



Introduction and procedure

1. On 23 April 2013, the Applicant, then unrepresented, filed an application contesting several decisions made by the United Nations Office for Project Services (“UNOPS”) and the United Nations Development Programme (“UNDP”).
2. By Order No. 50 (GVA/2013) of 3 May 2013, the application was split into two separate cases, registered under Case Nos. UNDT/GVA/2013/021 and UNDT/GVA/2013/022, respectively, and served on the Respondent, who filed his reply on Case No. UNDT/GVA/2013/021 on 31 May 2013.
3. The Tribunal ordered that the case at hand—No. UNDT/GVA/2013/021—addresses exclusively the application against the decision not to select the Applicant for the position of Portfolio/Grants Manager, at the P-4 level, within the Switzerland Operations Centre (“SWOC”), UNOPS (the “disputed post”).
4. On 19 June 2013, the Applicant instructed counsel to represent him in this matter, and on the same date he same S

Facts

8. The Applicant started employment at the SWOC, UNOPS, as Portfolio Manager of the Environment Portfolio, at the P-3 level, on 1 March 2009, in Geneva, Switzerland. In 2011, the then Director, SWOC, decided to assign the Applicant to the Water-Sanitation and Hygiene (“WASH”) portfolio within SWOC, whereas the Environment portfolio was assigned to the other Portfolio Manager, SWOC, equally at the P-3 level. The then Director, SWOC, subsequently left UNOPS in September 2011.

9. On 15 December 2010, a “Committee”, composed of the Executive Director, UNOPS, the Deputy Executive Director, UNOPS, and the Director, Outreach and Partnerships Group (“OPG”), endorsed the decision to assign, effective 1 January 2011, the Project Manager, Small Grants Program, North America Office (“NAO”), P-4 level, from New York to the OPG, UNOPS Headquarters in Copenhagen as Community Grants Advisor. This assignment was later extended, several times, until the end of 2012. The incumbent of the post of Community Grants Advisor was subsequently selected for the disputed post (the “selected” or “successful” candidate).

10. On 29 February 2012, an Investigator, Internal Audit and Investigation Group (“IAIG”), informed several UNOPS staff member, including the Applicant, that the IAIG had received a complaint regarding a contract with the Renaissance Mumbai Convention Center, and that it had decided to conduct an initial assessment in order to determine if it warranted an investigation.

11. The former Director, OPG, started his duty as new Director, SWOC, on 1 June 2012.

12. On 5 June 2012, the selected candidate, received delegation of authority for procurement and supply chain practice, as Project Manager, SWOC, Europe and the Middle East (“EMO”) Regional Office.

13. By email of 7 August 2012, the new Director, SWOC, informed the Applicant that the P-3 position he encumbered would be abolished effective

Parties' submissions

19. The Applicant's principal contentions are:

a. Well before he took on his position, the Director, SWOC, abused his discretion and authority to prepare the ground and to position the selected candidate on a P-4 Portfolio Manager position at SWOC;

b. The successful candidate was transferred to a new position as Community Grants Advisor, in UNOPS Headquarters, in January 2011, to work at the newly created OPG, under the leadership of the Director, OPG, who subsequently became the Director, SWOC; the transfer of the selected candidate at his P-4 level, and the funding thereof, were approved by a Committee composed, *inter alia*, of the then Director, OPG;

c. When it was decided that the OPG, in its form at the time, should be abolished, the Director, OPG, was granted the position of Director, SWOC, without competition, by decision of the Executive Director, UNOPS; since there was no position available within SWOC at the P-4 level to place the incumbent of the Community Grants Advisor, OPG, it was decided to upgrade the Applicant's post to the P-4 level, to advertise the vacancy and

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g. The terms of reference of the UNOPS Standard Portfolio Manager were reviewed to adjust them with the profile of the Community Grants Advisor, i.e. that of the selected candidate;

h. The members of the interview panel were selected so as to ensure the selection of the successful candidate, and for their conflict of interest with the Applicant; as such, the latter was denied his right to full and fair consideration;

i. One panel member was the Director, IAIG, who had a conflict of interest, since prior to the interview, IAIG had launched an investigation into issues falling within the Applicant's portfolio. While the case was eventually closed, the process was used to intimidate the Applicant and to leave the way to rumours and allegations about his role in the case under investigation; during the interview, the Director, IAIG, asked an inappropriate question relating to issues relevant to the ongoing investigation; the Respondent's argument that the Applicant was only a fact witness, and not the subject of the investigation, does not change the fact that the Director, IAIG, could not be completely neutral with respect to the Applicant in the selection process, since he was the Portfolio Manager for the incident that was being investigated;

j. The Director, IAIG, did not have the profile to sit as a technical expert in the interview panel, since he did not have the requisite understanding of what the post required;

k. Another member of the panel was the Programme Manager, Global Sanitation Fund ("GSF"), WSSCC; the Applicant, as Portfolio Manager, Water-Sanitation and Hygiene ("WASH"), SWOC, had, on many occasions, to reject unfounded requests emanating from the Programme Manager, GSF, WSSCC, and his team and inform UNOPS management of risks of breaches to UNOPS Rules and Regulations or breaches of UNOPS fiduciary duty; the participation of the Programme Manager, GSF, WSSCC, in the interview panel was therefore clearly a conflict of interest and disadvantaged the

Regional Director or EMO Deputy Regional Director, despite them being copied on these messages; the allegations made against him by the EMO Regional HR Specialist were never followed up;

r. Headquarters and the EMO Regional Office Management and staff created artificial obstacles to obstruct and impede the Applicant's work which finally impacted his performance;

s. These events, which were part of the process leading to his non-selection, constitute harassment, and led to a biased restructuring and recruitment process;

t. He submitted a request for an investigation into the harassment he was subjected to to the United Nations Office of Internal Oversight Services ("OIOS") and the United Nations Ethics Office, in 2013, which both advised him that he should submit his case to UNOPS, IAIG, or UNOPS Ethics Office; he did not follow this advice because of the evident conflict of interest; however, these events impacted on his non-selection and have to be taken into account.

20. The Respondent's principal contentions are:

a. The Applicant refers to some decisions which were not subject to

appointment; the successful candidate assumed his functions in January

i. Neither the Director, SWOC, nor the selected candidate were involved in the decision to assign the UNFCCC loan project to SWOC; when the UNFCCC loan project was assigned to SWOC, the successful candidate, remained in Copenhagen, as Community Grants Advisor, OPG, and was therefore not transferred to SWOC;

j. The Applicant's P-3 post would have been abolished regardless of whether the UNFCCC loan project was assigned to SWOC or to any other unit;

k. The allegations concerning the Director, SWOC, are unfounded, particularly because it is normal that a focal point be appointed for audit purposes; moreover, both the Applicant and the Director, SWOC, were on paternity leave in summer 2012 and, hence, their opportunities to meet were limited; the Director, SWOC, was free to organize meetings with clients, without including any Portfolio Manager;

l. Since the post was reclassified to the P-4 level, it was necessary to advertise the post for competitive selection; the WASH portfolio did indeed require grants related expertise;

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- p. The application should be dismissed in its entirety.

Consideration

21. The Tribunal recalls the jurisprudence of the Appeals Tribunal in appointment and promotion matters, whereby a selection should be upheld when candidates have received full and fair consideration, when discrimination and bias are absent, when proper procedures have been followed, and when all relevant material has been taken into consideration (*Rolland* 2011-UNAT-122; *Charles* 2013-UNAT-286). In *Rolland*

29. Finally, the Applicant's argument that the Director, IAIG, had a conflict of interest in view of the then IAIG ongoing investigation into issues falling within

purpose of this rule and considers that it can legitimately be argued that in view of the similarity of the management functions of the Director, IAIG, and those of the disputed post, the Director, IAIG, was an expert under the above-quoted rule. Moreover, and maybe more importantly, the Tribunal finds that there can be no doubt that the Programme Manager, GSF, WSSCC, though he was sitting on the Panel as a “client representative”—beyond what was required by the applicable rules—also fulfilled the criteria of a technical expert for the purpose of the above-referenced provision. Indeed, in view of the profile of GSF, WSSCC, and the interaction of the Programme Manager, GSF, WSSCC, with SWOC/WASH, he certainly had in-depth knowledge with respect to the skills and expertise required for the disputed post. This is also supported by the fact that it was in fact him, together with the Director, SWOC, who marked the written test which the Applicant, together with four other candidates, passed successfully. The Tribunal is therefore satisfied that sec. 14.7.3(b)(i)(2) of the UNOPS Recruitment - Instructions and Procedures was complied with.

32. An additional argument of the Applicant is that the selection process was biased because the successful candidate may have had early access to the test and interview questions. The Tribunal notes that the Applicant does not provide any evidence for this allegation, and stresses that the Applicant was one of the candidates who successfully passed the written test and who was invited to the interview on that ground, together with four other candidates. The minutes of the interview Panel noting the “studied approach” of the successful candidate to respond to questions clearly and exclusively refer to the interview, and not to the written test, which had been assessed independently and was the basis to invite candidates to the interview. Therefore, the Tribuna

Applicant—scored under the passing threshold, with the Applicant ranking fourth out of five interviewed candidates, with 65 points, and the other two scoring 58 and 70 points, respectively. The successful candidate scored 88 points.

34. In view of the minutes of the Interview Panel showing that the Panel was unanimous with respect to the Applicant not obtaining at least the passing score of 75 points, the Tribunal's conclusion that the composition of the Panel was in accordance with the applicable rules and the Applicant's failure to prove any conflict of interest for any of the Panel members, the Tribunal concludes that the selection procedure was correctly followed, that th