribunal is of the view that, because secs. 2.1 to 2.3 of ST/AI/2010/3 refer to the selection system, including the roster, and sec. 2.5 refers to transfer, which is excluded from the scope of the staff selection system, in accordance with sec. 3.2(I), the hiring manager and the head of department must give priority and exercise their discretion firstly by implementing the roster system right from the beginning of it, deciding if any pre-approved candidate from the roster (who is reviewed and endorsed by a central review body and has been approved by the head of department) can be immediately and directly recommended and selected for the post. It is only if no such recommended candidate is selected for the post by the head of department that s/he has the discretion to transfer an interested staff member to the vacant post. Movement of a staff member after a job opening is cancelled. The Tribunal considers that, after its cancellation, a job opening does not exist anymore, and consequently cannot be filled through a transfer, a lateral move or a lateral reassignment. Consequently, such a measure is unlawful if the transfer is to a vacant post for which a job opening was not created or no longer exists.

## **Decision Contested or Judgment/Order Appealed**

The Applicant contested the decision of the Office of Human Resources Management ("OHRM") to cancel job opening number 24670 ("JO 24670") for the post of Programme Budget Officer at the P-4 level based on a request from the then Assistant Secretary-General, Controller ("ASG/C"). She also contested the decision of the ASG/C to laterally transfer a staff member from the Department of Management to the vacant post. The Applicant had previously applied for a Programme Budget Officer position at the P-4 level and been placed on a roster of pre-approved candidates. The Tribunal found that the decision to cancel JO 24670 was based solely on the fact that more than 160 days had passed since the initiation of the job opening without any progress through the different stages of the recruitment

process. It was therefore cancelled in accordance with sec. 4.1.8 of the Recruiter's Manual. There was no evidence that the job opening was cancelled in order to disadvantage the Applicant. The Tribunal found that the decision to laterally transfer another staff member to the vacant post was illegal because (a) the decision was made before the official cancellation of the job opening; (b) a new job opening was not created as required by sec. 2.5 of ST/AI/2010/3 and sec. 6.10 of the Hiring Manager's Manual; (c) The Head of Department did not exercise her discretion vis-à-vis the pre-approved roster candidates for the post, before she decided to fill the vacancy by a lateral transfer/move; (d) the transferred staff member was involved in creating the cancelled job opening.

## Legal Principle(s)

A new job opening must be created by the hiring manager, in accordance with sec. 2.5 from ST/AI/2010/3.

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Simmons

## Entity

DM

## Case Number(s)

UNDT/NY/2013/91

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

15 Apr 2015

## Duty Judge

Judge Greceanu

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Staff selection (non-selection/non-promotion)

Full and fair consideration

Selection decision

## Applicable Law

Administrative Instructions

- ST/AI/2010/3
- ST/AI/2010/4/Rev.1

Secretary-General's bulletins

- ST/SGB/2012/1
- ST/SGB/2013/3

Staff Regulations

- Regulation 1.2(e)
- Regulation 4.2

#### Staff Rules

- Rule 11.2
- Rule 4.8

#### UNDT Statute

- Article 10.5
- Article 2

## Related Judgments and Orders

UNDT/2012/178

UNDT/2011/172

UNDT/2011/013

UNDT/2010/211

UNDT/2010/133

UNDT/2011/058

UNDT/2014/062

UNDT/2010/135

UNDT/2010/178

2011-UNAT-172

UNDT/2010/189

UNDT/2010/190

UNDT/2010/172

UNDT/2010/208

UNDT/2011/129

2013-UNAT-335

2013-UNAT-300

2012-UNAT-204

2013-UNAT-309

UNDT/2014/117