

6. On 24 March 2020, the Applicant was selected for the temporary position of Human Resources Officer at the P-4 level against Temporary Job Opening (“TJO”) 131330. The Applicant assumed the functions of the post effective 1 April 2020 through 30 January 2021 and was informed of the conditions for eligibility for SPA. A request for SPA for their temporary assignment at the higher P-4 level was made on their behalf by the Chief of Human Resources (“CHRO”).⁴ The SPA was granted effective 1 July 2020 pursuant to section 6.3 of ST/AI/2003/3 (Special post allowance for field mission staff).⁵ The Applicant’s temporary assignment and SPA were subsequently extended until 31 May 2021.⁶ According to the Respondent, the Applicant had a short break at the P 4 post upon return of the incumbent to UNSOS, but resumed the functions on 28 June 2021.⁷

7. In March 2022, the UNSOS Human Resources Section recommended the extension of the Applicant’s SPA retroactively from 1 June 2021 through 30 June 2022.⁸ There is an email from one PG to the Applicant dated 26 April 2022 informing them of the extension of their SPA from 1 June 2021 to 30 June 2022 and that payment would be reflected in their May salary.⁹

8. Between 20 April to 19 May 2022, UNSOS advertised a P-5 Senior Logistics Officer position in *Inspira* under JO 178301.¹⁰ The Applicant applied for JO 178301 on 1 May 2022, and subsequently learned that their application was rejected, and that they would not be further considered.¹¹ According to the Respondent, recruitment for JO 178301 is still ongoing.¹²

⁴ Reply, annexes R/4 and R/5.

⁵ Application, annex 01 and annex 04, pages 4-5.

⁶ Application, annex 06 (response from the Management Evaluation Unit).

⁷ Reply para. 14

⁸ Application, annex 04.

⁹ Reply, annex R/7.

¹⁰ Reply, para. 16.

¹¹ Application, p. 4, para. 5; motion for interim measures, section II, para. 5; and motion for leave to respond to the Respondent’s response on interim measures, para. 8.

¹² Reply, para. 16.

9. On 12 May 2022, a Personnel Action (“PA”) form was issued retroactively

shows that such internal steps are appealable if they end the assessment process for a candidate. This decision is not time-barred since they applied for JO 178301 on 1 May 2022 and requested management evaluation on 22 May 2022.

Merits

14. Pursuant to staff rule 3.10(b), “promotion under staff rule 4.15 shall be the normal means of recognizing increased responsibilities and demonstrated ability” and that SPA should be granted only in exceptional cases when a staff member is called

17. The Applicant seeks the following remedies: rescission of the decision to grant them SPA in lieu of temporary promotion from 1 June 2021; and rescission of the decision to find them ineligible for JO 178301.

Respondent's submissions

Receivability

18. The Applicant did not request management evaluation of the SPA decision within 60 days of notification, as required by staff rule 11.2(a) and art. 8.1(c) of the Statute. The date of a contested decision “is based on objective elements that both parties (Administration and staff member) can accurately determine”.¹⁵ This test is satisfied by determining when the “staff member knew or reasonably should have known of the [...] decision”.¹⁶ A staff member’s actual knowledge cannot be ignored for the purposes of calculating time limits.¹⁷ The 60-day deadline for requesting management evaluation began to run from 24 March 2020 when UNSOS first notified the Applicant of the SPA decision. The Applicant knew or should have known that their temporary assignment to TJO 131330 was not a temporary promotion thus the management evaluation deadline was 19 May 2020, making the 22 May 2022 management evaluation request more than two years late. Neither UNSOS’s subsequent decision of 26 April 2022 to retroactively continue the Applicant’s SPA nor the related 12 May 2022 PA constituted a new decision or reset the deadline. The Applicant continued to serve on the same assignment and continued to receive SPA as the SPA panel had approved in August 2020.

19. With respect to JO 178301, the Applicant does not contest a reviewable administrative decision within the meaning of art. 2.1(a) of the UNDT Statute. An administrative decision is a precise act distinguished from other administrative acts and which is notified to a staff member on a specific date hence the Applicant must clearly

¹⁵ *Rosana* 2012-UNAT-273, para. 25; *Terragnolo* 2015-UNAT-566, para. 36; *Awan* 2015-UNAT-588, para. 19.

¹⁶ *Chahrour* 2014-UNAT-406, para. 31; *Rabee* 2013-UNAT-296, p

specify the exact date they first became aware of the contested act.¹⁸ There has been no decision that the Applicant was determined to be ineligible to apply for the P-5 position. The Applicant's allegation that they heard from their friends and colleagues on the

which informs, at page 2 *in fine*²³, that, if the selected candidate is a staff member from the United Nations Secretariat, the selection will be administered as a temporary assignment, and not as an appointment. At the latest, the Applicant must have learnt this in March 2020, when they had been selected for the post and not issued a new appointment, a legal regime that continued through subsequent extensions of the assignment, the last one taking place in June 2021. The 2022 retroactive extension of the SPA is only a corollary to the extension of the assignment and does not create any new legal situation for the Applicant's appointment.

26. On the facts presented to the Tribunal, the question of a temporary promotion had never been contemplated for any contender among Secretariat staff members, neither had it been raised between the parties. As such, the application regarding this part is not receivable *ratione materiae* for the lack of administrative decision. In the alternative, accepting, *arguendo*, that the extension of the Applicant's assignment was an implied refusal of a temporary promotion, it is not receivable for the lack of a timely management evaluation.

27. As concerns eligibility for JO 178301, even though the Respondent may have not issued a specific decision rejecting the Applicant, the matter belongs in a broad category of non-selection decisions, which are

grade.²⁵ Undisputedly, the Applicant's personal grade was P-3 when they applied, rendering them formally non-eligible.²⁶

31. To establish whether there was irregularity in retaining the Applicant at the P-3 level, and thus precluding their competing for JO 178301, the Tribunal must examine incidentally the question of not granting a temporary promotion. The Tribunal notes that the parties seem to agree that the matter of the Applicant's engagement pursuant to TJO 131330 was regulated by an administrative instruction on administration of temporary appointments. They, however, seem to rely on different renditions of this instruction and derive different conclusions as to the Applicant's situation.

32. The Tribunal, at the outset, finds that the administrative issuance controlling the matter is ST/AI/2010/4/Rev.1, and not, as incorrectly referenced by the Applicant, ST/AI/2010/4. Section 3.7 of ST/AI/2010/4/Rev.1 provides:

The selected candidate shall be offered a temporary appointment unless he/she already holds another type of appointment, in which case the following rules apply: (a) Candidates holding a permanent or continuing appointment will retain their permanent or continuing appointment and will be assigned to the position to be temporarily encumbered; (b) Candidates holding a fixed-term appointment will retain their fixed-term appointment and will be assigned to the position to be temporarily encumbered for a period not exceeding the duration of their fixed-term appointment.

33. It results that an option of a temporary appointment to the post is only open to external applicants. The Tribunal need not entertain the question of fairness of this provision, nor the fairness of section 6.5 of ST/AI/2010/3, which has since been abolished²⁷, because none of them were applied to the Applicant's case. As results from the notice in TJO 131330 (see para. 25 *supra*), the option of a temporary appointment was not open to any staff member from the United Nations Secretariat. The Applicant

²⁵ Section 6.1 "Staff members holding a permanent, continuing,12 probationary or fixed-term appointment shall not be eligible to apply for positions more than one level higher than their personal grade."

²⁶ This requirement was abolished in ST/AI/2010/3 Rev.1, which entered into force on 1 July 2022 and the Applicant may now apply even for an USG position.

²⁷ ST/AI/2010/3/Rev.1

voluntarily entered this regime when they accepted the assignment and the SPA. The Tribunal agrees with the Respondent that the mere extension of the Applicant's temporary assignment did not convert the TJO for which they had applied to a regular job opening, with a regular promotion regime.

34. Contrary to the Applicant's averment, the regime of a temporary assignment at a higher level does not contradict staff rule 3.10(b), even where the assignment is preceded by a selection exercise, because its finite duration and a simplified recruitment process justifies a different treatment and is not improperly discriminatory. Moreover, there is no violation of the principle of equal pay for equal work. The payment of SPA ensures that the principle is observed. As held by the United Nations Appeals Tribunal in *Elmi*:

It does not follow from the principle "equal pay for work of equal value" that a staff member who exercises higher level functions has a right to receive the same salary and pension benefits as a staff member at a higher level exercising the same or similar functions. If this were the case, Staff Rule 3.10(a) and (b) would be unlawful in itself as it states expressly that staff members, for a certain amount of time, must exercise higher functions as a normal part of their customary work and without any pecuniary reward in the form of higher salary or pension and, afterwards and if certain criteria are met, may receive only non-pensionable SPA.

As Staff Rule 3.10(a) and (b) regulates the interests of staff members of lower grades exercising higher level functions in a consistent and reasonable way, it lawfully embodies the principle of "equal pay for work of equal value" into the United Nations' system.²⁸

35. This Tribunal finds this holding dispositive of the issue at hand. As such, there was no irregularity in not granting the Applicant a temporary promotion, and, holding an appointment on a P-3 level, they were rightly considered non-eligible for JO 178301.

36. Absent irregularity of the impugned decision, the question of compensation does not arise.

²⁸ 2016-UNAT-704, para. 35.

