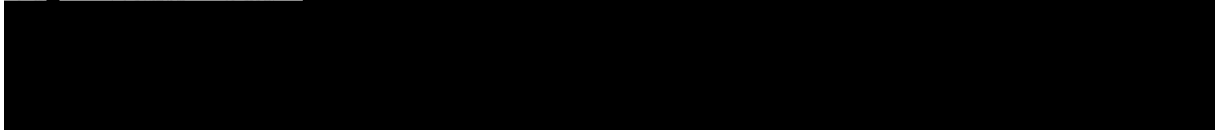




UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DE DROIT



JUDGE JEAN COURTIAL, Presiding

Synopsis

1. Ms. Liliana Contreras, a staff member at the P-4 level and candidate for a vacant P-5 post, contests the decision, as a result of the intervention from the head of a recruiting department, to exclude her from the list of candidates transmitted to the Central Review Body despite the fact that she had been recommended by the panel and, consequently, not to include her in the roster of candidates approved to fill any subsequent vacancies with similar functions.

2. The provisions of administrative instruction ST/AI/2006/3 concerning the staff selection system, in particular sections 7 and 9, show that it is not for the head of department to intervene in the evaluation process conducted by the programme manager, the central review body and, where applicable, the panel. At that stage, up to and including the approval of a list of qualified candidates, the duties of the head of department are only to ensure that the Organization's human resources planning objectives and targets are taken into account, especially with regard to geography and gender; to ensure that the established procedures are respected; and, at the final stage of the procedure, to appoint the candidate that he or she believes to be best suited. The head of department is not entitled to exclude a candidate from the list of qualified candidates and hence from the roster of qualified candidates. i322.. (ad4 C

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even when an interview panel has been set up by a programme manager, the panel is independent of the latter in doing its job as long as it acts within its mandate. It is equally independent of the head of department.

9. The UNDT found that the Executive Director had unlawfully intervened in the establishment of the interview panel's recommendation by substituting her own opinion with that of the panel, and that she had manipulated the selection process by influencing the interview panel to drop the names of Ms. Contreras and of two other candidates from the list of recommended candidates. According to the UNDT, that interference and manipulation impinged on the integrity of the selection process. Ms. Contreras having not been included on the roster of approved candidates, she consequently incurred a prejudice.

10. The Dispute Tribunal also found that the original vacancy announcement had been cancelled because of lack of compliance with the relevant administrative instructions.

11. Finally, the UNDT found that the selection process had not been conducted in accordance with the provisions of administrative instruction ST/AI/2006/3, and that Ms. Contreras's right to a fair and full consideration had not been respected. It ordered the Secretary-General to pay her compensation equivalent to six months' net base salary.

12. The Secretary-General filed an appeal against the judgment.

Submissions

The Secretary-General's appeal

13. The Secretary-General contends that the Dispute Tribunal erred on a question of law in finding that the actions of the Executive Director were *ultra vires* and had disregarded ST/AI/2006/3. He submits that the error stems from a narrow interpretation of section 7.7 of ST/AI/2006/3, without reference to the other provisions outlining the authority of the head of department in the staff selection system, in particular paragraph 3 of Annex I to administrative instruction ST/AI/2006/3, paragraphs 14 and 16 of the *Staff Selection Guidelines*, and step 3 of the *Guide to Workflow and Rules for Processing Vacancies in the*

14. The Secretary-General maintains that the Dispute Tribunal erred in considering that the actions taken by the Executive Director were not fully consistent with the provisions relevant to the role of a head of department in the staff selection system. He submits that the head of department has the right and the responsibility to confirm compliance with established procedures, as non-compliance with those procedures may subsequently expose the department to liability towards unsuccessful candidates. Since the head of department is responsible for the execution of mandated programmes and activities, he or she must ensure that the recommended candidates sent to the central review bodies are not simply “suited” for the functions of a vacant position, but that such individuals are “the best suited” to perform these functions, as set out in paragraph 3(b) of Annex II to ST/AI/2006/3.

15. The actions taken by the Executive Director were in conformity with the applicable legal provisions governing the role of the head of department in the staff selection system. She had received a list containing two candidates who were strongly recommended and thre52 798]TJ-0.0179

22. Ms. Contreras then contends that if the head of department was free to veto at any time and on any basis, the recommended candidates, the pre-approved criteria for candidate evaluation would risk becoming meaningless, as would the convening of a panel and the role of the central review body. The head of department would not be able to fulfil his function of selecting the best suited candidate if he was not provided with the opportunity to choose from a list of independently evaluated candidates based on procedures validated by the central review body. With regards to the roster of approved candidates, whose importance is vital for the efficiency of the staff selection process and staff mobility, its utility would be undercut.

23. Ms. Contreras maintains that neither the *Galaxy Workflow Guide* nor the *Staff Selection Guide* contemplates a different procedure. To the extent that the *Staff Selection Guidelines* contemplate a substantive evaluation of candidates by the head of department before the review of the central review body, such a procedure would be inconsistent with the system put in place by the administrative instruction. Such an interpretation, even if reflected in the *Guidelines*, should be regarded as incorrect. Ms. Contreras submits that not all of the Administrations publications create rights.

24. Ms. Contreras maintains that the fact that the jury submitted a list of ranked candidates did not mean that the head of department could require a shorter list of unranked candidates.

25. Ms. Contreras further contends that the Dispute Tribunal did not makComi511.302 0 Td()Tj/TT

procedure that adversely affected the rights of the appellant. The Respondent adds that this concerns a determination of the facts made by the Dispute Tribunal that is not manifestly unreasonable.

27. Lastly, Ms. Contreras submits that the Dispute Tribunal committed no error that would cause the judgment to be reversed or the quantum of compensation to be altered. She concludes that the appeal should be dismissed and submits a request for an oral hearing in order to be able to attend the deliberations of the Appeals Tribunal.

Considerations

28. At the outset, this Court believes that oral submissions do not appear to be necessary for a fair and expeditious disposal of the proceedings in a case where the facts are clearly established in the judgment of the Dispute Tribunal and are not contested by the parties. The Appeal Tribunal does not grant Ms. Contreras's request for oral proceedings.

29. The Tribunal further notes that the Secretary-General does not criticize the Dispute Tribunal judge's determination that the first vacancy announcement of 2007 had been cancelled because it was inconsistent with the administrative instructions. However, seeing that the Dispute Tribunal judge did not draw any clear or specific conclusions from the cancellation, this Court will not do so either.

30. The Appellant focuses his case on a challenge of the Dispute Tribunal's judgment with regards to the role of the head of department during the selection process.

31. According to the Appellant, the Dispute Tribunal judge should have taken into consideration all of the provisions and procedural guidelines that make up the legal framework of the staff selection process. He invokes Annex I of administrative instruction ST/AI/2006/3, the *Staff Selection Guidelines* and the *Guide to Workflow and Rules for Processing Vacancies in Galaxy*.

32. The Appellant maintains that the judge disregarded paragraph 3 of Annex I to administrative instruction ST/AI/2006/3, entitled "Responsibilities of the head of department/office", which provides that

[i]n the discharge of his or her responsibility to deliver mandated programmes and activities, the head of department/office works in close cooperation with the programme

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40. It is irrelevant that the Executive Director did not ask the chair of the panel to provide her with a new report. The Dispute Tribunal judge rightly found that the manner in which the changes to the list of candidates had been requested clearly amounted to improper interference in the evaluation process.

41. With regards to the question of compensation, the Appellant requests on the basis of article 10(5) of the Statute of the United Nations Dispute Tribunal that this Court rescind or

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