

UNITED NATIONS DISPUTE TRIBUNAL



5. The Applicant is a former staff member, who held the position of Principal Officer, at the D-1 level, with the DGACM until he separated from the Organization on 31 December 2015.

6. According to the Office of Human Resources Management ( OHRM ), the Applicant was placed on the roster of Principal Administrative Officer at the D-1 level in the Administration job family effective 23 January 2015 as a result of the selection process for Chief of Office, Office of the Under-Secretary-General, at the D-1 level, at the DGACM. This job opening required education in international relations, economics, social science, or related field, and relevant work experience including in conference servicing and conference management.

7. It appears that the Applicant has never been rostered at the D-1 level in the job network of Information and Telecommunication Technology. The Management

MEU



15. On 15 June 2016, the Applicant came to know about the selection of Chief, SICTM, apparently through an automatically generated email notification sent to unsuccessful candidates who applied for JO 41653, the post he did not apply for.

16. On 16 June 2016, the Applicant submitted a request for management evaluation of the contested decision.

17. On 21 June 2016, the MEU completed the management evaluation and informed the Applicant that his request was not receivable. The MEU noted that the Applicant was rostered in the administrative job family, but that there was no indication that he had a roster status for a job related to the work of OICT. Nevertheless, even assuming that the Applicant were on a relevant roster, to the degree that the Applicant asserts any rights under his former appointment, the MEU found no direct effect on any rights the Applicant had under the terms of his former contract. The MEU further found that, to the degree the Applicant meant to ground his challenge on any current right to compete for the positions, as a former staff member, the Applicant enjoyed no such legal standing.

18. By letter dated 27 June 2016, the selected candidate was offered a one-year fixed-SICTM. The letter further stated:

Your appointment is subject to satisfactory completion of pre-recruitment formalities through the United Nations Secr(-)6hi 1 154nos712 792 r/d0.0pr



the order and that, in any event, the three-week extension sought was excessive. The Respondent requested that the motion be rejected.

28. By Order No. 161 (NY/2016) dated 7 July 2016, the Tribunal granted in part extension of time and directed that he file a response to

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for summary judgment in which he contended, *inter alia*, that summary judgment was inappropriate in this case since the facts were in dispute and neither the factual matters nor the legal issues were straightforward and clear such as to justify summary consideration of the matter.

30. On 27 July 2016, the Respondent filed his reply to the application in which he contends that the application is not receivable arguing that: (a) the Applicant has no standing to contest the selection decision as he did not apply for the job opening while he was a staff member; and (b) the Applicant is no longer a staff member and he has not identified any right that was breached under the terms of his former appointment. In any event, the Respondent submits that the application is without merit, because *inter alia*, at the post no longer existed at the time of selection is incorrect as the position in question, Chief, SCITM, continued to exist under the same post number even after a new OICT structure was approved by the General Assembly resolution 70/247 adopted on 23 December 2015. The Respondent maintains that the position was deployed from the Strategic Management Service (Subprogramme 5) to Enterprise Service Desk in the Global Operations Division (Subprogramme 6), and after deployment it continued to be funded through Post Number 6912 under the regular budget of OICT. The Respondent further

and adequate consideration for a position he is currently rostered for has no merit since: (1) he is not rostered for positions in the Information Management System and Technology job family; (2) even if he were on a relevant roster, a roster membership does not give him a right to be selected nor any priority over non-rostered candidates;

and (3) the Applicant did not apply to the Job Opening, and in the absence of an application he could not be considered for the position.

31. By Order No. 187 (NY/2016) dated 29 July 2016, the Tribunal instructed the parties to attend a Case Management Discussion

32. At the request of the Applicant, by Order No. 196 (NY/2016)









c. A job application to a vacant position is not the sole condition required to gain legal standing; otherwise the Applicant would be necessarily without such standing if he did not apply to the vacant position. There is not an all-inclusive list of such rights or conditions anywhere, and it is up to the Tribunal to determine each case on its merits.

*Abbassi* 2011-UNAT-110 and *Rolland* 2011-UNAT-122 are misplaced as the

d. The Applicant has, in fact, sufficient interest in the matter having previously applied to the defunct position of Chief, SICTM. Clearly, the Applicant has sufficient interest in protecting his own rights, given that the unlawful decisions will deprive him of a career opportunity with the United Nations, and fair and adequate consideration for a position he was eligible to apply to and qualified to hold. Given the budget proposal pending in the General Assembly at the time, and that JO 41653 was posted in Inspira from 2 June 2015 to 1 August 2015, the Applicant has correctly determined that the position would be abolished before it was filled, and has therefore not applied for it;

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rostered for the vacant position in question. Being rostered was an earned right the Applicant had as a staff member at the time of the adoption of General Assembly resolution 70/247 on 23 December 2015 and which he retained when separated on 31 December 2015 and will carry over for the position if reclassified and reposted. Given that there are very few opportunities at the D-1 level, it is in the interest of the Applicant that this

f. There is and the impugned decisions, as per *Shkurtaj* 2011-UNAT- former staff member has standing to contest an administrative decision concerning him or her if the facts giving rise to his or her complaint arose, partly arose, or flowed from his or her employment. There must be a ;

g. The application partly arises from the disregard of General Assembly resolution 70/247 adopted on 23 December 2015 (at which time the Applicant was still employed by the United Nations). A General Assembly resolution is only preceded by the United Nations Charter at the top of the legal hierarchy of the United Nations (see *Villamorán* UNDT/2011/126). The Applicant possesses information of intensive discussions by senior management on the cancellation of JO 41653 pursuant to the General Assembly resolution, before deciding to proceed with the unlawful recruitment.

### **Consideration**

49. The Applicant clarified, at paras. 13 and 14 of his submission dated 22 July 2016, that he is contesting:

two distinct albeit interlinked administrative decisions by the [Under- Secretary-General for Management]:

a. First, the decision not to cancel Job Opening number 15-IST-OICT-41653-R-NEW YORK (R) for the defunct position of Chief of Service (D1), Strategic Information and Communication Technology Management, Office of Information and Communications Technology (OICT), DM, which has become invalid starting 1 January 2016 as a result of the General Assembly resolution 70/247 adopted on 23 December 2015; and

b. Subsequently, and as a result of the failure of the Administration to

That is, the Applicant is contesting a recruitment process which

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of

include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;

(b) To appeal an administrative decision imposing a disciplinary measure;

(c) To enforce the implementation of an agreement reached through mediation pursuant to article 8, paragraph 2, of the present statute.

53. Article

An application under article 2, paragraph 1, of the present statute may be filed by:

(a) Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(b) Any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes.

54. Article 2.1(a) of the Tribunal Statute therefore provides that the Dispute Tribunal is competent to hear and pass judgment on an application filed by an

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cautioned in *Luvai* 2010-UNAT-014, at para. 29, someone who did not even apply for a position has a heavy burden to contest the result .

61. In *Li* UNDT/2014/056, an applicant did not apply to the contested job opening because he believed that the job opening was drafted to intentionally favour a particular candidate and to exclude him and other staff members. The Dispute Tribunal held that the applicant had no standing to bring a claim in the absence of his application as his justification was based solely on his subjective assessment of his eligibility and his suspicion, unproven at that stage.

62. Similarly, in *Rockliffe* UNDT/2015/086, the Dispute Tribunal held that an applicant had no standing when an applicant decided not to apply for the contested job opening based on her subjective assessment as to how her submission of the application would be perceived when she was challenging the validity of the job opening itself.

63. In contrast, the Dispute Tribunal found the application receivable in *Singh* because one of the requirements in the contested job opening (i.e. a Chartered Financial Analyst CFA certification requirement) made him clearly ineligible for the post and thus his rights to full and fair consideration were affected from the outset.

64. In the present case, the Applicant, as a staff member at the relevant time period, had a right to be fully and fairly considered as part of the terms of his former employment. Since the Applicant decided not to apply for JO 41653 in the belief that the post in question would be abolished according to the budget proposal for OICT, the question is whether he is entitled to a review of the contested decision despite his decision not to apply for the job opening.

65. When JO 41653 closed on 1 August 2015, only the budget proposal by the Secretary-General was published, and the General Assembly resolution approving the budget for OICT (70/247) was adopted a few months later, on 23 December 2015. Therefore, even if the budget proposal intended to abolish the post in question, which

is contested by the Respondent, it was only the post in question would be abolished. Further, the Respondent contends that the post in question continued to exist having been redeployed to the Global Operations Division following the restructuring of OICT, pursuant to the General Assembly resolution 70/247, and where it continued to be funded through Post Number 6912 under the regular budget of OICT.

66. Whether the impugned JO preceded the establishment of the post or not is a matter for the merits. However, it is not disputed that the budget proposal for OICT was not adopted at the time of the publication and closing of JO 41653. In that regard, the present case is similar to *Li* and *Rockliffe*, who lacked standing, and distinguishable from *Singh* in that the Applicant decided not to apply for JO 41653 based on his subjective assessment of the possible OICT structure following the General Assembly resolution, which was not adopted at the time.

67. Additionally, the Applicant claims that he has standing to bring a claim based on his roster membership for the post in question since being rostered is an earned right he had as a staff member during the relevant time period. The Respondent contends that the Applicant is not a roster candidate for the position in question as he was rostered at the D-1 level in the Administration job family and the post in question is in the job network of Information and Telecommunication Technology. The Respondent, relying on *Krioutchkov* UNDT/2016/091, further submits that regardless, a roster membership does not grant the Applicant any rights.

68. Section \_\_\_\_\_ -specific job openings up to and including at the D-1 level included in a list endorsed by a central review body shall be placed on a roster of candidates pre-approved for *similar functions* at the level of the job opening (emphasis added) and c]andidates included in the roster may be selected by the head of department/office for a subsequent job opening without reference to a central review body.





decisions. Where a decision requires several steps to be



**Conclusion**

78. In view of all of the foregoing, the present application is rejected as not receivable.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 2<sup>nd</sup> day of October 2018

Entered in the Register on this 2<sup>nd</sup> day of October 2018

*(Signed)*

Nerea Suero Fontecha, Registrar, New York