UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2022-UNAT-1285

Khalid Younis

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Graeme Colgan Judge Martha Halfeld
Case No.:	2022-1655
Date of Decision:	28 October 2022
Date of Publication:	9 December 2022
Registrar:	Juliet Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Patricia Aragonés

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. The United Nations Appeals Tribunal (UNAT or Appeals Tribunal) has before it an appeal by Mr. Khalid Younis (Mr. Younis) against Judgment No. UNDT/2021/159 of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), of 21 December 2021. This Judgment dismissed his application challenging the decision not to select him for the position of Chief of Section, Transport, P-5, with the United Nations Support Office in Somalia (UNSOS).

2. For the reasons given below the appeal is dismissed.

Facts and Procedure

3. Mr. Younis serves on a continuing appointment as Chief Transport Officer, P-5, with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) in Goma. At the time relevant to this case, he served as Chief of Section, Transport, P-5, with the United Nations African-Union Mission in Darfur (UNAMID).

4. On 8 October 2019, UNAMID uploaded Mr. Younis' profile to COSMOS, an online platform which was established to assist UNAMID international staff members, in anticipation of UNAMID's closure, to find suitable vacancies in other agencies regardless of a staff member's receipt of a notice of separation.

5. On 29 October 2019, UNSOS advertised a vacancy for the position of Chief of Section, Transport, P-5, with UNSOS in Mogadishu (the position), for which Mr. Younis applied on 30 October 2019. On 6 November 2019, UNSOS Human Resources transmitted the job applications of Mr. Younis and one other candidate to the hiring manager for a suitability review. The job applications included the Personal History Profiles (PHPs) of the candidates.

6. On 11 December 2019, the UNSOS Chief Human Resources Officer informed the Head of UNSOS that the hiring manager had completed the suitability review and had found Mr. Younis to be not suitable for the position because he failed to meet two essential criteria. Accordingly, as the other candidate was no longer available, the hiring manager requested the selection process for the position to be allowed to continue without further consideration of Mr. Younis.

7. The first criterion which Mr. Younis did not satisfy, required a minimum of ten years of progressively responsible experience in motor vehicle transport operations, movement control, multimodal transportation and logistics management. The hiring manager was of the opinion, based on his assessment of Mr. Younis' PHP, that Mr. Younis only had seven and a half of the required ten years' experience. The second criterion 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 hiring manager considered that Mr. Younis had only two years of the required supervisory experience.

8. The suitability review explained:

> [T]he 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.

9. On 27 December 2019, a new online platform, Horizon, was introduced to succeed COSMOS effective January 2020. Horizon facilitates hiring managers' consideration for suitable vacancies in the Secretariat of staff members notified of their separation due to downsizing, restructuring or closure. At the time, Mr. Younis' profile was not uploaded to Horizon as no decision had been made to terminate his appointment, nor had he received notice of separation.

10. On 21 January 2020, the Head of UNSOS endorsed the 11 December 2019 suitability review, and allowed the selection process to continue without further consideration of Mr. Younis.

11. On 23 June 2020, following an appropriate selection exercise comprising three candidates, the Head of UNSOS selected a candidate for the position based on a selection recommendation. Mr. Younis was notified of his non-selection for the position (the non-selection decision) on 14 August 2020.

12. Mr. Younis sought management evaluation on 31 August 2020 and filed an application with the UNDT contesting the non-selection decision on 20 October 2020.

13. On 12 November 2021, Mr. Younis was reassigned to MONUSCO, where, as mentioned, he currently serves on a continuing appointment, as Chief Transport Officer, P-5.

14. On 23 December 2021, the UNDT issued its judgment, dismissing Mr. Younis' application. It held that UNSOS had given Mr. Younis "priority consideration" but had determined that he was not suitable for the position, and there was no basis to disagree with that assessment. It held further that there was also no basis to conclude that the selection of the selected candidate was unreasonable or tainted by ulterior motive. Moreover, it held that Staff Rule 9.6(e) - which affords priority consideration to staff members holding continuing appointments in cases of termination as a result of abolition of a post or the reduction of staff - did not apply in this case, because at the time there had been no decision taken to terminate Mr. Younis' appointment. It accordingly upheld the non-selection decision.

15. The UNDT also held that there was no evidence to support the claim of Mr. Younis that the responsible officers manipulated the system by falsifying his experience in order to clear and select their favorite candidate.

16. Mr. Younis filed his appeal with this Tribunal on 21 January 2022.

Submissions

Mr. Younis' Appeal

17. Mr. Younis mainly repeats the arguments he made before the UNDT. In the first instance, he maintains that he had more and better experience than the selected candidate.

18. He also submits that he was found not suitable because UNSOS improperly preferred a favored candidate who was "pre-selected".

19. Mr. Younis further contends that his application should have received prior consideration in terms of Staff Rule 9.6(e) in the context of the implementation of downsizing at UNAMID.

20. Mr. Younis did not request the UNDT Judgment to be reversed but merely asked for his application to be reconsidered and for all the documents related to his application to be made public. He requested a hearing before the UNAT in order to "explain the fraudulent to the court".

The Secretary-General's Answer

21. The Secretary-General submits that the UNDT correctly dismissed the application as Mr. Younis did not in fact meet the selection criteria. And Mr. Younis has not established any error by the UNDT warranting a reversal of the Judgment.

22. He contends that the claim that UNSOS had falsified Mr. Younis' experience and disqualified him and other candidates, allegedly to clear and select its preferred candidate, is unsubstantiated.

23. The Secretary-General submits that the UNDT also did not err when it found that Staff Rule 9.6(e) did not apply to Mr. Younis. Staff Rule 9.6(e) requires the Organization to 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." Although there was an indication that UNAMID would downsize, there was no evidence that at the time Mr. Younis applied for the position any decision had been taken to abolish his post or to reduce staff, which affected him directly. Only a decision to abolish a post triggers the mechanism and procedures under Staff Rule 9.6(e).

24. The Secretary-General accordingly requests that the appeal be dismissed and for the Judgment of the UNDT to be affirmed.

Considerations

25. Mr. Younis has requested an oral hearing. As will appear presently, the appeal turns on an uncomplicated issue and thus there is no need for a hearing to assist in the expeditious and fair disposal of the case.

26. In its thoughtful, considered and well-reasoned judgment, the UNDT carefully examined and assessed the evidence to determine whether Mr. Younis met the requisite criteria for selection and concluded rightly that he did not.

27. In terms of the vacancy announcement, the required work experience for the position was a minimum of ten years of progressively responsible experience in motor vehicle transport operations, movement control, multimodal transportation and logistics management; including at least four years in a supervisory position directly related to the coordination of complex surface transport operations in an international environment or a United Nations entity.

28. The suitability review concluded that the information furnished by Mr. Younis in his PHP disclosed that he at best had seven and a half years of relevant experience, made up as follows: i) the period he spent as CTO in UNAMID; ii) the time spent as a Regional Operations officer in Mali (October 2014-May 2016); iii) his time in Chief Integrated Support Services (CISS) in Cyprus (July 2010-Oct 2014); and iv) his service as Chief Logistics Services at UNMIN in Nepal (January 2009-May 2010). The remainder of his experience was considered not to be relevant to this key selection criterion. The suitability review further determined that Mr. Younis only had two years of supervisory experience directly related to the coordination of complex surface transport operations and thus he did not satisfy the second criterion either.

29. After perusing the PHP submitted by Mr. Younis, the UNDT held that the suitability review was correct. The PHP confirmed the Administration's assessment of Mr. Younis' work experience. The total number of years of experience for each criterion had been properly arrived at by first determining if the nature of his work experience fulfilled the relevant criteria and then the number of years for which he had served in relevant roles was computed for both criteria. In the final analysis, the experience in various roles identified by Mr. Younis in his PHP did not cumulatively constitute "a minimum of ten (10) years of progressively responsible experience in motor vehicle transport operations, movement control, multimodal transportation, logistics management". While Mr. Younis' experience in his PHP generally related to logistics management, it did not amount to "progressively responsible experience in motor vehicle transport operations, movement control and multimodal transportation".

30. In his closing submissions to the UNDT, Mr. Younis referred to documents including the terms of the respective positions he had held and appraisals and achievements in them, and requested the UNDT to verify (with the Office of Human Resources Management at the United Nations Headquarters in New York) his duties and responsibilities in CISS positions at the United Nations Peacekeeping Force in Cyprus (UNFICYP) and UNMIN to confirm that in these positions he had responsibility for the coordination of surface transport operations in

both United Nations entities. The UNDT correctly held that such information was irrelevant because the information was not before the decision-maker at the time of the non-selection decision. The impugned decision was based on what Mr. Younis presented in his PHP and the ultimate question is whether the decision of the hiring manager was a decision that a reasonable decision-maker could have taken on the information before him at the time he took it.

31. The UNDT accordingly did not err when it held that the determination of the hiring manager that Mr. Younis did not have the requisite experience for the position was supported by the then-available evidence and was thus reasonable.

32. Mr. Younis also challenged the finding that he did not have at least four years' experience in a supervisory position directly related to the coordination of complex surface transport operations in an international environment or a United Nations entity. The UNDT noted that the supervisory experience required related to "complex surface transport operations" and the information provided by Mr. Younis in his PHP did not indicate the complexity of the roles which he executed, sufficient to rebut the presumption of regularity. It accordingly agreed with the assessment of Mr. Younis' experience as being deficient in this regard also.

33. In his appeal brief, Mr. Younis did not point to any error of the UNDT in the computation of his experience in relation to the first criterion. Nor did he set out a different computation or provide any countervailing evidence that contradicted the finding that he lacked the requisite ten years' experience.

34. He did on the other hand provide some indication of the complexity of the operations he had supervised for the purposes of the second criterion. In this regard, he contends that the Administration and the UNDT erred in their appraisal of his supervisory experience by failing to take proper account of his experience between July 2013 and October 2014, and between January 2009 and May 2010. His role between July 2013 and October 2014 was that of CISS at UNFICYP, which entailed direct supervision for all logistics sections and included overall management and coordination of UNFICYP 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 UNFICYP area of operation. He supervised 18 staff members employed in the maintenance and services for United Nations and leased vehicles. Between January 2009 and

May 2010, he was engaged as Chief Logistics Services, P-4, at UNMIN. This position entailed direct supervision for all logistics services. His responsibilities 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's area of operation. Here he supervised 17 staff members who managed more than 200 vehicles.

35. Even if Mr. Younis is given the benefit of the doubt on the second criterion, the fact remains that he has not shown that the UNDT erred in its finding on the first criterion; with the result that any error the UNDT may have made in relation to the second criterion would not be an error of fact that resulted in a manifestly unreasonable decision - as required in terms of Article 2(1)(e) of the Statute of the UNAT before his appeal could succeed. Any error in relation to the second criterion would not change the result. The ultimate outcome would remain the same. The finding that Mr. Younis did not meet the temporal requirements of the first criterion is indisputably in accordance with the evidence and without error. Consequently, Mr. Younis did not meet all the requirements for appointment and hence the non-selection decision was both lawful and reasonable. This finding alone is dispositive.

36. It follows that Mr. Younis, being unqualified for the position, has no direct or substantial interest in the question of whether the selected candidate met the appointment criteria.

37. Mr. Younis has persisted with his submission that the non-selection decision was unlawful because UNSOS failed to give due consideration to its obligations to absorb qualified staff from downsizing missions and thereby wrongly continued with the recruitment exercise for the position as he was a qualified staff member on a continuous appointment from a downsizing mission. Staff Rule 9.6(e) requires the Organization to make reasonable efforts to retain staff members where there has been a decision to terminate staff members' appointments due to the abolition of posts or the reduction of staff, subject to the availability of suitable posts in which (having regard *inter alia* to competence) their services can be effectively utilized. Although there was some reference to Staff Rule 9.6(e) in the correspondence, there was no evidence that Mr. Younis' appointment had been affected by staff reduction as he had not been notified of a decision to abolish his post or to terminate his appointment at the time he applied for the position. Staff Rule 9.6(e) was not triggered merely by the anticipated closure of UNAMID. There needed to be a final decision to abolish the post

or to reduce staff, which directly affected Mr. Younis' appointment.[1] That was not the case when Mr. Younis applied for the vacant position at UNSOS. In any event, Mr. Younis had been subjected to a suitability review that concluded he was not suitable for the position. Even had Staff Rule 9.6(e) applied in the present case, it probably would not have benefited Mr. Younis as he failed to meet the position's requirements.

38. In the premises, the appeal stands to be dismissed.

[1] *Timothy v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-847, para. 31.

Judgment

39. The appeal is dismissed and Judgment No. UNDT/2021/159 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of October 2022 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Murphy, Presiding	Judge Colgan	Judge Halfeld

Judgment published and entered into the Register on this 9th day of December 2022 in New York, United States.

(Signed)

Juliet Johnson, Registrar