UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NBI/2024/049
Judgment No.:	UNDT/2025/054
Date:	19 August 2025
Original:	English

Before: Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

KEBEDE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON LIABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alhagi Marong, UNECA

Introduction

1. The Applicant serves as a Supply Assistant (G5) at the United Nations Economic Commission for Africa (UNECA). He holds a permanent appointment and is based in Addis Ababa, Ethiopia.

2. In 2023, the Applicant applied for a vacancy as Senior Control and Inventory Assistant (G7) position (Job Opening 214050) at UNECA. The Applicant was interviewed on 14 December 2023, as part of a Competency Based Interview (CBI) process. He was not selected and, in this application, challenges his non-selection.

Procedural History and Submissions

3. The Applicant argues that the selection process was "an unjust denial of my career advancement and a retaliation/discrimination for my active engagement of exposing wrong doings, allegations of corruptions, financial malfeasance and abuse of authority by the senior management of ECA."

4. The Respondent argues that the Applicant was fully and fairly considered for the position.

5. Thereafter, the Applicant filed a submission entitled "Motion for Summary Judgment." This submission was, in effect, a rejoinder to the Respondent's reply.

6. The Tribunal issued Order No. 143 (NBI/2024) denying the motion for summary judgment. However, the Tribunal directed the Respondent to file copies of the Competency Based Interview (CBI) report showing the Applicant's interview rating, the selected candidate's interview rating, and the qualifications of the selected candidate, redacting the name of the selected candidate. The Respondent submitted a document purporting to comply with Order No. 143.

Considerations

Appeal Against Order No. 143 (NBI/2024)

7. The Applicant has filed a submission entitled "Appeal to Order No. 143 (NBI/2024)" wherein he takes issue with this Tribunal's order denying his Motion

for Summary Judgment. Appeals from rulings of the Dispute Tribunal are within the exclusive jurisdiction of the Appeals Tribunal, and that jurisdiction is generally limited to appeals against final judgments. Statute of the United Nations Appeals Tribunal, art. 2.1. Thus, this Tribunal lacks authority to rule or take any action on the "appeal."

8. Further, this Tribunal notes that, in the Appeal to Order No. 143 (NBI/2024), the Applicant argues that the order "narrows the scope of [his] claim, which is a 'Systemic Retaliation'." However, in his application, the Applicant identified the contested decision as "an unfair decision for my application for a G7 position," which is consistent with his request for management evaluation "to request the ruling of the job opening."

9. It has long been held that the Dispute Tribunal has the "inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and subject to judicial review." See, e.g., *Massabni* 2012-UNAT-238, para. 26; *Mohamed* UNDT/2019/153; *Barber* UNDT/2018/051; *Dufresne* UNDT/2020/019; *Gakira* UNDT/2021/136; *Melbiksis* 2023-UNAT-1386; *Dia* 2024-UNAT-1452; and *Kulga* UNDT/2025/012.

10. Pursuant to that authority, the Tribunal defines the contested decision in the same manner that the Applicant did in both his request for management evaluation and his application: his non-selection for the G7 position in Job Opening 214050. His subsequent claim that the application challenged "systemic retaliation" is rejected and the gravamen of the Applicant's "appeal" is unfounded.

Management Evaluation

11. The Applicant has expended significant energy before the Tribunal criticising the management evaluation response. It is important that litigants before the Dispute Tribunal, especially those who represent themselves, know that "the Administration's response to a request for management evaluation is not a reviewable decision." *Kalashnik* 2016-UNAT-661, paras. 27-29; *Nwuke* 2016-UNAT697, para. 20; *Nadeau* 2017-UNAT-733, para. 36; *Auda* 2017-UNAT-740, paras. 22-23; *Kalashnik* 2017-UNAT-803, paras. 23- 27.

Merits of the Non-Selection Decision

12. On matters concerning staff selection, the jurisprudence is well-established that under article 101.1 of the Charter of the United Nations and staff regulations 1.2(c) and 4.1, the Secretary-General has broad discretion to appoint staff (see *Abbassi* 2011-UNAT-110, *Frohler* 2011-UNAT-141, and *Charles* 2013-UNAT-286). This discretion is to be exercised within the framework of the applicable regulations and rules, ensuring that the highest standards of efficiency, competence, and integrity are maintained.

13. The Tribunal's role is not to substitute its decision for that of the Administration (See*, inter alia*, *Ponce-Gonzalez* 2023-UNAT-1345). Instead, in conducting a judicial review of administrative decisions regarding staff selections, the Dispute Tribunal is to consider the following factors: (1) whether the procedure as laid down in the Staff Regulations and Staff Rules was followed; (2) whether the staff member was given full and fair consideration; and (3) whether the applicable Regulations and Rules were applied in a fair, transparent and non-discriminatory manner.

14. In other words, the Tribunal's role in reviewing staff selection processes is to ensure that the applicable regulations and rules have been applied, and that candidates have received full and fair consideration (see *Rolland* 2011-UNAT-122, *Aliko* 2015-UNAT-540, and *Verma* 2018-UNAT-829).

15. In *Rolland* 2011-UNAT-122, para. 26, the Appeals Tribunal held:

> There is always a presumption that official acts have been regularly performed. This is called a presumption of regularity. But this presumption is a rebuttable one. If the management is able to even minimally show that the Appellant's candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter the burden of proof shifts to the Appellant who must show through clear and convincing evidence that she was denied a fair chance of promotion.

16. The Respondent therefore bears the burden of showing that the Applicant was given full and fair consideration. He must, at least, "minimally show" that the Applicant's candidature was fully and fairly considered.

17. In his reply, the Respondent acknowledges that he has this burden and conclusively asserts that he has met the burden. Specifically, the Respondent asserts that "[i]n Mr. Kebede's case, the administration has shown that the selection process was conducted fairly and transparently."

18. However, the reply contains no reference to evidence to support this assertion. Indeed, the Respondent submitted no annexes demonstrating how the selection process was conducted nor any evidence at all.

19. The reply asserts, as if it were fact, that "[t]he selection panel was composed of impartial members who had no prior interactions or conflicts of interest with Mr. Kebede." He also submits no evidence to support this assertion.

20. During this litigation, it required two orders from the Tribunal for the Respondent to submit evidence identifying the selection panel members. This evidence showed that two of the four panel members had direct involvement with the Applicant prior to the selection process, including negative interactions. In other words, the evidence showed that the Respondent's submission on the impartiality of the panel members was false.

21. The apparent Chair of the panel, George Balarabe Ogboro, was the Applicant's second reporting officer (SRO), and in 2018 he overrode the Applicant's then first reporting officer's (FRO) assessment of the Applicant's performance as "A-Exceeds expectations." In response, the Applicant said that the SRO's rating was "discriminatory and retaliatory," and specifically alleged that the SRO (Mr. Ogboro) had requested him on several occasions to sell surplus property "to the staff, not to the public" by competitive bid, as required by organization rules. The record is silent about the result of this dispute other than an email between the Applicant and Mr. Ogboro a few years later in which the Applicant recounts that the "issue was resolved in my favor".

22. Additionally, the record also includes correspondence in the months prior to the challenged selection exercise in which the Applicant complains to and/or about Mr. Ogboro regarding a lack of career advancement. Among his examples are "vacancies filled without any competition/advertisement" and his being "bypassed

for a training on disposal, which is my primary job function, and someone else was allowed to attend that training."

23. There is also an email from the Applicant to the General Executive Secretary of UNECA, the week before his interview in this challenged selection process in which he wrote

> I have had a various discussion the last 15 years with Mr. Ogboro, regarding my concerns stated in the email I sent to him on May 27, 2023, which was also [copied] to different senior officials. Now I have called for interview for the G7 position however, Mr. Ogboro, Chief of SCMS has promised to give this position to another staff member at the warehouse.

24. These emails demonstrate that Mr. Ogboro had prior interactions and conflicts with the Applicant, contrary to the Respondent's assertion.

25. Additionally, a second person on the panel was Tafsir Alassane Ndiaye, a Property Management Unit Officer, and apparently the Applicant's recently-installed supervisor. The record includes numerous communications between Mr. Ndiaye and the Applicant. The Applicant alleges that he is "a victim of Mr. Ogboro's direct and indirect retaliation using proxies, such as Mr. Ndiaye. Mr. Ndiaye's continuous harassment is nothing but a directive from Mr. Ogboro whom I blamed rightfully for all problems of SCMS on many occasions." Various other documents in the record reference the Applicant's complaints about Mr. Ndiaye's management and alleged ignorance of the UNECA property management operations. So, here again the record proves that the Respondent's assertion was false because another panel member had prior interactions and conflicts with the Applicant.

26. In addition, the Tribunal notes that the panel interviewed eleven of the twelve short-listed candidates on 11 and12 December 2023. For some reason not disclosed on the record, the Applicant was interviewed days later on 14 December 2023. The CBI Report does not even spell the Applicant's name correctly. One could infer that his interview was merely an afterthought.

27. Based on the record, the Tribunal finds that the Respondent has failed to meet its burden to show that the Applicant was given full and fair consideration, in order to satisfy the presumption of regularity. When half of the interview panel are individuals about whom one candidate has made prior complaints, the process is certainly irregular and would lead any observer to conclude that the process would not give that candidate fair consideration.

28. The Tribunal finds that these circumstances clearly and convincingly point to a panel that was tainted by more than a "reasonable apprehension of bias". As the Appeals Tribunal observed in *Mahmoud* 2019-UNAT-964, para. 30:

> The rule against bias, as part of the requirements of procedural fairness, requires that members of selection panels must have an open mind throughout the proceedings. A decision may be set aside if there is a reasonable apprehension of bias. In other words, there is no need to prove actual bias but only a reasonable apprehension. The test is objective and an inference of a reasonable apprehension of bias must be consistent with the proved facts and a plausible and probable inference.

29. In *Finniss,* 2017-UNAT-397, para. 21., a case quite similar to the instant one, the Appeals Tribunal observed that

> [G]iven the open animosity and ill-feeling between the PCO and Mr. Finniss, the Administration should not have included the former on the interview panel. On the other hand, the PCO ought to have recused himself from the interview panel.

30. The Appeals Tribunal went on to hold that "[i]n the circumstances, the test for apparent bias applied by the UNDT - whether the fair-minded observer, having considered the facts, would conclude that there was a real possibility that the interview panel was biased - was correct." *Id.* para. 24.

31. Here, any fair-minded observer considering the facts of the prior interactions between the Applicant and two members of the panel would conclude that there was a real possibility that the interview panel was biased. Of course, a selection decision tainted by bias is unlawful and must be rescinded.

Compensation in lieu of rescission

32. Article 10.5 of the Dispute Tribunal Statute requires that, where the rescinded decision concerns appointment, promotion or termination, the Tribunal must set an amount of compensation that the Organization may elect to pay instead of implementing the rescission.

33. The Appeals Tribunal has held that "the purpose of *in lieu* compensation is to place the staff member in the same position he or she would have been in had the unlawful decision not been made." *Saleh* 2023-UNAT-1368 para. 69. (citing *Ashour* 2019-UNAT-899, para. 18).

34. Calculating the amount to set as compensation *in lieu* must be done on a case-by-case basis. *Saleh*, *supra* para.69; *Mwamsaku* 2011-UNAT-265.

> [I]n determining compensation [*in lieu* of rescission], [the Tribunal] should bear in mind two considerations. The first is the nature of the irregularity that led to the rescission of the contested administrative decision. The second is an assessment of the staff member's genuine prospects for promotion if the procedure had been regular.

Ardisson 2010-UNAT-052, para. 24. See also, *Fröhler* 2011-UNAT-141, para. 33; *Fradin De Bellabre* 2012- UNAT-214, para. 28; and *Appleton* 2013-UNAT-347, para. 22.

35. The Appeals Tribunal has also held that compensation *in lieu* of rescission for non-selection may be calculated based on "the probability of the candidate being selected." *Appleton*, *supra*. para. 23. See also, *Hastings* 2011-UNAT-109, para. 18; *Mezoui* 2012-UNAT-220, paras. 43-45. However, this is not the only method permitted, and the Tribunal is entitled to determine the appropriate amount of compensation. *Lutta* 2011-UNAT-117, para. 14. It is recalled that, except in very unusual circumstances, compensation *in lieu* should not exceed the difference in pay and benefit for two years. *Hastings* 2011-UNAT-109, para. 2. See also, *Krioutchkov* 2016-UNAT-691, para. 30; *Krioutchkov* 2017- UNAT-712, para. 18; *Pinto* 2018-UNAT-878, para. 24.

36. In analysing the circumstances in this case, the Tribunal notes that the nature of the irregularity was bias in the selection panel, which should have been obvious to the Administration and to Messrs Ogboro and Ndiaye. Given that the Applicant had been doing similar work at UNECA for 17 years, his probability of selection was rather high. It is also noted that the Applicant was a G5/Step XIII Supply Assistant on a permanent appointment. The selection was for a G7 appointment.

37. Under staff rule 3.3(b) when a staff member is selected for a new position at a higher level within the same category, they shall be placed "at the lowest step of the level to which they have been assigned that provides an increase in net base salary equal to at least the amount that would have resulted from the granting of two steps at the lower level."

38. Applying this rule means that the Applicant, had he been selected in the challenged process, would have been placed in the new post at step VII of the G7 level. This would have resulted in an increase in his annual net salary of USD 2257. Accordingly, the Tribunal sets the amount of compensation *in lieu* of rescission at two years of the difference in pay, or USD 4514.00.

Accountability and related sanctions

39. Article 10.8 of the Dispute Tribunal Statute provides that the Tribunal may refer appropriate cases for possible action to enforce accountability. Clearly this is such a case.

40. As noted above, in responding to the Applicant's allegation of bias, the Respondent through counsel told the Tribunal that "[t]he selection panel was composed of impartial members who had no prior interactions or conflicts of interest with Mr. Kebede." Reply, p. 3. Ultimately, the record revealed this statement to be false. Two of the panel members, Mr. Ogboro and Mr. Ndiaye, had extensive interactions and conflicts with the Applicant. Thus, this was a clear misstatement to the Tribunal.

41. This false statement was only uncovered when the Tribunal directed the Respondent to file the interview panel report. Initially, the Respondent attempted

to hide the truth by redacting the names of the panel members from the report, thereby compounding the misconduct. This required the Tribunal to issue a second order specifically directing the Respondent to identify the panel members by name.

42. The General Assembly adopted a Code of Conduct for legal representatives and litigants in person. A/RES/71/266, para. 43 and annex. The purpose of the Code was to describe "the conduct expected … in proceedings before the Tribunals in the interest of the fair and proper administration of justice." *Id.*, art.2.

43. The first and most basic standard says that "[l]egal representatives and litigants in person shall maintain the highest standards of integrity and **shall at all times act honestly, candidly**, fairly, courteously, in good faith…." *Id*., art.4.1 (emphasis added)

44. Indeed, honesty and candour to the Tribunal is the bedrock of the fair and proper administration of justice.

45. Counsel for the Respondent, Alhagi Marong, violated this standard of conduct by making a false statement about the composition of the selection panel. Then, he attempted to hide the truth by redacting the names of the panel members from the report. If the Tribunal had accepted counsel's statement as true, as it should have been able to do, and had not gone behind it to ascertain the truth, the outcome of this litigation would have been different and justice would not have been properly done, to the detriment of the Applicant.

46. The Tribunal notes that Mr. Marong is not a new or junior legal officer. He is Secretary to the Commission and Senior Legal Adviser, with over two decades of service as a legal officer with the United Nations. Such misconduct by a senior legal officer cries out for a referral to enforce accountability. As such, the Tribunal will refer Mr. Marong to the Secretary-General to enforce accountability.

47. It also seems appropriate to refer Mr. Marong to his national bar authority for such action as the authority deems appropriate under the circumstances.

48. In addition, the Tribunal recalls that "[t]he ability to promote and protect the court, and to regulate proceedings before it, is an inherent judicial power." *Igbinedion* 2014-UNAT-410 para. 31. This authority is set out in art.9 of the Code of Conduct, which provides that "[t]he Tribunals may issue orders, rulings or directions in order to implement the provisions of the present Code."

49. An essential element of protecting the court and regulating proceedings before it is the power to regulate who may appear as a legal representative before the Tribunal. When a legal representative has violated the basic standards of honesty and candour to the Tribunal, it is within the Tribunal's authority to bar that legal representative from appearing in the Tribunal.[1]

50. Given the findings regarding the misconduct of Mr. Alhagi Marong in this case, the obvious issue is whether he should be permitted to appear as a legal representative before the Dispute Tribunal in the future. Before making a final determination on this issue, the Tribunal will accord Mr. Marong due process by allowing him to file a submission setting forth any reasons why he should not be disbarred from future appearances before the UN Dispute Tribunal.

CONCLUSION

51. The application is granted and the decision not to select the Applicant for Job Opening # 214053 is rescinded.

52. As an alternative to the rescission of the contested decision, the Respondent may elect to pay the Applicant the amount of USD 4514.00 as compensation *in lieu.*

53. Mr. Alhagi Marong, counsel for the Respondent is referred to the Secretary-General of the United Nations for possible action to enforce accountability for his false statement and related misconduct in these proceedings.

[1] Obviously, this is distinct from self-represented litigants who cannot be barred from accessing the Tribunal to protect their rights. However, legal representatives are different in that they have no such personal rights to protect and appear only in a representative capacity.

54. Mr. Alhagi Marong, counsel for the Respondent, is referred to his national bar authority for such action as the authority deems appropriate under the circumstances.

55. On or before 1 September 2025, Mr. Alhagi Marong shall show cause in writing as to why the Tribunal should not disbar him from future appearances as a legal representative before the United Nations Dispute Tribunal.

(Signed)
Judge Sean Wallace
Dated this 19th day of August 2025

Entered in the Register on this 19th day of August 2025

(Signed)
Wanda L. Carter, Registrar, Nairobi