



Administrative Tribunal

Distr. Limited
31 May 2008

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1384

Case No. 1467

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Spyridon Flogaitis, President; Ms. Jacqueline R. Scott, Vice-President; Ms. Brigitte Stern;

Whereas at the request of a former staff member of the United Nations, the President of the Tribunal granted an extension of the time limit for filing an application with the Tribunal until 31 July 2005, and twice thereafter until 30 November;

Whereas, on 25 November 2005, the Applicant filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 12 February 2006, the Applicant, after making the necessary corrections, filed an Application containing pleas which read, in part, as follows:

“II: **PLEAS**

The Administrative Tribunal is respectfully requested to:

1. Find that I was never *officially* informed, although this was required by section 9, *para. 9.2 of ST/AI/1999/8* [of 17 August 1999, entitled ‘Placement and promotion system’], of the promotion of my opponent, either by an [information circular] or by even an official letter from [the Office of Human Resources Management (OHRM)], and that consequently, my [appeal] was not time-barred as erroneously claimed by the [Joint Appeals Board (JAB)] report.
2. Find that, by recruiting an external candidate, [the United Nations Conference on Trade and Development (UNCTAD)] violated staff regulation 4 ...

3. Find that UNCTAD violated all relevant provisions dealing with promotion ...

...

7. Find that my right to due and fair consideration for promotion was consequently decisively and fundamentally violated by the defective selection by UNCTAD of an external candidate who failed to meet the requirement of Article 101.3 of the Charter and of [General Assembly] resolutions 2480 B and 50/11, and indeed of the vacancy announcement for the post itself ...

8. Find that the Respondent's [action] ... negatively and decisively affected my promotion prospects in UNCTAD since I retired without a promotion.

...

10. Find, furthermore, that the Head of UNCTAD's Resources Management Service [(RMS)] maliciously and illegally misled the [Appointment and Promotion Board (APB)] by supplying inaccurate information on me ...

11. Find that UNCTAD's refusal to let me have access to *all* (repeat *all*) documents submitted by the Respondent, while my application, along with *all* (repeat *all*) attachments, were submitted to the Respondent constitutes an obvious violation of the principle of equality of arms.

12. Find, consequently, that UNCTAD's illegal actions deprived me of a promotion to which I feel entitled in view of my qualifications and services, which is even more serious since that vacancy represented, in view of my age, the last opportunity to reach the P-5 level.

13. Order, accordingly, the Secretary-General to award me compensation equal to three years' net salary."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 July 2006, and once thereafter until 27 August;

Whereas the Respondent filed his Answer on 18 August 2006;

Whereas the Applicant filed Written Observations on 10 October 2006;

Whereas the statement of facts, including the employment record, contained in the report of the JAB reads, in part, as follows:

“Employment History

... The [Applicant] entered service at the United Nations in February 1978 as an Associate Programme Management Officer in the Department of Economic and Social Affairs ... at the P-2 level, on the basis of a fixed-term appointment for three months. [His appointment was renewed several times and he received a series of promotions. At the time of the events which gave rise to his Application, he held a permanent appointment and was serving as an Economics Affairs Officer at the P-4 level with UNCTAD.]

...

... On 8 November 1999, the [Applicant] was reassigned to the service of Least Developed Countries, Office of the Special Coordinator for Least Developed Land-Locked and Island Developing Countries [(LDC/OSC)].

... The [Applicant] was separated from service upon retirement on 30 April 2003.

Summary of Facts

... On 6 November 2000, a vacancy announcement [(VA)] was issued for the post [of] Senior Economic Affairs Officer (P-5), [LDC/OSC], UNCTAD, with deadline on 6 January 2001. [The Applicant applied for the post.]

... By memorandum dated 8 March 2001, the Acting Special Coordinator ... sent an evaluation of 23 short-listed candidates for the above mentioned post ..., including a ranking order for the top five candidates, to the Chief of [RMS] ...

... On 21 March 2001, the UNCTAD Departmental Placement and Promotion Panel met in order to review the applications of the short-listed candidates. The Panel adopted its report on 10 April ... and agreed unanimously to recommend the appointment of an external candidate. It also unanimously agreed that the [Applicant] was a strong candidate for this post, meeting most of the requirements of the post.

... By memorandum dated 10 April 2001, the Deputy Secretary-General of UNCTAD informed the Chairperson of the [APB] that the Secretary-General of UNCTAD endorsed the Panel's recommendation for the appointment of the external candidate to the post.

...

[After a lengthy exchange of correspondence between the APB and UNCTAD - and, thereafter, between UNCTAD and the Applicant, who considered that he ought to communicate directly with the APB - as to the relative merits of the candidates and, in particular, the Applicant, by] memorandum dated 28 September 2001, the ... APB informed ... UNCTAD that after a careful review of the case, 'the Board was of the view that [the external candidate] was the most suitable candidate for the post'.

...

... On 1 November 2001, ... UNCTAD [was informed] that the APB, at its meeting of 18 October ..., recommended the appointment of the external candidate to the post, [and that this] recommendation [was approved] on behalf of the Secretary-General. ... [I]n accordance with ST/AI/1999/8, the APB [had] recommended the selection of the [Applicant] as alternate candidate to the post, but ... this recommendation was not endorsed ...

... Effective 1 December 2001, the external candidate was appointed to the post ...

... By email dated 18 February 2002, the [Applicant] informed the Head, RMS ..., that '[he had not] received any notification from anybody as to the outcome of [his] applications' and asked him 'whether the Board ha[d] completed its selection process'.

... By email dated 19 February 2002, the Head, RMS ..., informed the [Applicant] that 'the P5 post ... [had] been filled ... effective 1 December 2001 ...

...”

On 5 June 2002, the Applicant requested administrative review of the decision not to select him for the post in question. On 1 October, he lodged an appeal with the JAB in Geneva. The JAB adopted its report on 16 November 2004. Its considerations, conclusions and recommendation read, in part, as follows:

“Considerations

...

70. The Panel took note of the fact that effective 1 December 2001, the external candidate was appointed to the P-5 post ... Despite the fact that the Appellant was working in the same Service, the Panel considered that the benefit of the doubt would apply to the Appellant who might not have known which post the external candidate ... was actually working on ...

...

72. The Panel ... could only but consider that the email of the Head, RMS ..., of 19 February 2002 constitute[d] the notification of the Appellant of the administrative decision concerning his non-selection for the post ... Therefore, the deadline to request an administrative review ... was ... 19 April ...

73. The Panel noted that it was only in his letter dated 5 June 2002 that the Appellant requested the Secretary-General to review the contested decision. The Panel stressed that this delay was almost two months (...) beyond the deadline of 19 April ... that would normally be applicable under the provisions of staff rule 111.2 a (ii), in the absence of any [recognized] and justifiable exceptional circumstances.

...

75. The Panel noted that the Appellant ... indicated that ‘[he was] never informed either directly by letter or indirectly by information circular, of the decision taken by UNCTAD with respect to [his] application’. The Panel reiterated that it had ... material proof of the fact that the Appellant had indeed been informed of the decision not to select him for the P-5 post ... on 19 February 2002. ...

...

Conclusions and Recommendations

79. For the foregoing reasons, the Panel concludes that there are no exceptional circumstances warranting a waiver of the time limit. In this connection, the appeal is time-barred and hence not admissible.

....”

On 14 March 2005, the Officer-in-Charge, Department of Management, transmitted a copy of the report to the Applicant and informed him that the Secretary-General agreed with the JAB’s findings and conclusions and had decided to accept its unanimous recommendation and to take no further action on his appeal.

On 12 February 2006, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. The Applicant contends that, as he was never officially informed of the selection of the external candidate as email is not a legal means of notification of an official decision, his appeal was not time-barred.

2. The Respondent violated all relevant provisions relating to promotions.
3. The Applicant was not given full and fair consideration for promotion.

Whereas the Respondent's principal contentions are:

1. The appeal was time-barred.
2. A waiver of the time limits is not justified under the circumstances of the case.

The Tribunal, having deliberated from 22 April to 2 May 2008, now pronounces the following Judgement:

I. The Applicant entered the service of the United Nations at the P-2 level, on 26 February 1978. At the time of the events which gave rise to his Application, he had been promoted to the P-4 level as Economics Affairs Officer, UNCTAD.

The Applicant applied for the advertised vacancy of Senior Economic Affairs Officer, LDC, at the P-5 level. He was short-listed for the position but, ultimately, the APB recommended the appointment of an external candidate, with the Applicant listed as alternate. The Secretary-General accepted only the former of these recommendations. In response to a request from the Applicant, the Head, RMS, UNCTAD, advised him by e-mail of 19 February 2002 that the post had been filled, effective 1 December.

On 5 June 2002, the Applicant requested administrative review of the decision not to select him for the post in question. In particular, he noted that the appointed candidate did not meet the language requirements of the VA. On 1 October, he filed an appeal with the JAB in Geneva. In its report dated 16 November 2004, the JAB concluded that the Applicant's case was time-barred, as he had submitted his request for administrative review almost two months after the statutory deadline. The Secretary-General accepted this conclusion on 14 March 2005.

II. The Tribunal recalls staff rule 111.2, which provides, in relevant part:

“(a) A staff member wishing to appeal an administrative decision, pursuant to staff regulation 11.1, shall, as a first step, address a letter to the Secretary-General, requesting that the administrative decision be reviewed; such a letter must be sent within two months from the date the staff member received notification of the decision in writing.

...

(f) An appeal [to the JAB] shall not be receivable unless the time-limits specified in paragraph (a) above have been met or have been waived, in exceptional circumstances, by the panel constituted for the appeal.”

These provisions are quite clear. Moreover, as the Tribunal held in Judgement No. 1301 (2006),

“the ‘exceptional circumstances’ referred to in staff rule 111.2 (f) must be strictly construed. According to the Tribunal in Judgement No. 913, *Midaya* (1999), they ‘must consist of events beyond the Applicant’s control that prevent the Applicant from timely pursuing his or her appeal’.”

This accords with the approach of the Tribunal on time limits in general. In Judgement No. 1106, *Iqbal* (2003), the Tribunal “reiterate[d] the importance it attaches to complying with procedural rules, as they are of utmost importance for ensuring the well functioning of the Organization”, and in Judgement No. 1046, *Diaz de Wessely* (2002), it held:

“In the Tribunal’s view, it is of the utmost importance that time limits should be respected because they have been established to protect the United Nations administration from tardy, unforeseeable requests that would otherwise hang like the sword of Damocles over the efficient operation of international organizations. Any other approach would endanger the mission of the international organizations, as the Tribunal has pointed out in the past: ‘Unless such staff rules [on timeliness] are observed by the Tribunal, the Organization will have been deprived of an imperative protection against stale claims that is of vital importance to its proper functioning’ (see Judgement No. 579, *Tarjouman* (1992), para. XVII)”.

III. In the present case, the Tribunal finds that the Applicant failed to comply with the relevant time limits and, in fact, that he missed the time limits twice.

First of all, the Applicant’s apparent ignorance of the outcome of the personnel exercise prior to receipt of the 19 February e-mail is somewhat surprising. Although the JAB determined that “[d]espite the fact that the [Applicant] was working in the same Service, the Panel considered that the benefit of the doubt would apply to [him, as he] might not have known which post the external candidate ... was actually working on ...”, the Tribunal finds this difficult to believe, and would have been less inclined to offer such benefit of the doubt. On the contrary, it considers that when a staff member works in a working environment in which his competitor in a promotion exercise is brought on board to perform the functions for which the exercise took place, it is disingenuous for said staff member to later claim that he was not formally informed of the outcome of the exercise. It is, of course, the duty of the Organization to diligently observe its rules about how persons participating in a promotion exercise will be informed of the outcome, so that they may exercise their rights in legal or other proceedings in a timely fashion. However, such duty does not exonerate an interested party who has the right to contest the Administration’s decision from exercising due diligence in requesting official information, especially when the relevant office structure means that he is well aware of the outcome of the process.

Secondly, and independent from the above, the Applicant was notified on 19 February 2002 that the post had been filled. Even taking this date as notification of the administrative decision - and, thus, the date on which his time limit for commencing formal proceedings began to run - the Applicant failed to comply with staff rule 111.2 (a), as he did not request administrative review until 5 June, almost two months after the already generous deadline of 19 April.

IV. In view of the foregoing, the Tribunal agrees with the JAB that the Applicant's appeal was not receivable, *ratione temporis*. Accordingly, his Application is rejected in its entirety.

(Signatures)



Spyridon Flogaitis
President



Jacqueline R. Scott
Vice-President



Brigitte Stern
Member

New York, 2 May 2008



Maritza Struyvenberg
Executive Secretary