
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2010/007
UNAT/1578
Judgment No.: UNDT/2012/019
Date: 10 February 2012
Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

DEBEBE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represented

17. The Respondent further contends that any right the Applicant may have had to consideration for promotion to the L-1 post at issue, has to be balanced against his failure to pass the exam on eight separate occasions.

18. The Applicant asserts that the ECA has promoted numerous General Service staff to the Professional category without requiring them to resign and apply for Professional posts through competitive selection. Even if this policy was in breach of the applicable rules, it is unfair on the Applicant that he should be treated differently because of a policy change which occurred whilst he was in the process of negotiating his own promotion. The Applicant refers to the former UN Administrative Tribunal Judgment No. 1169 *Abebe* (2004) and avers that he is in the same position as the applicant in that case and should therefore be treated similarly.

Consideration

Promotion to the Professional category

19. In *Abebe*, the applicant, a General Service staff member of ECA was appointed to an L position and served in that capacity for a number of years. The ECA was said to have been acting outside its delegated

...the Respondent...allowed the Applicant to remain in that Professional capacity beyond one year, without requiring her to take the competitive examination. In fact, the Respondent allowed the Applicant to encumber a Professional post for more than six years. During that entire time, the Respondent allowed the Applicant to perform Professional duties, and the Respondent benefited from the performance of those services. Clearly, the Respondent believed the Applicant possessed skills sufficient to carry out the responsibilities of her Professional post, without requiring an examination to confirm that. If the Respondent believed otherwise, he undoubtedly would have required the Applicant to take the examination before she was allowed to continue in her post beyond the one year period. The Respondent cannot now assert that the Applicant must take the qualifying examination in order to qualify as a Professional.¹

20. Thus the former UN Administrative Tribunal found in the applicant's favour in respect of her eligibility for Professional posts despite not having taken the examination.

21. The Applicant relies on *Abebe* in asserting that he should be formally placed against the L-1 post he is presently encumbering. The Tribunal, however, sees a distinction between the Applicant's case and that in *Abebe*. The applicant in *Abebe* had applied, and been selected for, an L-1 post. Ultimately it was said that the ECA was wrong to have granted a General Service staff member an L position, but the fact remains that the applicant in *Abebe* was competitively selected for the position. Further, the applicant in *Abebe* was continuously employed in that position for six years. The Applicant in the present case has not undergone any form of competitive selection for any L post, and his many attempts to pass the G to P examination have been unsuccessful. It cannot, therefore, be said that he "qualifies" as a Professional in the way that the applicant in *Abebe* did.

22. Furthermore, the former UN Administrative Tribunal did not award the applicant in *Abebe* that which the Applicant in the present case is seeking: placement directly into a Professional position. Such an outcome would, in the view of this Tribunal, be beyond its jurisdiction. There is a clear difference between eligibility for a Professional post, and

¹ *Abebe*, paragraph XX.

its intention to restrict movement of staff from the General Service category to the Professional category”³, and this Tribunal has no power to gainsay it.

Fair and equal treatment

27. In its report, the JAB found “no evidence that Appellant had suffered consequential damage while his case had been pending” and therefore rejected his claim for two years net base salary at the L-1 level as compensation “for damages suffered as a result of the improper, or lack of, action by ECA”. This seems an odd conclusion.

28. It is the obligation of both the staff member and the Organisation to act in good faith towards each other. Good faith includes honesty, reasonableness, courtesy and consideration. In this case, the Respondent has acknowledged his failures in this regard, accepting that “errors were committed by ECA in connection with reclassification of Professional posts” and that “Headquarters should have clarified any resultant misconceptions sooner...” but simply accepting that mistakes were made does not seem to this Tribunal to go far enough. It is extremely unfair to the Applicant that other staff around him in ECA should appear to have benefited by the aforementioned “errors”, creating an atmosphere of unhappiness and a sense of unequal treatment which is apparent from the pleadings in this case.

29. Further, as the JAB found, the Applicant was given a legitimate expectation of promotion to L-1 level, which was never satisfied. The award of the equivalent of SPA to L-1 level does not compensate him for this—it is not compensation at all, in fact. It is, rather, appropriate remuneration given that the Applicant is performing the functions of an L-1 position and bearing in mind the fundamental principle of equal pay for equal work.

30. In the circumstances, it seems to this Tribunal that the Applicant should receive some level of damages pursuant to article 10.5(b) of the Statute of the Tribunal, for the

³ Paragraph V.

distress caused to him by the Respondent's admitted