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Case No.: UNDT/GVA/2009/51

Edement No.: UNDT/2010/025

Date: 26 February 2010

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## Introduction

1. On 20 March 2009, the Applicant submitted to the Joint Appeals Board (JAB) in New York an appeal against the 16 September 2008 decision whereby the Programme Manager of the Action for Cooperation and Trust (ACT) Project at the United Nations Development Programme (UNDP) field office in Cyprus informed her that she had not been selected for a project associate contract following interviews conducted by UNDP on 3 and 4 September 2008 and that her contract, which would expire on 31 October 2008, would not be renewed.

2. This appeal was referred to the United Nations Dispute Tribunal (UNDT) on 1 July 2009, pursuant to General Assembly

they held contracts under the 100 series of the Staff Rules then in effect or service contracts, that a competitive job fair for the available positions would be held and limited to the aforementioned staff. It was explained that holders of contracts under the 100 series of the Staff Rules then in effect would be given priority consideration. On 29 August 2008, details on the interview dates and modalities were provided.

7. The Applicant applied for the three project associate posts which were available on the basis of service contracts. She was short-listed and, on 3 September 2008, invited to be interviewed.

8. By a letter dated 16 September 2008, the Applicant was informed that



recordings of the interview show that the questions asked of the Applicant were irrelevant;

- f. The terms of reference for project associate service contracts stipulate that the contract holders must be familiar with ATLAS, which the candidates who were selected were not;
- g. Thus, the Administration selected the least competent and least qualified candidates without taking into account the Applicant's many qualifications and, instead, retained an unqualified candidate.



- g. In accordance with UNDP restructuring procedures, a competitive job fair was held;
- h. Notwithstanding the Applicant's statement, she was a staff member not for eight years, but only as from 1 January 2005. In accordance with rule 104.12 (b) (iii) of the Staff Rules then in effect, services rendered under a service contract or special service agreement are not counted towards seniority;
- i. Notwithstanding the Applicant's statement, her contract was not terminated; it expired, and its non-renewal was at the management's discretion;
- j. In accordance with rule 104.12 (b) (iii) of the Staff Rules in effect at the time of the contested decision, the Applicant also had no right to a different type of appointment. The Administration informed her of her rights and of its intent to assist her in her search for other employment;
- k. There was no staff post to which the Applicant could have applied. Since she was initially appointed to a United Nations post on 1 January 2005 and thus had not accumulated the five years of continuous service envisaged by rule 104.12 (b) (iii) of the Staff Rules in effect at the time of the contested decision, the Administration had no specific obligations to the Applicant following the abolition of her post;
- l. The application is not receivable in as much as it concerns the refusal to award the Applicant a service contract since the awarding of such contracts is a procurement exercise, not a staff appointment, and is not covered by the terms of employment or by the Staff Rules and Regulations. If the Applicant wished to contest the decision not to award her a service contract, she should have registered a formal bid protest with the UNDP Procurement Support Office. Even if the application were receivable, it should be noted that the term "staff" used in the 19 August 2008 memorandum announcing the job fair was used broadly in order to

encompass all personnel affected by the restructuring, including service contract holders. This is clear from the context and from the title of the memorandum, which is clearly addressed to all affected staff (100 series appointments and service contract holders);

- m. The Applicant is confusing a priority in consideration of her application with a guarantee of placement, which should not exist in a job fair. She was short-listed and interviewed but was not or



17. The Applicant is contesting both the refusal to award her a project

22. It is, however, clear from the aforementioned provisions that the



(signed)

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Judge Jean-François Cousin

Dated this 26th day of February 2010

Entered in the Register on this 26th day of February 2010

(signed)

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Víctor Rodríguez, Registrar, UNDT, Geneva