



Judgment No. 2015-I

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JUDGE ROSALYN CHAPMAN , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2014/042, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 15 April 2014, in the case of *Aliko v. Secretary-General of the United Nations*. On 18 July 2014, Mr. Artan Aliko filed his appeal and on 12 September 2014, the Secretary-General of the United Nations filed his answer.

Facts and Procedure

2. On 1 March 2009, Mr. Aliko joined the United Nations Office for Project Services (UNOPS), within the Switzerland Operations

5. On 8 August 2012, UNOPS advertised Vacancy Announcement VA/2012/B5108/987 for the position of Portfolio/Grants Manager (P-4 level), Europe and Middle East, Geneva (the Post). It listed the following key functions: Fund management coordination (overall coordination); grant management (advisory guidance and support); operational portfolio management; partnership and client relations; implementation support (programme development and business acquisition activities of SWOC); support to the Representative and the SWOC Director; and knowledge management.

6. Mr. Aliko applied for the Post. He passed a written examination and was interviewed on 18 September 2012. The interview panel consisted of: (1) the SWOC Director, who was the Chair and Hiring Manager; (2) the Programme Manager, Global Sanitation Fund (GSF), Water Supply & Sanitation Collaborative Coun

10. On 23 April 2013, Mr. Aliko, proceeding *pro se*, filed an application before the UNDT,

reassigned a Project Manager role with UNOPS; upgraded the Post from the P-3 to the P-4 level, when there was no reason to do so added the requirement of grant-management experience to the terms of reference for the Post; and selected members of the panel who would agree to choose his preferred candidate.

16. Mr. Aliko asserts that the Programme Manager had a conflict of interest with him due to the fact that, over the past year or so, Mr. Aliko regularly rejecting requests made by the Programme Manager. Further, Mr. Aliko contends that the Programme Manager had a moral obligation to the selected candidate stemming from sitting on the same panel that had previously selected the Programme Manager for his position.

17. Mr. Aliko asserts that the Director, IAIG, had a conflict of interest with him due to the fact that, in his capacity with IAIG, he was investigating a matter that was within Mr. Aliko's portfolio. Additionally, Mr. Aliko asserts that the Director, IAIG, was not qualified to be a "technical expert" on the panel. He claims that the Director, IAIG, showed bias when he asked a question during the interview that distressed him.

18. Mr. Aliko claims that the UNDT also erred when it did not find that the selected candidate may have had early access to the written test and interview questions, citing the interview notes from the panel.

19. Finally, Mr. Aliko claims that the UNDT erred when it did not find that, prior to the selection process for the Post, the SWOC Director avoided and isolated him and undermined his authority. As examples, Mr. Aliko cites a communication banning him from directly communicating with the IAIG about the audit of the matter within his portfolio, the refusal to send him to a course, and the failure to defend him when he was accused of inappropriate behavior in dealing with Human Resources personnel.

20. Mr. Aliko seeks compensation in the amount of two years' salary as compensatory and punitive damages for the procedural irregularities occurring during the process of filling the Post.

The Secretary-General's Answer

21. The UNDT correctly held that the selection process was lawful in all respects. Mr. Aliko received full and fair consideration, all proper procedures were followed,

all relevant material was taken into consideration, and there was no discrimination and bias. Mr. Aliko did not meet his burden to show by a preponderance of the evidence bias or conflicts of interest on the part of the panel members.

22. As to the SWOC Director, the UNDT correctly found that the terms of reference for the Post, including grants management experience, were justified by the actual activities performed at SWOC and were not tailored for any candidate. There was no evidence proffered to show a hostile working relationship with the SWOC Director, and, as the UNDT found, Mr. Aliko had never previously complained about the Director's actions or conduct, thus undercutting his claims of prior ongoing discrimination.

23. As to the other panel members, the UNDT properly found that sitting on an interview panel in the past did not preclude a panelist from being neutral in another selection exercise. And moreover, Mr. Aliko admitted he had a cordial relationship with the Programme Manager. The UNDT correctly determined that the Administration had discretion to determine who is a "technical expert" on a selection panel.

24. The UNDT correctly found that there was no evidence to support Mr. Aliko's claim that the selected candidate may have had early access to the test and interview questions. This is pure speculation on the part of Mr. Aliko.

25. Mr. Aliko has shown no errors of fact or law warranting a reversal of the Judgment. The claims on appeal merely repeat the claims before the Dispute Tribunal; the appeal is an attempt to relitigate the case. Mr. Aliko offers only speculation and suspicion, rather than evidence.

26. The UNDT properly found that certain matters pre-dating the selection exercise were not before it since Mr. Aliko had not sought management evaluation of those matters. For example, Mr. Aliko's challenges of the decisions to upgrade his position from P-3 to P-4 and to transfer the selected candidate to SWOC from his previous UNOPS position were never exhausted by management evaluation. Any claims of systematic harassment not attendant to the selection exercise were not properly before the UN c

Considerations

28. It is an axiom that the appellant has the burden on appeal to establish that the UNDT judgment is defective within the meaning of Article 2(1) of the Appeals Tribunal Statute. This means that:²

[w]hen the Appeals Tribunal hears an appeal, it does not simply re-try the case. ... It follows that the appellant must identify th

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34. Regarding the Programme Manager, the UNDT properly found:¹¹

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Judgment

40. The appeal is dismissed and Judgment No. UNDT/2014/042 is affirmed.

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Adinyira

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar