

UNDT/2018/082, Abbas

UNAT Held or UNDT Pronouncements

The Tribunal had to determine whether a valid contract existed between the Applicant and UNISFA, and, in the affirmative, whether the decision not to proceed with his on-boarding was illegal. The Tribunal considered that for the conditions of Gabaldon to apply, it is necessary that the offer of employment extended to a candidate be based on a selection decision made by the person disposing of the relevant delegated authority. Legal framework for delegation of authority to make the selection decision The Tribunal was of the view that at the time of the contested decision in accordance with the ST/AI/2010/3 and in the Standard Operating Procedure on Staff Selection System for peacekeeping operations and special political missions (SoPs), the delegation of authority to make the selection decision for the TJO in question was with the Head of Mission. The latter approved the Applicant's selection on 16 June 2015. Did a valid contract exist between Ms. S. and UNISFA? Ms. S. was another candidate who had been initially selected for the TJO by the Chief Mission Support (CMS), UNISFA but whose selection had not been endorsed by the Head of Mission. The Tribunal found that the selection of Ms. S. was ultra vires and that no valid contract existed between Ms. S. and UNISFA. The Tribunal was concerned that not only was the decision ultra vires, but also that no comparative review had been conducted at the time the "selection" of Ms. S. was made by the CMS. The Tribunal reiterated that the Head of Mission never approved her selection. Did a valid contract exist between the Applicant and UNISFA? The Tribunal observed that the Applicant had been informed of his selection on 23 June 2015 and unconditionally accepted the offer by signing an acceptance of temporary assignment on 3 July 2015. He was medically cleared and issued with a Sudanese Visa. UNAMA had been requested to and confirmed his release for the temporary assignment. The Tribunal thus was of the view that the conditions set by the Appeals Tribunal in Gabaldon were met. The offer of appointment had been extended to the Applicant on the basis of the approval of his selection by the Head of Mission dated 16 June 2015. The Tribunal noted that on the basis of the legal framework applicable at the time, the authority to make the contested selection decision had been delegated to the Head of Mission. Furthermore, the record indicated that the Head of Mission was aware of the previous selection recommendation of Ms. S., made by the CMS nevertheless, he selected the Applicant. The Tribunal therefore found that the decision to select the Applicant was legal and that his unconditional acceptance and fulfilling of all the conditions of the offer of appointment created a valid contract between UNISFA and the Applicant. At the very least, a legitimate expectancy was created for the Applicant that he was to be temporarily employed against a P-4 position. In light of the above, the Tribunal concluded that the decision not to proceed with the on-boarding of the Applicant was illegal. Remedies The Tribunal noted that had the Applicant been on-boarded for the temporary P-4 position, he might have received an SPA for a period of nine months. While this was not a certainty, as the Respondent rightly pointed out, no evidence exists, either, that such SPA would not have been granted. Under the circumstances, Tribunal considered appropriate to grant the Applicant the amount of SPA at the P-4 level, for a period of nine months, in compensation for salary differential. Furthermore, the Tribunal found it appropriate to award the Applicant an additional amount of compensation of USD1,000 for damages to career prospects.

Decision Contested or Judgment/Order Appealed

Decision not to recruit on a P-4 temporary job opening ("TJO") as Administrative Officer at the United Nations Interim Security Force for Abyei ("UNISFA").

Legal Principle(s)

Unconditional acceptance by a candidate of the conditions of an offer of employment before the issuance of the letter of appointment can form a valid contract, provided the candidate has satisfied all of the conditions

(Gabaldon 2011-UNAT-120). Any delegation of authority must contain a clear transmission of authority to the grantee concerning the matter being delegated (Bastet 2015-UNAT-511).

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Abbas

Entity

UNISFA

Case Number(s)

UNDT/GVA/2016/088

Tribunal

UNDT

Registry

Geneva

Date of Judgement

20 Aug 2018

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Applicable Law

Administrative Instructions

- ST/AI/2010/3

Other UN issuances (guidelines, policies etc.)

- Standard Operating Procedure on Staff Selection System for Peacekeeping Operations and Special Political Missions (SoPs)

Secretary-General's bulletins

- ST/SGB/2015/1

UNDT Statute

- Article 10.5

Related Judgments and Orders

2011-UNAT-120

2015-UNAT-511