



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Hafida Lahiouel

LEMONNIER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Daniel Trup, OSLA

Counsel for Respondent:
Steven Dietrich, ALS/OHRM, UN Secretariat
Alister Cumming, ALS/OHRM, UN Secretariat

Introduction

1. On 5 March 2015, the Applicant, a former staff member of the United Nations Stabilization Mission in Haiti (“MINUSTAH”), serving at the P-5 level on a continuing appointment, filed an application challenging his non-selection for the position of Chief, Integrated Support Services (“CISS”), MINUSTAH. The Applicant submits that the Respondent advertised the CISS post without providing him priority consideration under staff rule 9.6(e) and that he was not considered fully and fairly for the post.
2. On 8 April 2016, the Respondent replied to the application, submitting that the decision to terminate the Applicant’s appointment was lawful.

Procedural history

3. On 24 August 2016, the United Nations Appeals Tribunal published *Lemonnier* 2016-UNAT-679, remanding Case No. UNDT/NY/2015/011 “for a consideration on the merits” (see paras. 50 and 53 of the Appeals Tribunal’s judgment). Effective 24 August 2016, the matter was re-opened by the New York Registry under Case No. UNDT/NY/2015/011/R1, as per the Tribunal’s standard procedures.
4. On 30 August 2016, the Tribunal issued Order No. 206 (NY/2016), inviting the parties to consider whether the present matter could also be settled amicably, in view of their efforts at informal resolution of Case

5. On 1 September 2016, the parties filed a joint submission confirming their agreement to attempt informal resolution and requesting that the case be suspended for a period of one month.

6. On 2 September 2016, the Tribunal issued Order No. 210 (NY/2016), suspending the proceedings in Case No. UNDT/NY/2015/011/R1 until 29 September 2016.

7. On 27 September 2016, the Tribunal held a case management discussion in the present case and Case No. UNDT/NY/2016/007 (in which the Applicant contested the termination of his continuing appointment). Counsel for the Applicant stated that no hearing was needed in these cases. Counsel for the Respondent stated that the Respondent had only one witness in relation to Case No. UNDT/NY/2016/007. The parties agreed that they would provide a stipulation regarding that witness's statement of proposed evidence, following which the parties would be provided with the opportunity to file their closing submissions. The parties agreed that both cases would thereafter be decided on the papers.

8. By Order No. 224 (NY/2016) dated 27 September 2016, the parties were directed to file a joint submission by 30 September 2016, including a written confirmation that they consented to the Tribunal deciding the two cases on the papers before it and the parties' views as to whether there was any practical benefit to consolidating these two cases through an order for a combined proceeding, given that the matter would be decided on the papers. The parties were also directed to file their closing submissions by 4 October 2016.

9. On 7 October 2016, the parties filed a joint submission pursuant to Order No. 224 (NY/2016), stating, *inter alia*, that the parties consented to the

Tribunal deciding this case on the papers and that the parties saw no practical benefit to consolidating the two cases.

10. On 10 October 2016, the parties filed their closing submissions.

Facts

11. The Applicant joined the Organization in 2001 as a P-2 level staff member. By 2010, he was rostered for P-4 and P-5 level positions in the area of information and communication technology resources.

12. Effective 20 December 2010, the Applicant joined MINUSTAH as Chief Telecommunications and Information Technology Officer at the P-4 level on a fixed-term appointment. Eff

17. On 17 April 2014, MINUSTAH advertised a job opening for the CISS post. It was advertised as a “recruit from roster” selection exercise, which meant that it was open only to candidates who were already on pre-approved rosters. The job opening required a minimum of ten years of relevant experience “*both in the field and at headquarters*” (emphasis added). The job opening further stated, under the “Responsibilities” section, that the incumbent would “manag[e] and coordinat[e] all multifunctional support requirements between the UN Headquarters, mission components and other UN and non-UN entities.” The Applicant was on the pre-approved roster and was one of ten candidates considered for the position. However, he was found as not meeting the mandatory requirement of Headquarters experience indicated in the job opening.

18. By letter dated 1 October 2014, the Applicant was notified that he had been granted a continuing appointment effective 30 September 2014.

19. By memorandum dated 1 December 2014, the outcome of the selection process for the CISS post was submitted to the Director of Mission Support for approval. The memorandum stated:

... Approval is requested for the selection of [the successful candidate] for the position of CISS (P-5), against post no. 51511 which is authorized under O/CISS for the approved budget period 1 July 2014–30 June 2015.

... In making the selection decision, a total number of 10 screened candidates from the Recruit from Roster (RfR) Job Opening No. 34579 for CISS at the P-5 level were considered. The list of nominated candidates is attached.

... Having considered the recommended candidates, I confirm that [the successful candidate] is the most suitable candidate for the position, on the basis of her relevant experience in field missions and at the HQ level. I also confirm that in recommending the selection of [the successful candidate] I have taken into consideration MINUSTAH human resources

objectives and targets, especially with regard to geography and gender. Due consideration was also given to internal candidates as well as candidates that were victims of malicious acts or natural disasters; serving staff members who have served under the former 200 and 300 series of the staff rules; candidates from troop and police contributing countries; and prior service or employment of candidates with relevant experience in field duty stations or locations for which relevant field experience is highly desirable as applicable and as stipulated in General Assembly resolution 63/250.

20. On 1 December 2014, the Director of Mission Support signed off on the memorandum dated 1 December 2014, approving the selection of the recommended candidate.

21. The Applicant subsequently requested management evaluation of the decision not to selection him for the post of CISS. By letter dated 5 February 2015, he was notified that the outcome of management evaluation was to uphold the decision of 1 December 2014.

22. On 5 March 2015, the Applicant filed the present application before the Tribunal.

23. On 1 September 2015, the Applicant was notified of the decision to terminate his appointment, effective 31 August 2015. The termination date was subsequently amended to 1 September 2015.

Consideration

Applicable law

24. Staff regulation 1.2(c) provides:

General rights and obligations

(c) Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of

staff rule 9.6(e). He, therefore, lost a fair chance of being selected for the CISS

a. With regard to the period of 1 January 2015 to 1 September 2015, the Applicant was fully employed by the United Nations and suffered no pecuniary harm;

b. With regard to the period of 2 September 2015 to 31 December 2016, the Applicant's lost earnings are fully compensated in *Lemonnier* UNDT/2016/186, which compensated him for the loss of earnings in the period of September 2015 to September 2017—an even longer period than the period covered by the present case. The Tribunal cannot award the Applicant additional comp

supporting the claim for such relief (*Kozlov and Romadanov* 2012-UNAT-228; *Hasan* 2015-UNAT-541). No evidence has been provided by the Applicant to substantiate his claim for compensation for moral injury, nor does the Tribunal consider that the breach of his rights was of such a fundamental nature that it should give rise, in and of itself, to an award of compensation in addition to compensation for his pecuniary loss (see also art. 10.7 of the Tribunal's Statute, precluding awards of exemplary or punitive damages). Accordingly, the claim for an award for moral injury is dismissed.

Orders

46. The application succeeds. However, in view of the compensation ordered in *Lemonnier* UNDT/2016/186, no further compensation is warranted for pecuniary loss. The Applicant's request for compensation for moral injury is rejected.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 14th day of October 2016

Entered in the Register on this 14th day of October 2016

(Signed)

Hafida Lahiouel, Registrar, New York