UNITED N

JUDGE ROSALYN CHAPMAN, PRESIDING.

1.   On 10 July 2013, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York issued Judgment No. UNDT/2013/098 in the case of *Terragnolo v. Secretary-General of the United Nations*. On 15 August 2013, Mr. Julien Terragnolo appealed the Judgment to the United Nations Appeals Tribunal (Appeals Tribunal), and on 21 October 2013, the Secretary-General filed his answer.

Facts and Procedure

2.   On 26 August 2010, Vacancy Announcement 10-ADM-unjspf-eceo-15697-R-New York (O) was posted on Inspira for the position of Investment Assistant at the G-7 level (Post) with the United Nations Joint Staff Pension Fund (UNJSPF or Pension Fund) for the open period of 26 August through 25 September 2010.

3.   Vacancy Announcement 10-ADM-unjspf-eceo-15697-R-New York (O) listed the following education and work experience requirements:

> High school diploma or equivalent. Supplementary courses/training in finance or equivalent, preferably in economics, business administration, or related subjects are desirable.
> ***
> Ten years of experience in the financial markets. Exposure to capital markets and international work experience is desirable. Prior experience in investment management is also desirable.

4.   Mr. Terragnolo applied for the Post on 15 September 2010, at which time he was "rejected" as "Ineligible- Req. Work Exper".

5.   At the time he applied for the Post, Mr. Terragnolo was employed by the French Text Processing Unit, Department for General Assembly and Conference Management (DGACM), as a Desktop Editorial and Publishing Assistant at the G-4 level, step 6. He was initially hired on 27 June 2009, as an Editorial and Desktop Publishing Assistant at the G-3 level, stD.001nd C

in Business Administration (M.B.A.) upon completion. While he was attending business school and shortly afterward, Mr. Terragnolo participated in internships at various firms, including PricewaterhouseCoopers, Valeo and Arcelor. From April 2007 through October 2008, he was employed by Société Générale as Relationship Manager Assistant. According to his PHP, Mr. Terragnolo was also enrolled in the Chartered Financial Analyst (CFA) Program.

7.   On 23 November 2010, Mr. Terragnolo sent an e-mail to the Office of Human Resources Management (OHRM) "bring[ing] an exception to the rules of the Secretariat in staffing matters [to OHRM's] attention". In particular, Mr. Terragnolo challenged reliance upon ST/AI/2010/3 (Staff selection system), which limited a staff member to applying for a position above the next grade. He explained in detail the Pension Fund's need for specialized expertise and emphasized that the Pension Fund expressed explicit interest in candidates enrolled in the CFA Program.

8.   On 26 November 2010, OHRM advised Mr. Terragnolo that:

> [his] application ha[d] been rejected on the basis of required experience. ... According to [his] PHP, [he] ha[d] attained just short of 3 years experience which includes 1 year 5 months as an Editorial Desktop and Publishing Assistant in DGACM. For information, internships are not considered for the purpose of establishing work experience.
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> ...
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> Apart from the above, applicants (without exception) who hold contracts subject to the staff rules are not eligible to apply to positions at more than one level above their personal grade. In this regard, there are no exceptions for persons applying to positions in UNJSPF. OHRM is guided by the Staff Rules and Regulations, administrative instructions, policy documents. Application of HR [Human Resources] practices according to statements made in UNJSPF reports may be applied when promulgated in the aforementioned documents.

9.   On 29 November 2010, Mr. Terragnolo requested management evaluation of the decision that he was not eligible to be considered for the Post.

10.   On 31 January 2011, the Management Evaluation Unit (MEU) informed Mr. Terragnolo that it had "found no basis to conclude that the Administration abused its discretion in its determination that [he was] ineligible for consideration for the Post".

11.   On 10 March 2011, Mr. Terragnolo filed an application before the Dispute Tribunal challenging the decision that he was not eligible to be considered for the Post.   On 14 April 2011, the Secretary-General filed his reply. 1172 719.16 1.08 11.97-4.6(l)099 Tc[(HE)0 0 12.

Pension Fund staff "shall be appointed and promoted through the normal UN A&P [appointment and promotion] procedures".

20.

Considerations

Did The UNDT err in applying ST/AI/2010/3 to the selection of staff for the G-7 post?

25.   The penultimate issue before the Appeals Tribunal is whether Mr. Terragnolo was eligible to be considered for the G-7 Post with the Pension Fund when he applied for it in 2010. Subsumed within this issue, we must determine whether the UNDT was correct in concluding that the MOU required the application of ST/AI/2010/3 to the selection of a staff member for the G-7 Post and Section 6.1 of ST/AI/2010/3 precluded Mr. Terragnolo from being eligible for the G-7 Post. We must also determine whether the UNDT was correct in finding that Mr. Terragnolo did not seek an exception to Section 6.1 of ST/AI/2010/3.

26.   On 21 April 2010, the Under-Secretary-General for Management promulgated ST/AI/2010/3, an administrative instruction regarding staff selection, to be effective the next day. Section 6 generally sets forth eligibility requirements for staff, and Section 6.1 specifically provides that:

> Staff members holding a permanent, continuing, probationary or fixed-term appointment shall not be eligible to apply for positions more than one level higher than their personal grade. Staff members in the General Service and related categories holding a permanent, continuing or fixed-term appointment may apply for positions in the Field Service category at any level, irre

authority over the management of the [Pension] Fund or the independence of the CEO
of the [Pension] Fund in the administration of its staff. ...

* * *

The CEO and Deputy CEO of the [Pension] Fund are appointed by the
UN Secretary-General, upon the recommendation of the Pension Board (Article 7(a) of
the UNJSPF Regulations). Article 7(b) of the UNJSPF Regulations provides that the
"Secretary-General shall appoint such further staff <u>as may be required by the Board</u>"
(emphasis in original). The staff of the UNJSPF are thus appointed by the
Secretary-General and, holding UN appointments, are entitled to all UN benefits and
entitlements and are subject to the UN Staff Rules. However, the UN's administrative
procedures and directives are not automatically applicable to the [Pension] Fund
staff, since the requirements of the Board take precedence.

28.   Paragraph 14 of the MOU applies to General Service staff with the Pension Fund,
providing in relevant part:

The General Service staff of the Fund secretariat shall be appointed and promoted

applying ST/AI/2010/3 to the Pension Fund. There is no merit to this argument. To the contrary, the language of paragraph 14 of the MOU requires that "[t]he General Service staff of the [Pension] Fund secretariat shall be appointed and promoted through the normal [United Nations appointment and promotion] procedures, according to the policies applicable at the duty stations in which the UNJSPF staff serve". This is a mandatory requirement. And Mr. Terragnolo does not dispute that ST/AI/2010/3 sets forth the "normal" United Nations appointment and promotion procedures in effect in 2010.

30.   Mr. Terragnolo also contends that the UNDT made an error of law when it applied ST/AI/2010/3 since the administrative instruction was not properly promulgated due to the lack of a consultative process with the staff unions. This is not so. As the Secretary-General notes, under Staff Rule 8.1(h), consultation with staff is not required for an administrative issuance on staff selection.[5]

31.   Mr. Terragnolo further contends that the UNDT made an error of law when it applied ST/AI/2010/3 because the administrative instruction conflicts with higher legal authority, such as Articles 8 and 101.3 of the United Nations Charter, the Universal Declaration of Human Rights (adopted by the General Assembly), and statements in the Pension Board's reports to the General Assembly. There is no merit to any of these contentions. In fact, to hold that the United Nations Charter and the Universal Declaration of Human Rights prevent the Administration from attaching minimum requirements for education and work experience to posts would conflict with the Charter's paramount goal of having an efficient and competent work force -- and would lead to dangerous situations in which unskilled and inexperienced individuals could fill posts for which they do not have the proper expertise. Moreover, as the Secretary-General notes, the Appeals Tribunal has previously upheld the

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[5] Staff Rule 8.1(h) provides:
>   General administrative instructions ... on questions within the scope of paragraph (f) above shall be transmitted in advance, unless emergency situations make it impracticable, to the executive committees of the staff representative bodies concerned for consideration and comment before being placed in effect.

In turn, paragraph (f) provides:
>   The staff representative bodies shall be entitled to effective participation, through their duly elected executive committees, in identifying, examining and resolving issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies, and shall be entitled to make proposals to the Secretary-General on behalf of the staff.

Original and Authoritative Version: English

Dated this 27th day of June 2014 in Vienna, Austria.

(Signed)	*(Signed)*	*(Signed)*
Judge Chapman, Presiding	Judge Faherty	Judge Adinyira

Entered in the Register on 29th day of August 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar