



JUDGE DEBORAH THOMAS -FELIX , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2015/033, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 15 April 2015. The Secretary-General filed an appeal on 15 June 2015. Ms. Sheryl Simmons has not filed any answer.

Facts and Procedure

2. The following facts are uncontested:<sup>1</sup>

... JO 24760 was advertised on Inspira with a posting period of 29 August to 11 November 2012 for a Programme Budget Officer at the P-4 level.

... The Applicant applied for the Post on 31 August 2012.

... By memorandum dated 12 February 2013 to the Executive Officer of the Department of Management, the then [Assistant Secretary-General/Controller (ASG/C)], as the head of [the Office of Programme Planning, Budget and Accounts (OPPBA)], requested the cancellation of JO 24760 and the lateral transfer of Ms. CP to the advertised post. The memorandum stated:

The purpose of this memorandum is to request cancellation of Job Opening 24760, which was advertised for a P-4 Programme Budget Officer in service

... By email dated 5 March 2013, the Executive Office, Department of Management, requested that the Chief, Staffing Unit A, Strategic Planning and Staffing Division (“SPSD”), OHRM, cancel JO 24760, “which will be filled through a lateral reassignment which was approved by the Controller on 12 Feb[ruary]”. By return email the same day, the Chief, Staffing Unit A, SPSD, OHRM confirmed that JO 24760 had been cancelled.

... On the same day, the Applicant received an automated email from OHRM thanking her for her application and informing her that the job opening had been cancelled.

... On 9 July 2013, a personnel action was approved and the 12 February 2013



of further documents, finding that documents relating to recruitment processes that took place before JO 24760 became vacant were not relevant to the present case. The parties were ordered to file their closing submissions by 24 October 2014. Both parties duly complied.

3. On 15 April 2015, the UNDT issued its Judgment. It concluded that the Administration's decision to cancel JO 24760 was lawful. It was based on the fact that more than 160 days had passed since the initiation of the job opening without any progress made in the evaluation of the candidates. It further found no evidence that the decision was based on extraneous motives such as the intention to block Ms. Simmons from being promoted or to accommodate the lateral reassignment of Ms. CP.

4. The UNDT, however, found that the decision to laterally reassign Ms. CP to the position was unlawful and constituted an arbitrary use of the Administration's discretion. It based its conclusion on the grounds that: a) The decision to laterally reassign Ms. CP had been made before the official cancellation of JO 24760; b) no new selection process had been initiated by creating a new job opening; c) the ASG/Controller, as the Head of Department, did not consider the pre-approved candidates from the roster before deciding on a lateral reassignment; and d) Ms. CP had been involved in creating JO 24760.

5. The UNDT awarded USD 2,400 as compensation to Ms. Simmons for the breach of her rights to be fully, fairly and timeously considered for the position.

#### The Secretary-General's Appeal

6. The UNDT erred in law and fact in concluding that the lateral transfer was unlawful and an arbitrary use of the Administration's discretion. The Administration has broad discretion in relation to the internal organization of units and departments. Section 2.5 of ST/AI/2010/3 (Staff Selection System) allows for lateral reassignment within a department or office without the creation of a job opening. The lateral reassignment of Ms. CP thus fell within the internal reorganization of PPBD, which is within the discretion of the Administration.

7. The ASG/Controller simultaneously requested the cancellation of JO 24760 and the lateral reassignment of Ms. CP to the position. The requests were both based on the absence of progress in the recruitment process. The lateral reassignment of Ms. CP was a

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cancellation of JO 24760 to have been lawful and that it did not affect irreparably the contractual rights of the Applicant since it was announced that the post may be re-advertised.

As established by the jurisprudence of the Appeals Tribunal, a staff member has  
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Original and Authoritative Version: English

Dated this 24<sup>th</sup> day of March 2016 in New York, United States.

(Signed)

Judge Thomas-Felix

(Signed)

Judge Simón

(Signed)

Judge Faherty

Entered in the Register on this 13<sup>th</sup> day of May 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar