



Judgment No. 2017-UNAT-770

Counsel for Ms. Humackic: Edwin P. Nhliziyo

Counsel for Secretary-General: Isavella Maria Vasilogeorgi

JUDGE JOHN MURPHY , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2016/196, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 26 October 2016, in the case of *Humackic v. Secretary-General of the United Nations*. Ms. Nina Humackic filed the appeal on 9 January 2017, and the Secretary-General filed his answer on 10 March 2017.

Facts and Procedure

2. Ms. Humackic served as an Administrative Assistant at the United Nations Interim Force in Lebanon (UNI

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Administration occupational group to the Procurement occupational group". She maintains that staff members who have been rostered and continue to perform the same functions be "grandfathered" when the function is reclassified under another occupational group.

15. Ms. Humackic requests that the Appeals Tribunal hold an oral hearing and vacate the impugned Judgment.

The Secretary-General's Answer

16. The Secretary-General submits that the UNDT correctly identified ST/AI/2010/4/Rev.1 as providing the legal framework for the contested decision. ST/AI/2010/4/Rev.1 regulates the selection and appointment of staff members for positions established for less than one year and in the present case, the position in question was for a total duration of six months. The UNDT correctly determined that the selection process for the TJO fully complied with all procedural obligations imposed under Section 3 of ST/AI/2010/4/Rev.1.

17. He submits further that Ms. Humackic has not established any errors warranting a reversal of the UNDT Judgment. She merely reargues matters from her application before the UNDT without identifying any errors by the UNDT in the Judgment. It does not fall to the Appeals Tribunal to conduct a new trial. In accordance with its well-established jurisprudence, the Appeals Tribunal should, on this basis alone, dismiss the appeal. Her other submissions are irrelevant to her appeal.

18. Furthermore, Ms. Humackic provides no substantiation for her claims of unequal treatment and does not identify any error with the UNDT's finding that there was no discrimination in the selection exercise for the TJO. Finally, as to her claim that the UNDT failed to address the question of compensation for the undue stress suffered by her, as the UNDT rejected her claims, it was correct in not addressing the question of compensation.

19. The Secretary-General asks that the Appeals Tribunal dismiss the appeal and affirm the UNDT Judgment.

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23. ST/AI/2010/4/Rev.1 was promulgated by the Under-Secretary-General for Management, pursuant to Section 4.2 of Secretary-General's bulletin ST/SGB/2009/4 (Procedures for the promulgation of administrative issuances), and for the purpose of establishing terms and conditions pertaining to the use and administration of temporary appointments in accordance with Staff Regulation 4.5 and Staff Rule 4.12. Section 1.1 of ST/AI/2010/4/Rev.1 provides that the purpose of temporary appointments is to enable the Organisation to effectively and expeditiously manage its short-term staffing needs usually for seasonal or peak workloads and specific short-term requirements for less than one year.⁵ They are typically granted for specific short-term requirements that are expected to last for less than one year to respond to an unexpected and/or temporary emergency or surge demand. A temporary appointment may not be used to fill needs that are expected to last for one year or more.

24. Section 3 of ST/AI/2010/4/Rev.1 regulates the job opening, selection and appointment process for temporary appointments. It provides that when a need for service for more than three months but less than one year is anticipated, a TJO shall be issued by the programme manager. This TJO shall include a description of the qualifications, skills and competencies required and reflect the functions of the post. Each TJO shall indicate the date of posting and specify a deadline by which all applications must be received. TJOs shall be posted for a minimum of one week on the Intranet or be circulated by other means, such as e-mail, in the event that an Intranet is not available at the duty station concerned. A TJO may also be advertised externally if deemed necessary and appropriate.

25. Sections 3.5-3.7 of ST/AI/2010/4/Rev.1 govern the process of evaluation, selection and appointment or assignment in TJOs. The provisions read as follows:

3.5 The department/office will assess the candidates' applications in order to determine whether they are eligible, and whether they meet the minimum requirements, as well as the technical requirements and competencies of the temporary position. Such assessment will be undertaken through a comparative analysis of the applications. The assessment may also include a competency-based interview and/or other appropriate evaluation mechanisms, such as written tests, work sample tests and assessment centres. Following a competitive process, the

⁵ They can be renewed for up to one additional year when warranted by surge requirements and operational needs related to field operations and special projects with finite mandates.

head of department/office shall make the selection decision, up to and including the D-1 level.

3.6 When a candidate has been selected, he/she shall be offered the respective appointment, which for external candidates will be subject to satisfactory reference checks to be completed by the recruiting department/office. Such reference checks shall include, at a minimum, verification of the highest required academic qualification(s) and record with the last employer. Once such reference checks are

28. Finally, there is no evidence at all of any discrimination or harassment, or any basis for awarding Ms. Humackic any damages for moral injury. The process followed in relation to the TJO was wholly regular and completely consistent with the governing Administrative Instruction ST/AI/2010/4/Rev.1. The UNDT committed no error of law, fact or procedure in

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29. The appeal is dismissed and Judgment No. UNDT/2016/196 is affirmed.

Original and Authoritative Version: English

Dated this 14th day of July 2017 in Vienna, Austria.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Knierim

(Signed)

Judge Halfeld

Entered in the Register on this 5th day of September 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar