



## **Introduction**

1. The Applicant contests the 12 May 2011 decision from the Office of Human Resources Management (“OHRM”) that she was not eligible for consideration or conversion from the FS-6 category to the Professional category during the course of a temporary assignment as a Subject Matter Expert (“SME”).

2. The Respondent contends that the decision was taken in accordance with the applicable regulations and rules.

## **Relevant background**

3. In September 2006, the Applicant joined the United Nations Interim Force in Lebanon (“UNIFIL”) on Temporary Duty from the United Nations Mission in Ethiopia and Eritrea and, on 12 December 2006, she took over as Officer-in-Charge of the Property Control and Inventory Unit. Following the war in Lebanon, the Applicant’s post was reclassified first at the P-3 level and later at the FS-6 level.

### **P-3 level post selection**

4. On 4 November 2010, the Applicant received an automated email from the Department of Field Support (“DFS”) announcing a Temporary Vacancy Announcement (“TVA”) for the position of Logistics Operations Officer at the P-3 level (reference No. TVA/2010/37761/37762/1311/LO). The TVA announcement listed that candidates should possess the following qualifications:

**Education:** Advanced university degree (Master’s degree or equivalent) in business administration, supply chain management, logistics operations/management, transport management or other related area. A first level university degree with a combination of relevant academic qualifications and experience may be accepted in lieu of the advanced university degree.

required. Logistics planning experience in a complex environment is required. Experience within the context of a humanitarian relief, military, emergency management, peacekeeping or disaster relief operation is desirable.

5. On 2 December 2010, the Administrative Management Policy Unit, Operation Support Service, Logistics Support Division, DFS, emailed the Applicant and informed her that she had been short-listed for the TVA. The Applicant was asked to confirm her interest and availability to participate in an interview on 8 December 2010.

6. Towards the end of January 2011, the Applicant emailed several staff members to inquire as to the status of her being considered for the TVA. On 31 January 2011, the Applicant emailed Ms. SB, Department of Peacekeeping Operations (“DPKO”) stating

Many thanks for your time today and for providing information regarding the TVA.

and stated that they were “look[ing] at all avenues to see whether [her] experience as FS-6 is sufficient to fulfil requirements”.

8. On 15 April 2011, the Applicant received three separate emails from the Logistics Unit, informing her she had met the pre-screening requirements for the P-3 level post of Property Disposal Officer, Vacancy Announcement (“VA”) #424970; the P-3 level post of Receivi

Case No. UNDT/NY/2011/088

Judgment No. UNDT/2014/062

stated that the remedy she was seeking was: (1) “[...] know as to why [she] was denied the temporary conversion and as of when [she] will meet the eligibility criteria to apply for a post at the P-3 or P-4 level as stipulated in the ST/AI”; and (2) “be deemed eligible for P-3 [level] positions”. The Applicant did not receive a response to either of her requests for management evaluation.

16. On 16 November 2011, the Applicant filed the present application whereby she requested “[c]onfirmation of eligibility for P-3 and P-4 posts based on credentials; compensation for violation of contractual rights and due process rights and loss of opportunity”.

17. On 23 December 2011 and 11 January 2012, the Respondent submitted a request for extension of time to file his reply due to the Management Evaluation Unit (“MEU”) having “informed the Responde

### **Applicant's submissions**

20. The Applicant's principal contentions may be summarized as follows:
- a. The Appeals were timely filed as there was no written notification of the decision. Further UNOMS' involvement from January to August 2011 in attempting to resolve the matter would have suspended the time limits;
  - b. OHRM's decision that the relevant professional experience needs to have been acquired post the qualifying degree is the result of a vague, arbitrary and restrictive interpretation of the eligibility requirements. This post was a temporary vacancy and was governed by ST/AI/2010/4 and not ST/AI/2010/3. Further, OHRM cannot rely on a guideline that was neither available to the staff member nor properly promulgated by the Organization. Finally, the Applicant obtained her bachelor's degree in 2010 and possessed the required experience at the time of her application.

### **Respondent's submissions**

21. The Respondent's principal contentions may be summarized as follows:
- a. The appeal of the Applicant's non-selection for the P-3 posts is not receivable as the Applicant did not request management evaluation of the decision within 60 days of the 31 January 2011 notification of the reasons behind her non-selection. The Applicant relies on outdated rules and jurisprudence to justify the receivability of her appeal. There was no need for the Applicant to be notified of the reasons for the decision not to select her, especially after her own acknowledgment that she was informed of the reasons for that decision;
  - b. A review of the facts and applicable rules shows that, at the relevant time, it was not possible to award her a P-3 level post, even on a temporary basis, for her to perform as a SME. The Applicant did not have the relevant





the P-4 and P-5 levels, provided that they have served for one year at their current level, meet the academic qualifications required for an appointment to the Professional category and, for P-5 positions, satisfy the lateral move requirements for promotion to the P-5 level.

6.5 A staff member holding a permanent, continuing, probationary or fixed-term appointment (with no appointment limitation) assigned from a headquarters location, including regional commissions, to a position one level higher than his/her current grade in a peacekeeping operation or special political mission, where a lien is

25. The Applicant, in her 5 and 20 July 2011 requests for management evaluation, contested three separate non-selection decisions due to OHRM determining that she did not have the required number of years of experience: (1) the TVA for which she had applied in November 2010; (2) the VAs for which she had applied in April 2011; and (3) OHRM's decision that she could not be granted a conversion to P-3 level to perform temporary duties as an SME with Umoja.

#### Non- selection for TVA

26. The record shows that the Applicant sent an email on 31 January 2011 stating that it was "helpful to know that [her] selection for the [TVA] was rejected by OHRM on the grounds that [she did] not have 4 years experience after obtaining [her] degree". She also requested that her non-selection be reconsidered in light of the fact that her professional experience as Chief Property Control Inventory since 2006 meant that she had the requisite experience.

27. On 1 February 2011, the Applicant sought advice from UNOMS regarding OHRM's decision. UNOMS subsequently offered to discuss her inquiries regarding the level of her qualifications and the related decision by OHRM. Following this, the Applicant requested a reconsideration of her non-selection on the grounds that she had held the post of Chief, Property Control Inventory since 2006.

28. As part of her 5 July 2011 request for management evaluation of the decision to deny her temporary conversion from the FS-6 category, the Applicant submitted that

in December 2010 while on staff exchange at [Headquarters] after undergoing a competitive selection process [she] was recommended for a temporary vacancy at the P3 level in the Logistic Support Section in the Department of Field Support (DFS). At that time OHRM had not endorsed [her] temporary conversion as [she] did not have the required one year seniority at the FS6 level. The Ombudsman's Office confirmed then that [she] would meet the eligibility criteria for the temporary conversion as of 1 May 2011. While I can understand the reason for the rejection for the [TVA] in January this year I do not understand why my case was rejected once again after 1 May 2011

when I met the eligibility criteria set out in section 6.4 of ST/AI/2010/3 (emphasis added).

29. The Applicant is therefore deemed to have been aware of her non-selection for the TVA, and the initial reasons on which it was based, at the latest by 31 January 2011. The Tribunal considers that based on her own submissions and the evidence before it, the Applicant, following UNOMS February 2011 intervention, received a different explanation as to why she had not been selected for the TVA in January 2011, namely that she did not have one year of seniority at the FS-6 level. The Applicant was aware and accepted the explanation provided to her regarding her non-selection, including the fact that she would only fulfil the condition of one year of seniority set by art. 6.4 of ST/AI/2010/3 in May 2011. Consequently, the Applicant's 31 January 2011 request for reconsideration was resolved by OHRM. The 31 January 2011 non-selection decision was confirmed but for a different reason.

30. The decision to deny the Applicant's request for reconsideration of her non-selection for the TVA due to her not having one year of seniority prior to May 2011 was not identified and expressly mentioned by the Applicant in either the 5 July 2011 or 20 July 2011 requests for management evaluation.

#### Non-selection to VA1-VA3

31. The Applicant applied for three P-3 posts and, on 15 April 2011, she was informed that she meet the pre-screening requirements for these posts. After undergoing the post selection process for each VA, the Applicant was informed, on 13 July 2011, that she had been "identified as a [Field Central Review Body] (FCRB) Candidate for the available post" – VA3 – and was asked to confirm her interest and availability for the post.

32. On 21 July 2011, the Applicant was informed that she had been endorsed by the FCRB for all three VAs (V1 – VA3) and that her profile would be maintained on a roster of selectable candidates for positions in Headquarters and Regional Commissions for the next three years.



request in her 20 July 2011 request for management evaluation. For purposes of efficiency and in fairness to the parties, the Tribunal will consider the merits of her application contesting her non-consideration to a temporary P-3 grade and non-conversion from an FS-6 level to a P-3 level.

38. On 15 April 2011, the Applicant was informed that she had been selected for a temporary post of SME with Umoja. On 21 April 2011, Umoja asked the Applicant's employer, UNIFIL, for a confirmation of her assignment with Umoja for six months. UNIFIL agreed to release the Applicant for a period of six months and insisted on being provided with a confirmation of the period during which the Applicant would be with Umoja in order to issue an internal TVA to "back-fill her position". That same day, UNIFIL received the requested confirmation. On 12 May 2011, UNIFIL was informed by the EO/DM that "due to a technicality, OHRM is not in a position to grant the Applicant a temporary grade at a P3 level" and asked if the office would agree to a reimbursable TDY for six months retroactive to 4 May 2011. UNIFIL responded that the Applicant's release was based on the understanding that she would be on assignment with Umoja for six months "during which she will be placed against an Umoja post" and her UNIFIL post will be used to find a temporary replacement. The TDY arrangement was not accepted by UNIFIL.

39. On 28 June 2011, UNIFIL and the Umoja office agreed that Umoja would reimburse UNIFIL for all costs related to the Applicant's assignment for the period of 27 April 2011 through 26 July 2011 after which the Applicant was expected to return to UNIFIL. The memorandum emphasized that

40. The Tribunal finds that on 21 April 2011, UNIFIL initially agreed that the Applicant's would be seconded to Umoja for a six months period so that they could advertise a temporary vacancy announcement for the Applicant's post. A secondment is a movement of a staff member from one organization (releasing organization) to another (receiving organization) in the interest of the receiving organization for a fixed period of time during which the staff member will normally be paid by, and be subject to, the staff regulations and rules of the receiving organization. When a staff member is seconded to another organization his or her contractual relationship with the releasing organization will be suspended until the expiry of the agreed period.

41. However, the problems identified by OHRM resulted in UNIFIL retracting their initial agreement and, per the 28 June 2011 memorandum, establishing that the Applicant's appointment would be limited to a three months loan for the period 27 April 2011 to 26 July 2011. A loan is a movement of a staff member from one organization to another for a limited period, during which he will be subject to the administrative supervision of the receiving organization, but will continue to be subject to the staff regulations and rules of the releasing organization. When a staff member is loaned, he will be under the administrative supervision of the receiving organization, but will have no contractual relationship with it, continuing to be subject to the staff regulations and rules and retaining his contractual rights with the releasing organization.

42. The Tribunal will analyse OHRM's 12 May 2011 decision that the Applicant could not be granted a temporary grade at the P-3 level "due to a technicality", taking into consideration the fact that UNIFIL retracted its agreement for the Applicant's secondment and only agreed to a loan.

43. Pursuant to art. 6.4 of ST/AI/2010/3 "Sta



31. As the Tribunal stated in Villamoran UNDT/2011/126, at the top of the hierarchy of the Organization's internal legislation is the Charter of the United Nations, followed by resolutions of the General Assembly, staff regulations, staff rules, Secretary-General's bulletins, and administrative instructions. Information circulars, office guidelines, manuals, memoranda, and other similar documents are at the very bottom of this hierarchy and lack the legal authority vested in properly prom



under the table in paragraph 6 [sic. para. 5] of the Guidelines that the relevant experience must be post-qualification experience”.

35. The Tribunal observes that while the vacancy announcement required “a minimum of five years of progressively responsible experience in procurement ... and an advanced university degree (Master’s degree or equivalent)”, it did not state that the progressively responsible experience was to be counted only if it followed the Master’s degree. Nor is such requirement included in the Guidelines, as is in fact acknowledged by the Respondent.

36. As the Dispute Tribunal stated in *Neault* UNDT/2012/123, the criteria to be used in evaluating candidates must be clearly stated in the vacancy announcement. Not having specified that the five years of experience had to be completed after the Master’s degree, in the absence of properly promulgated issuances stating otherwise the Respondent was bound by the terms of the vacancy announcement, which did not include any such requirement (*Id.*).

37. Furthermore, it is a contractual right of every staff member to receive full and fair consideration for job openings to which they apply. Even if the Guidelines contained a provision that only experience obtained after a Master’s degree shall be counted, the lawfulness of such provision would be questionable, as it would appear to be manifestly unreasonable and imposing unwarranted limitations on qualification requirements. Such a provision, if it were added to the Guidelines, may constitute an unfair restriction on eligibility of a group of staff members for appointment and promotion without proper basis in properly promulgated administrative issuances. It may be possible for a staff member to obtain relevant professional experience prior to obtaining a Master’s degree. In the Tribunal’s considered view, the currently unwritten practice of not counting the experience obtained prior to the Master’s degree is not supported by any regulations, rules, or other properly promulgated administrative issuances forming part of the staff member’s contract and lends itself to being arbitrary and manifestly unreasonable.

47. The Applicant stated that she joined UNIFIL in September 2006 in the Property Control and Inventory Unit at the FS-4 level on a temporary basis. On 12 December 2006, she was made Officer-in-Charge and, in January 2007, she received a fixed-term appointment at the FS-5 level. Following a restructuring and reclassification exercise which started in 2006, the Applicant’s post was initially found to be at the P-3/P-4 level, but was finally reclassified at the FS-6 level with effect from 1 January 2008. Due to administrative delays caused by communication

complications between Headquarters and UNIFIL, as well as the time required to allow for technical clearance and a formal interview process, the Applicant's appointment was not completed until May 2010.

48. Consequently, from September 2006, the date on which the Applicant started her functions as officer-in-charge with UNIFIL, until June 2011, when the contested decision was taken, the Applicant's professional experience, prior to and after the obtention of her Master's degree totaled four years and 8 months which is less than the required five years of professional experience required to be considered for a P-3 post.

49. As of 27 April 2011, the Applicant met only one of the required cumulative conditions: a Master's degree obtained in May 2010. The second condition—one year4(48.)Tj/TT6 1 Tf1e

the mandatory requirement of five years professional experience, did not fulfill the conditions to be considered eligible for a temporary P-3 position.

52. The Tribunal notes that in November 2011, soon after the Applicant accumulated five years of professional experience, she was selected and promoted to a P-3 level post. Further, in June 2013, the Applicant was selected for a temporary assignment at the P-4 level in New York. The initial explanation received by the Applicant, similarly to *Korotina*, that she was not eligible due to the fact that she did not have five years of relevant professional experience after the obtention of her Master's degree in 2010 was no longer sustained by OHRM. Consequently, the Applicant's five years of professional experience calculated as of November 2011, included the entirety of the period prior to, and after, the obtention of her Master's degree—from September 2006 until October 2011. The Respondent, a year prior to the issuance of *Korotina* which clarified the legal standing of Guidelines, correctly applied the Guidelines deeming the Applicant not eligible to a P-3 level post.

53. The Tribunal concludes that despite shortcomings in the process, the Applicant's rights to fair consideration were respected since she was actually selected as a SME. The OHRM decision not to endorse and grant her temporary conversion to the P-3 level while with Umoja was valid and lawful.

#### Denial of a conversion from FS-6 to P-3

54. The Tribunal finds that ST/AI/2010/4, which governs the "Administration of temporary appointments", does not contain any provisions that would render the conversion of a staff member at the FS-6 level to that of a P-3 level possible during a temporary assignment such as a secondment.

55. Following UNIFIL's 12 May 2011 decision that the Applicant would be loaned to Umoja and that her contract would not be suspended, the only existing contractual relationship was between UNIFIL and the Applicant who remained on an FS-6 post.

56. On 28 June 2011, the Organization properly determined that the Applicant could not be converted to the P-3 level because there was no contractual relationship between the Applicant and Umoja seeing that UNIFIL had decided that the Applicant would be loaned to Umoja and that her contract would not be suspended.

**Conclusion**

In the light of the foregoing the Tribunal DECIDES

57. The application is rejected.

(Signed

Judge Alessandra Greceanu

Dated this 13<sup>th</sup> day of June 2014

Entered in the Register on this 13<sup>th</sup> day of June 2014

(Signed

Hafida Lahiouel, Registrar, New York