



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2020/042

Judgment No.: UNDT/2021/014

Date: 26 February 2021

Original: English

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**Before:** Judge Alexander W. Hunter, Jr.

**Registry:** Geneva

**Registrar:** René Vargas M.

GALATI

v.

SECRETARY-GENERAL  
OF THE WORLD  
METEOROLOGICAL ORGANIZATION

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**JUDGMENT**

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**Counsel for Applicant:**

Brandon Gardner, OSLA

**Counsel for Respondent:**

Daniel Trup, WMO

## **Introduction**

1. On 27 August 2020, the Applicant, a former staff member of the World Meteorological Organization (“WMO”), filed an application contesting the Administration’s failure “to make good faith efforts to absorb him on to a new post after it decided to abolish his existing post”.

2. On 3 September 2020, the Respondent replied stating, *inter alia*, that the application is without merit because the Administration did undertake to find a suitable position for the Applicant.

## **Relevant facts**

3. On 6 March 2020, the Applicant, a permanent appointment holder, was notified that his post was abolished following a restructuring in WMO.

4. Between 6 March and 30 July 2020, the Applicant applied for ten posts:

- a. Coordinator Officer (P-3 post);
- b. Country Profile Database Regional Coordinator (CPDB) (P-3 post);
- c. Procurement Officer (P-3 post);
- d. Risk and Quality Manager (P-3/P-4 post);
- e. Associate Business Intelligence Analyst (P-2 post);
- f. Scientific Editor (English principal language) (P-2/P-3 post);
- g. Conference Services Officer (P-3 post);
- h. Associate Conference Services Officer (P-2 post);

i. Call for Candidates for Roster for Communications Experts in Africa, the Caribbean and the Pacific; and

j. Associate Project Communications Officer (P-2 post).

5. The Applicant was not selected for any of these posts and was separated from the Organization on 31 August 2020.

### **Consideration**

#### *Applicable law*

6. WMO staff rule 192.1(b) provides that permanent appointment holders whose posts are abolished shall generally be retained in preference to staff members holding other types of appointments provided that a suitable post is available in which their “services can be effectively utilized”.

7. With respect to the Organization’s duty to endeavour to retain permanent appointment holders whose posts are abolished, the Appeals Tribunal summarized its settled jurisprudence in *Timothy* 2018-UNAT-847 (footnotes omitted):

32. Therefore, the Administration is bound to demonstrate that all reasonable efforts have been made to consider the staff member concerned for available suitable posts. Where there is doubt that a staff member has been afforded reasonable consideration, it is incumbent on the Administration to prove that such consideration was given.

...

35. Nevertheless, while efforts to find a suitable post for the displaced staff member rest with the Administration, the person concerned is required to cooperate fully in these efforts. Any staff member holding an indefinite appointment facing termination due to abolition of his or her post must show an interest in a new position by timely and completely applying for the position; otherwise, the Administration would be engaged in a fruitless exercise, attempting to pair the staff member with a position that would not be accepted.

38. ... Undoubtedly, the Administration is required by Staff Rule 9.6(e) to consider the indefinite position holder on a preferred basis for the available suitable position, in an effort to retain him or her in service. However, this requires, as per the clear language of this provision, determining the suitability of the staff member for the post, considering the staff member's competence, integrity and length of service, as well as other factors such as nationality and gender. If the redundant staff member is not fully competent to perform the core functions and responsibilities of a position, the Administration has no duty to consider him or her for this position.

...

45. We agree with the Secretary-General that it is lawful and reasonable for the Administration to expect affected indefinite appointment holders to cooperate fully in the process. As already mentioned, a staff member holding a continuing or indefinite appointment facing termination due to abolition of his or her post must show an interest in a new position by timely and completely applying for the position. So, if the Administration informs the affected staff members that they are expected to apply for suitable available positions, they are obliged to fully cooperate and make a good faith effort in order for their applications to succeed. This includes a duty to apply within the deadlines and to respect the formal requirements.

46. Based on these considerations, we find erroneous the UNDT's holding that staff members are entitled to be retained without having to apply for vacant job opening(s) since such a step represents the beginning of any competitive selection process based on the staff members' relative competence, integrity, length in service and where required, nationality and gender.

47. Once the application process is completed, however, the Administration is required by Staff Rule 9.6(e) and (f) and the Comparative Review Policy to consider the continuing or indefinite appointment holder on a preferred or non-competitive basis for the position, in an effort to retain him or her. This requires determining the suitability of the staff member for the post, considering the staff member's competence, integrity and length of service, as well as other factors such as nationality and gender.

*Discussion*

8. The Applicant's arguments are two-pronged. He first avers that in deciding to abolish his post, WMO failed in its obligation to consult with him. Secondly, the Applicant claims that WMO failed in its obligation to make reasonable efforts to find a suitable post for him.

The consultation process

9. With respect to the Applicant's argument in this respect, the Respondent responds that following an initial townhall meeting in which the Secretary-General of WMO informed staff of the restructuring, staff representatives and management met on seven occasions. Moreover, a Joint Consultative Committee was set in place as focal point for consultations in this process. The Respondent avers that the Applicant did not avail himself of this process.

10. In *Matadi et al.* 2015-UNAT-592 (para. 21), the Appeals Tribunal stated:

Nonetheless, the UNDT criticised the Administration for having failed to consult the staff members or [UNMIL's National Staff Association ("NASA")] about the posts to be abolished (footnote omitted). We accept the Secretary-General's position in his appeal that [the United Nations Mission in Liberia ("UNMIL")] staff members were given the opportunity to comment on the proposed restructuring from the beginning of the process, and the NASA representatives participated in the discussion on the Guidelines for the comparative review process. We therefore vacate the UNDT's finding in this regard.

11. In *Leboeuf et al.* 2015-UNAT-568 (para. 91), the Appeals Tribunal upheld the Dispute Tribunal's finding that consultations are not negotiations and that the Administration is not obliged to secure the consent or agreement of the consulted parties.

12. The Tribunal notes that pursuant to Service Note No. 26/2019 of 16 October 2019, the Secretary-General of WMO notified staff of his decision to restructure the WMO Secretariat in June 2019 and the Joint Consultative Committee commenced its meetings in October 2019.

13. In light of this caselaw, the Tribunal is satisfied that the process put in place by WMO was sufficient to discharge its duty of consultation with staff in the context of the restructuring in that the restructuring was announced to all staff sufficiently in advance of its implementation, and consultations were held with staff representatives to afford staff the opportunity to be heard.

Did the Administration undertake reasonable efforts to retain the Applicant?

14. Relying on *El-Kholy* 2017-UNAT-730 (para. 31), the Applicant argues that WMO had a duty to laterally transfer him to another suitable post outside of the normal selection process. He avers that other staff members holding fixed-term appointments with similar skills to the Applicant's were transferred to another section. He argues that he should have been transferred to one of those posts before the fixed-term appointment holders.

15. With respect to the Applicant's candidature for the CPDB post, he argues that while he met all of the mandatory and desirable criteria for the post and was shortlisted, he was made to compete with non-permanent appointment holders rather than being placed on the post outside of the normal recruitment process.

16. The Respondent informed that the Applicant was not found to be qualified for the posts of Coordination Officer, Procurement Officer and CPBD. The Respondent states that due to the financial situation of WMO, the recruitment processes for all the other posts for which the Applicant applied were frozen.

17. With respect to the CPDB post, the Respondent states that the Applicant was shortlisted for a preliminary assessment. As part of the preliminary assessment, all applicants were required to participate in an online video pre-screening process where they were required to provide technical answers to specific WMO-related questions. The Respondent avers that this pre-screening enabled hiring managers to narrow the number of candidates to ensure only those capable of demonstrating that they met the job specifications would be invited further into the selection process.

18. The Respondent states that the Applicant sat for the pre-screening interview but the Hiring Manager found that “being a WMO staff member [the Applicant] did not elaborate on the WMO decision-making processes and the community platform. He was not able to relate the data collection and availability to decision-making of the WMO constituent bodies and planning and monitoring to the country profile data-base”. Accordingly, the Applicant was not invited to participate further in the selection process.

19. The Applicant does not dispute his non-selection for the posts other than the CPBD. Having reviewed the Applicant’s personal history form and the post requirements for the posts of Coordination Officer and Procurement Officer, the Tribunal is satisfied that the Applicant clearly did not meet the requirements for these posts and the Administration’s decision not to place him against these posts was reasonable.

20. With respect to the post of CPDB, the Administration admits that the Applicant met the requirements for the post as he was shortlisted. The Administration further admits that the Applicant was required to sit through a screening exercise along with all the other pre-screened candidates concerning technical questions related to the job opening.

21. Therefore, by its own admission, the Administration did not consider the Applicant’s suitability on a preferred non-competitive basis considering his competence, integrity and length of service, as well as other factors such as nationality and gender. The Administration hence failed to follow the procedure set out in *Timothy*.

22. In light of the above, the Tribunal finds that the decision to terminate the Applicant’s permanent appointment was unlawful.

## **Remedies**

23. As a remedy, the Applicant requests to be placed onto a new post within WMO. In the alternative, the Applicant seeks compensation in the amount of two years' net-based salary "together with the appropriate level of compensation for moral damages".

24. Having concluded that the contested administrative decision was unlawful, the Tribunal decides to rescind it and orders the Administration to place the Applicant onto a suitable post within WMO for which he is qualified.

25. As an alternative to the rescission of the unlawful decision, in application of art. 10.5(a) of the Tribunal's Statute and in given that the Applicant was a permanent appointment holder, the Respondent may elect to pay the Applicant compensation in the amount of two years' net-based salary.

26. The Applicant further requests compensation for moral harm and provides two medical certificates supporting his claim. However, the Applicant does not specify what amount he deems adequate as compensation for the harm suffered. Absent a specific request with reasoning, the Tribunal is left with no option but to award an amount on the lower end of the spectrum. Accordingly, the Tribunal awards an amount of USD3,000 as compensation for harm under art. 10.5(b) of its Statute.

## **Conclusion**

27. In view of the foregoing, the Tribunal DECIDES:

- a. The application is granted;
- b. The contested decision is rescinded;
- c. The Respondent shall place the Applicant onto a suitable post within WMO for which he is qualified;



- d. The Respondent may elect to pay the Applicant compensation in the amount of two years' net-base salary in lieu of the rescission of the decision;
- e. The Respondent shall pay the Applicant compensation in the amount of USD3,000 for moral damages; and
- f. If payment of the above amount is not made within 60 days of the date at which this judgment becomes executable, five per cent shall be added to the United States Prime Rate from the date of expiry of the 60-day period to the date of payment. An additional five per cent shall be applied to the United States Prime Rate 60 days from the date this Judgment becomes executable.

Judge Alexander W. Hunter, Jr.

*(Signed)*

Dated this 26<sup>th</sup> day of February 2021

Entered in the Register on this 26<sup>th</sup> day of February 2021

*(Signed)*

René M. Vargas M., Registrar, Geneva