



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/GVA/2009/64

Judgment No.: UNDT/2010/013

Date: 27 January 2010

English

Original: French

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**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

PELLET

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

None

**Counsel for Respondent:**

Shelly Pitterman, DHRM/UNHCR

### **Application**

1. On 9 September 2009, the applicant submitted an appeal to the United Nations Dispute Tribunal (UNDT) contesting the 29 February 2008 decision whereby the Deputy High Commissioner for Refugees appointed 12 staff members to vacant posts after the first stage of a comparative review process.

2. He requested:

- a. The individuals responsible should be ruled guilty of having failed to advertise the vacancies; and
- b. That compensation should be awarded for the injury suffered.

### **Facts**

3. On 12 June 2007, all headquarters and field staff of the Office of the United Nations High Commissioner for Refugees (UNHCR) were informed of the decision to relocate a number of administrative services from Geneva to Budapest.

4. In August 2007, vacancies for several General Service posts in Geneva were advertised. In September 2007, the Appointments, Postings and Promotions Committee (hereinafter “APPC”) made a recommendation concerning the placement of candidates, and on 8 October 2007, the applicant was appointed to a post of Senior Programme Assistant at the G-7 level in the Chad/Darfur Situation Unit in the Department of Operations, Africa Bureau, Sudan and Chad Operations, at headquarters in Geneva.

5. On 22 October 2007, on the advice of the Joint Staff/Management Advisory Committee, the High Commissioner adopted the Guidelines for a comparative review process for General Service staff at headquarters and on 23 November 2007, the staff were so informed.

6. On 1 January 2008, the UNHCR Office in Budapest opened.

7. On 15 January 2008, the Comparative Review Panel met to review the status of unplaced staff members, that is, 12 staff members for 12 vacant posts.
8. On 29 February 2008, the Deputy High Commissioner filled the aforementioned posts.
9. On 28 April 2008, the applicant requested the Secretary-General to review the Deputy High Commissioner's decision of 29 February 2008.
10. On 6 August 2008, he filed an appeal against this decision with the Joint Appeals Board, which concluded that the appeal was inadmissible *ratione materiae*.
11. On 9 June 2009, the Deputy Secretary-General decided to follow the Board's recommendation.

#### **Parties' contentions**

12. The applicant's principal arguments are:
  - a. A comparative review process was unwarranted when the number of staff members to be placed and the number of vacant posts were the same. The ordinary rules on placement of staff members should therefore have been applied;
  - b. The available posts should have been advertised and filled after consultation with the APPC, not the Comparative Review Panel. Accordingly, staff regulations 4.3 and 4.4, as then in force, have been violated;
  - c. The Comparative Review Panel was not properly constituted at its meeting of 15 January 2008 because only representatives of management were present;
  - d. Staff members in the same situation were treated unequally. Another staff member was granted a post at a higher grade through the Comparative Review Panel even though she had been selected by the APPC for a G-6 post five months earlier; and

- e. Contrary to the respondent's contention, the impugned decision affected his rights owing to the irregularity of the comparative review and the unequal treatment he received.
13. The respondent's principal arguments are:
- a. The application is inadmissible because the contested decision is not an administrative decision within the meaning of staff regulation 11.1 and the jurisprudence of the United Nations Administrative Tribunal;
  - b. The application is also inadmissible owing to its lateness;
  - c. The applicant could not be included in the list of staff members reviewed by the Comparative Review Panel since he occupied a post at the time the Panel was constituted and remained in his post for the duration of the Panel's mandate;
  - d. The applicant had been selected by the APPC in September 2007 for a post of Senior Programme Assistant at the G-7 level in the Chad/Darfur Situation Unit in the Department of Operations, Africa Bureau, Sudan and Chad Operations at headquarters, effective 8 October 2007, and paragraph 19 of the APPC Procedural Regulations of June 2006, which stipulates that only staff members who have served for a minimum of one year in their present post will be eligible to apply for vacancies, applied to him; and
  - e. Thus, the contested decision did not affect the applicant's rights or terms of employment and caused him no injury.

### **Judgment**

14. The G-7 applicant is contesting the decision of 29 February 2008 whereby the Deputy High Commissioner for Refugees appointed 12 staff members to vacant posts after the first stage of the comparative review process established after the transfer of a number of General Service posts from Geneva to Budapest.

15. Article 2 of the Statute of the United Nations Dispute Tribunal provides that:

“The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations: (a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms ‘contract’ and ‘terms of appointment’ include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance ...”.

16. It has been argued that, under the aforementioned provisions, the application is inadmissible because the applicant’s rights and terms of employment are not affected by the contested decision.

17. The applicant was assigned to the post of Senior Programme Assistant at the G-7 level in the Chad/Darfur Situation Unit in the Department of Operations, Africa Bureau, Sudan and Chad Operations at headquarters in Geneva in September 2007, after consultation with the APPC.

18. Paragraph 19 of the APPC Procedural Regulations of June 2006 stipulates that only staff members who have served for a minimum of one year in their present post may apply for vacancies.

19. Thus, while the applicant contends that the impugned decision of 29 February 2008 to appoint 12 staff members to vacant posts infringed his rights because the vacancies for the said posts were not advertised, it is clear from the regulation mentioned that in any event, on the date on which the 12 aforementioned staff members were appointed, the applicant could not have been appointed to one of those posts, owing to his appointment of September 2007.

20. It follows, without any need to rule on the lateness of the application, that the decision contested by the applicant could not have infringed his

rights under his contract or terms of employment and that the application must be declared non-receivable.

**Decision**

21. For these reasons, the Tribunal DECIDES:

The application is rejected

*(signed)*

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Judge Jean-François Cousin

Dated this 27th day of January 2010

Entered in the Register on this 27th day of January 2010

*(signed)*

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Víctor Rodríguez, Registrar, UNDT, Geneva