

Introduction

1. By application registered on 17 November 2011 by the Geneva Registry of the United Nations Dispute Tribunal, the Applicant, a staff member of the United Nations Conference on Trade and Development (“UNCTAD”), contests the decision to cancel, three and a half years after it was published, vacancy announcement No. 07-ECO-UNCTAD-416118-R-GENEVA (G) for the D-1 post of Head of the Trade Logistics Branch within UNCTAD.

2. She requests the following:

- a. That the staff member now serving as Officer-in-Charge of the Trade Logistics Branch be relieved of his temporary duties;

Translated from French

Case No. UNDT/GVA/2011/083

Judgment No. UNDT/2012/066

this period, Galaxy, the online recruitment system, continued to indicate that the

UNCTAD for transmission to the Central Review Board, and that a decision would be taken by mid-November.

18. The interview panel's evaluations indicate that it concluded that the Applicant did not fully meet the requirements for the post and had therefore not been recommended. The panel was of the opinion that only two candidates met the post criteria, the candidate who had been serving as Officer-in-Charge of the Service since February 2008 and one 60-day candidate.

19. On 3 November 2010, the panel's recommendations were presented to the Geneva Central Review Board. The Board twice requested additional information with regard to: (i) the performance evaluations of the interviewed candidates, (ii)

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22. By memorandum of 14 April 2011, the Under-Secretary-General for Management requested the Secretary-General of UNCTAD to re-advertise the post.

23. By email of 3 May 2011, the Director of DTL informed the Applicant that

“interrupted” after those interviews. It also asked the Respondent to provide explanations and supporting documents as to why the Director of DTL decided,

Secretary-General and to a decision by the Under-Secretary-General to cancel the vacancy announcement. Of particular interest are the following points:

- i. A selection decision should have been taken following the interviews of the 30-day candidates in March 2008, and she should have been either selected or placed on the roster of pre-approved candidates;
- ii. Moreover, as a woman and a candidate particularly qualified for the post who meets the conditions set forth in paragraph 1.8(a) of administrative instruction ST/AI/1999/9 (Special measures for the achievement of gender equality), she should have been selected following the interviews of March 2008;
- iii. Instead, the selection procedure was suspended from April 2008 to June 2009 to allow for the placement of a staff member without assignment; it was at that point that the vacancy announcement should have been cancelled. Moreover, during that period, no steps were taken to appoint an Officer-in-Charge of the Branch in accordance with the rules in effect with regard to temporary assignments (ST/AI/1999/9, ST/AI/1999/17, ST/AI/2006/3 and ST/AI/2010/4), which inflicted material damage on her as well as damage on her career progression and gave an unfair competitive

vi. Moreover, the evaluation criteria were not consistently applied to all candidates, as noted by the Central Review Board. As a result, the evaluation of her candidacy by the interview panel cannot be considered reliable, nor can it be cited by the Respondent to claim that her chances of being selected were weak. Moreover, it is apparent from her evaluation that her candidacy did not receive the full and fair consideration to which she was entitled, as demonstrated by the inconsistencies between the scores assigned for her university studies and her knowledge of United Nations policies, procedures and operations, and the scores assigned to other candidates. These scores were arbitrarily assigned;

vii. As the Central Review Board noted, her candidacy suffered, moreover, owing to the fact that the Officer-in-Charge of the Branch was the Applicant's first reporting officer in 2008-2009 and 2009-2010, even though they were both applying for the disputed post;

viii. The Respondent cannot, on the one hand, decide to cancel the selection procedure after 42 months owing to its being tainted by irregularities, and on the other hand, argue, as he has, that her candidacy during this same procedure received the full and fair consideration to which she was entitled;

c. The decision of the Under-Secretary-General for Management to cancel the vacancy announcement amounts to a decision not to select the Applicant and not to place her on the roster of pre-approved candidates. Under section 5.6 of ST/SGB/2002/6, the Under-Secretary-General had the authority and the obligation to select a candidate and, in this case, to select the Applicant. There is no provision that covers the possibility of cancelling a vacancy announcement;

d. The decision to re-advertise the post is prejudicial to her for several reasons. Under the new selection rules, she will no longer benefit from the preferences granted to internal candidates and women. Furthermore, given the budgetary situation, it may well be that the post will never be filled.

40. The Respondent's contentions are:
- a. The decision to re-advertise the post is not prejudicial to the Applicant, as she can apply and has in fact done so;
 - b. The decision to re-advertise the post is lawful. It was taken in response to the recommendation of the Central Review Board and is consistent with the provisions of ST/SGB/2002/6, in particular, sections 5.6 and 8. While there is no provision covering the possibility of re-advertising a post, the United Nations Dispute Tribunal concluded in *Kamal* UNDT/2011/034 that such a practice was lawful. In that case, the selection procedure was tainted in several ways that prevented full and fair consideration of the applications; it therefore fell to the Under-Secretary-General to have the vacancy announcement cancelled rather than to take a selection decision which would have been unlawful owing to its being based on a tainted procedure;
 - c. While it is true that the decision to re-advertise the post will necessarily delay the selection of a candidate still further, in this case, the candidates' right to full and fair consideration should prevail over the

would be selected; as for the moral damage she claims to have suffered, she has provided no evidence of that, such as a medical certificate;

g. The interview panel concluded that the Applicant did not fully meet the criteria for the post, and it was not the Applicant's evaluation but that of another candidate that caused the Central Review Board to recommend re-advertising the post;

h. To the extent to which the application concerns the decision to select another candidate to serve as Officer-in-Charge of the Branch during the regular selection procedure, it is time-barred and therefore not receivable.

Consideration

41. From the facts as recounted above, it emerges that the Applicant submitted an application for the disputed D-1 post of Head of The Trade Logistics Branch on 24 December 2007 as a 30-day internal candidate and that she was invited to a selection interview that took place on 10 March 2008. Although she was informed by the Director of the Division on 15 July 2009, 16 months later, that the selection procedure would be interrupted and the vacancy re-advertised, the vacancy was not re-advertised, and between February and April 2010 a second round of interviews was conducted for the disputed post as advertised in November 2007. The Applicant was therefore interviewed for a second time on 30 March 2010, albeit with a differently composed selection panel. Other candidates not selected for interviews in 2008 were also interviewed during that round.

42. Finally, on 3 November 2010, the second selection panel's recommendations were submitted to the Geneva Central Review Board. By memorandum dated 7 April 2011, the Board declined to approve them owing to procedural flaws in the selection procedure. On 14 April 2011, the Under-Secretary-General for Management asked the Secretary-General of UNCTAD to re-advertise the post. This decision officially brought selection activities to an end.

43. It is the task of the Tribunal to note the primary irregularities tainting the selection procedure up until it was officially terminated.

44. First, after the Applicant was invited to the first selection interview on 10 March 2008, the procedure was suspended, and the Administration maintains that this was done in order to use the vacancy for the priority placement until

the Applicant, who applied for the disputed post on 24 December 2007, was not officially advised that the vacancy would be re-advertised until 3 May 2011, three and a half years after it was first advertised and more than three years after the Applicant was first interviewed.

52. Therefore, the Administration's delays

Entered in the Register on this 9th day of May 2012

(Signed)

René M. Vargas M., Registrar, Geneva