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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2016/010

Judgment No.: UNDT/2016/125

Date: 16 September 2016

Original: English

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**Before:** Judge Alexander W. Hunter, Jr.

**Registry:** New York

**Registrar:** Hafida Lahiouel

HOSANG

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
Nicholas C. Christonikos

**Counsel for Respondent:**  
Alan Gutman, ALS/OHRM, UN Secretariat

## **Introduction**

1.

4. On 9 September 2016, the parties filed their final submissions. Neither party requested a hearing nor proposed any witness testimony. Accordingly, the Tribunal proceeded to consideration of the case on the merits on the papers before it, including the parties' submissions of 9 September 2016.

5. The Tribunal notes that the Applicant has other pending and closed cases before this Tribunal. However, the present judgment concerns only Case No. UNDT/NY/2016/010, relating to the decision not to select the Applicant for the G-5 level post of Records Assistant, DFS.

### **Factual background**

6. On 22 June 2012, a job opening vacancy was issued for the contested G-5 level position, with a closing date for applications of 21 July 2012. The Applicant applied on 17 July 2012.

7. The Respondent submits that, as a result of the initial pre-screening process, 46 candidates were released to the hiring manager for assessment. Eight job applicants withdrew from the process. A preliminary review was conducted of the remaining 38 job applicants. As a result, four candidates, including the Applicant, were found suitable for the position and were invited for a competency-based interview.

8. Approximately two years later, on 3 July 2014, the first round of competency-based interviews was completed. On 21 July 2014, the interview panel's assessment was sent to DFS for transmittal to the Central Review Board ("CRB").

9. Another round of competency-based interviews was conducted on 10 February 2015. The candidates, including the Applicant, were interviewed and assessed in reference to the competencies of client orientation, communication, and professionalism. The interview panel assessed the Applicant and the ultimately successful candidate as follows:

<b>Criteria</b>	<b>Applicant</b>	<b>Successful candidate</b>
Academic requirements	successfully met	successfully met
Experience requirements	exceeded	exceeded
Language requirements	successfully met	successfully met
Competency of Client Orientation	<i>successfully met</i>	<i>exceeded</i>
Competency of Communication	<i>successfully met</i>	<i>exceeded</i>
Competency of Professionalism	<i>successfully met</i>	<i>exceeded</i>

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demonstrated more successfully the different competencies. He received outstanding [ratings] in all the competencies. In addition, he has an excellent ePAS [electronic performance appraisal system] record (“[e]xceeds expectations” in both the ePAS [reports] provided).

13. By memorandum of 11 September 2015, the select

The Respondent incorrectly raises and dwells on a point alleging that the Applicant claims the contested decision is unlawful ... There is no such claim anywhere in the application. Excluding the 2000–2012 period [i.e., prior to the publication of the job opening], on the surface it appears that lawful steps in the selection process

22. The Respondent submits that there was no unreasonable delay and that there is no legal right to the completion of a recruitment processes within a certain period of time and that delays in recruitment do not amount to a violation of an applicant's terms of appointment (*Kamal* 2012-UNAT-204; *Zeid* 2014-UNAT-401; *Kucherov* 2016-UNAT-669; *Krioutchkov* UNDT/2016/066). The Respondent further submits that the delay in the completion of the selection exercise was due to a number of "unavoidable factors." First, the requirement for a second round of competency-based interviews to address the issues raised by the CRB. Second, the hiring manager left his position before the recruitment process was complete, and it took approximately six months to find a replacement. The new hiring manager had an extensive backlog of work to complete as well as preparation for the roll-out of the new management system, Umoja. The Respondent also submits that the Applicant benefitted monetarily from the duration of the recruitment process because he was paid a special post allowance ("SPA") at the G-

the Organization is two years. Thus, some staff members started and finished their careers with the Organization while this recruitment exercise for this General Service-level post was still ongoing. The Tribunal also notes that this case is distinguishable from the cases referred to by the Respondent, due to its particular circumstances, including the sheer extraordinary length of the delay, the reasons for it, which were attributable to the Administration, and the actual effect on the Applicant, as explained below.

25. As a result of the selection exercise, the Applicant was placed on a roster of pre-approved candidates for relevant G-5 level posts. Therefore, although the Applicant was not selected for the post, the delay in the selection exercise had a direct impact on him because, had this exercise been finished sooner, the Applicant would have been placed on the roster earlier, which would have opened up additional employment opportunities that would have been available to him as a roster candidate (see, e.g., *Marsh* 2012-UNAT-205, stating that loss of a chance to be included on the roster may have material consequences).

26. Accordingly, the Tribunal finds that the Applicant is entitled to compensation for the significantly delayed recruitment exercise and for the loss of additional employment opportunities in connection with the delayed placement on the roster of pre-approved candidates for relevant G-5 posts. As such, the Tribunal finds it appropriate to award the Applicant the sum of USD3,000.

*Compensation for emotional distress*

27. By resolution 69/203, adopted on 18 December 2014 and published on 21 January 2015, the General Assembly amended art. 10.5 of the Tribunal's Statute to read as follows: "As part of its judgement, the Dispute Tribunal may *only* order one or both of the following ... (a) [r]escission ... [or] (b) [c]ompensation for harm, *supported by evidence*" (emphasis added). (See also



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