

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

G.
v.
UNIDO

127th Session

Judgment No. 4061

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr M. G. against the United Nations Industrial Development Organization (UNIDO) on 5 July 2016 and corrected on 18 August, UNIDO's reply of 15 December 2016, the complainant's rejoinder of 13 February 2017, UNIDO's surrejoinder of 22 May, UNIDO's additional submissions of 27 September 2017 and the complainant's e-mail of 11 January 2018 informing the Registrar that he did not wish to comment thereon;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decisions not to cancel the appointment of an external candidate following a recruitment procedure and not to organise a new procedure open to internal candidates only.

The complainant was promoted to grade G-5 on 1 July 2010. In June 2012 UNIDO issued a vacancy announcement for the post of Supervisor, Electronics Workshop and Conference Servicing, at grade G-6, which was recirculated in September 2012. The complainant applied for the post, but he was informed in October 2013 that an external candidate had been selected and that his candidature could not be considered, as he did not meet the eligibility requirements in terms

of seniority-in-grade at the time of his application. According to paragraphs 18 and 78 of the Human Resource Management Framework of 25 May 2010 (HRM Framework), applications to higher level posts are only receivable if the staff member has fulfilled the seniority-in-grade requirement (four years for a promotion from G-5 to G-6), less one year, and has served at least two years in her or his current post.

In October and November 2013 the complainant sent several e-mails to the Office of Internal Oversight Services (IOS) and to the Director General alleging that the recruitment of the successful candidate would put the interests of UNIDO in danger, that the successful candidate was employed by a contractor being investigated by IOS and that, if appointed, the successful candidate would jeopardize the investigation by covering up the irregularities committed by the contractor. IOS submitted the allegations of conflict of interest to HRM, which informed IOS that it had decided to proceed with the appointment of the successful candidate.

Meanwhile, on 29 November 2013, the complainant requested that the Director General cancel the decision to appoint an external candidate to the post for which he had applied and to order that a new selection process for internal candidates be organized. The complainant's request for review was rejected by a memorandum of 27 January 2014, on the ground that he was not eligible to apply at the time the vacancy announcement was posted, based on the criteria set out in the HRM Framework. In light of his allegations relating to the recruitment process and results, the matter had been referred to the Director of IOS for review. IOS issued its investigation report in January 2014, finding that the selected candidate had not been involved in the project under investigation by IOS.

The complainant appealed against the decision of 27 January 2014 before the Joint Appeals Board (JAB), which recommended, in its report of 10 March 2016, that the appeal be dismissed in its entirety. Considering the fact that the recruitment had taken over one year and nine months, the JAB recommended that in future the utmost efforts should be made to conclude recruitment procedures within shorter timelines.

By a memorandum of 7 April 2016 the Director General decided to endorse the JAB's recommendation to dismiss the appeal in its entirety. That is the impugned decision.

The complainant asks the Tribunal to quash the appointment of the external candidate to the post of Supervisor, Electronics Workshop and Conference Servicing, and to order that a new recruitment procedure be undertaken. He claims material damages for UNIDO's failure to promote him to the said post in 2013, moral damages in the amount of 80,000 euros, as well as costs, with interest on all sums awarded. He also claims damages for the delay in the internal appeal process and asks that the Tribunal order an investigation into the circumstances under which the successful candidate, a former employee of a company under investigation, was appointed to the said post.

UNIDO submits that the complaint is manifestly devoid of merit.

In its additional submissions UNIDO informed the Tribunal that the Director General had awarded the complainant 3,750 euros in moral damages for the delay in dealing with his internal appeal.

CONSIDERATIONS

1. The complainant impugns the Director General's 7 April 2016 decision which endorsed the JAB's conclusion that the selection of the successful candidate for the position of Supervisor, Electronics Workshop and Conference Servicing, a G-6 grade post, did not violate any of the complainant's contractual rights and was made in accordance with the applicable statutory requirements.

2. This complaint stems from the decision that, as the complainant did not meet the seniority-in-grade eligibility requirements in the HRM Framework, his application for appointment to the contested position was not receivable pursuant to the provisions in the Framework and, therefore, was not considered. The complainant contends that "formalistic" grounds were used to reject his application even though he had performed the functions of that post for six months and would have fulfilled the seniority requirement when the selected candidate took up the post in

December 2013. He maintains that the Buildings Management Section managers organized the timing of the interviews for the post to finalize them before he reached the required seniority-in-grade. The complainant also submits that the wording of the HRM Framework does not support the exclusion of his application.

3. The HRM Framework at paragraph 18 relevantly states:

“Applications to higher-level posts other than to field posts are only receivable if the staff member has fulfilled the seniority-in-grade requirements, less one year, as per paragraph 78, and has served at least two years in his or her current post. [...]”

Paragraph 78 provides that in addition to excellent performance, attainment of the minimum seniority-in-grade requirement as provided in the same provision is “one of the eligibility requirements for promotion”. In the complainant’s case, the applicable seniority-in-grade requirement was four years less one year as provided in paragraph 18.

4. The closing dates for the two vacancy announcements circulated for the Supervisor post were 4 July 2012 and 15 October 2012. The complainant does not dispute that he did not meet the eligibility requirement until July 2013, some months after the last closing date. Accordingly, the two applications he submitted for the Supervisor post in 2012 were clearly not receivable as contemplated in paragraph 18 and the Administration did not err in rejecting his applications on this ground. Indeed, if the Administration had accepted the applications, it would have been in violation of its own rules.

5. Pursuant to Article II, paragraph 5, of the Tribunal’s Statute, the Tribunal’s competence is limited to complaints relating to a “decision involving the terms of a staff member’s appointment or the provisions of the Staff Regulations” (see Judgments 3426, under 16, and 3136, under 11). The Tribunal has consistently held that a staff member’s right to challenge the appointment of another staff member to a particular post is not contingent on whether she or he had a relatively good chance of being the successful candidate (see Judgment 2832, under 8, and the cited cases). However, the same case law also establishes that the

individual concerned must be eligible to occupy the post, otherwise it could not be said that the individual was legally affected by the disputed appointment. As the complainant was not eligible to apply for appointment to the post at the relevant time, his complaint does not disclose a cause of action and must be dismissed.

6. The complainant also advances a number of allegations that are irrelevant in terms of his eligibility to apply for the Supervisor post. As the complainant's request for oral hearings was to adduce evidence in relation to these irrelevant allegations, it is denied. Lastly, as the complainant's claim for damages for the delay in the internal appeal process has been adequately compensated by UNIDO, it will be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 23 October 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ