
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/055

Judgment No.: UNDT/2019/004

Date: 14 January 2019

Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Nerea Suero Fontecha

YOUNIS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nicole Wynn, ALS/OHRM, UN Secretariat

Nusrat Chagtai, ALS/OHRM, UN Secretariat

Factual background

5. The Applicant joined the Organization in 2009. The Applicant states that he was on temporary appointment as the Officer-in- Deputy Director of Mission Support for UNAMID at the D-1 level from 13 November 2016 to 2 May 2017, whilst the Respondent contends it was from 13 November 2016 until 30 April 2017. The personnel action form provided by the Respondent, however, states the relevant dates as 14 November 2016 until 30 April 2017. During this temporary assignment as OiC Deputy Director, the Applicant received a Special Post Allowance to the D-1 level.

6. On 24 March 2017, OHRM announced that it was receiving nominations for the UN Leaders Programme designed for staff members at the Director level. This announcement included the selection criteria, which are set forth in the UN Leaders Programme Standard Operating Procedure :

The basic prerequisite set by [United Nations System Staff College

9.

Case No. UNDT/NY/2018/055

Judgment No. UNDT/2019/004

assignment is beyond the selected course date. The Applicant served on temporary assignment at the D-1 level until 30 April 2017 and the UN Leaders Programme for which he was nominated was to take place in September 2017, after the end of the temporary assignment. Therefore, it is contended by the Respondent that the Applicant did not meet the last eligibility criterion stipulated in the SOP by the time the training was to take place, as his temporary contract had ended already.

26. The Applicant, however, argues that he was eligible for participation at the time when the training was initiated, was duly nominated, endorsed, approved and confirmed for participation. He further argues that other staff members at the P-5 level, who were not on temporary assignment at the D-1 level and thus did not meet the selection criteria, were nevertheless allowed to attend the course and thus he was discriminated against. Although MEU found that the other two staff members met the selection criteria, the Respondent concedes and admits that one staff member did not qualify and attended the course in error, but counters that OHRM relied on the nomination information it received from the peacekeeping mission in Abyei, Sudan, which had nominated that staff member, and that there was no deliberate decision to treat the Applicant and another staff member differently.

27. The Tribunal has already cited staff rule 1.3(b) above regarding the A tion to ensure that appropriate learning and development programs are available for the benefit of staff including the Applicant. Furthermore,

normally be made available to staff at

Legal status of the SOP

28. It is not known from the information in the text of the SOP as to who drafted, authored or approved them. However, from a 27 March 2017 email circulating them, it is stated that OHRM developed the SOP for the selection and nomination of distributes available seats amongst offices and departments in line with organizational

29.

Tribunal stated in *Korotina* UNDT/2012/178:

31. As the Tribunal stated in *Villamorán* UNDT/2011/126, at the top of the hierarchy of the Charter of the United Nations, followed by resolutions of the General Assembly, staff regulations, staff rules, Secretary- and administrative instructions. Information circulars, office guidelines, manuals, memoranda, and other similar documents are at the very bottom of this hierarchy and lack the legal authority vested in properly promulgated administrative issuances.

32. Circulars, guidelines, manuals, and other similar documents may, in appropriate situations, set standards and procedures for the guidance of both management and staff, but only as long as they are consistent with the instruments of higher authority and other general obligations that apply in an employment relationship (*Tolstopiatov* UNDT/2010/147, *Ibrahim* UNDT/2011/115, *Morsy* UNDT/2012/043).

33. Just as a staff rule may not conflict with the staff regulation under which it is made, so a practice, or a statement of practice, must not conflict with the rule or other properly promulgated administrative issuance which it elaborates (Administrative Tribunal of the International Labour Organization, Judgment No. 486, *In re Léger* (486)). It is also important to highlight that a distinction must be made between matters that may be dealt with by way of guidelines, manuals, and other similar documents, and legal provisions that *must* be introduced by properly promulgated administrative issuances (*Villamorán*, *Valimaki-Erk* UNDT/2012/004).

30. In *Husseini* 2016-UNAT-701, at para. 15, for example, in reviewing the status of staff circulars as administrative issuances, the Appeals Tribunal found that in all practical terms they are akin to employment policy guidelines, bestowing discretion which must be exercised reasonably, fairly and flexibly in accordance with the Staff Rules. Thus, even if a staff member has no contractual right to receive an entitlement, he does have an expectation that the discretion will be exercised properly.

31. In terms of the Staff Rules and the relevant Secretary-General Bulletin ST/SGB/2009/9, the Administration is obligated to ensure appropriate learning and development programs for the benefit of the Applicant, and opportunities normally availed to him like any other staff member. Although there is no case law that the Tribunal is aware of on the legal standing of standard operating procedures in this context, it must be clear that they fall at the very bottom of the hierarchy of instruments. There is certainly no doubt that the Staff Rules and applicable Secretary-General Bulletin trump the SOP in this case. Standard operating procedures

had any power thereof, was not exercised properly. Even if a staff member has no contractual right to receive an entitlement, or for that matter a benefit, he does have an expectation that the discretion will be exercised properly in all the circumstances.

35. In addition, the Tribunal also finds that as the SOP was not mandatory nor obligatory,

