

**S.**  
**v.**  
**WHO**

**126th Session**

**Judgment No. 4033**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr B. S. against the World Health Organization (WHO) on 25 June 2014 and corrected on 28 July, WHO's reply of 12 December 2014, the complainant's rejoinder of 6 March 2015, corrected on 13 March, and WHO's surrejoinder of 16 June 2015;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant primarily challenges his non-selection for a post.

At the material time the complainant held a continuing appointment with WHO at grade P.5. In late 2010 WHO published vacancy notice HQ/10/IER/FT530 for the position of Executive Secretary, Health Metrics Network (HMN). The complainant was one of four shortlisted candidates. In January 2011 he took a written test and was interviewed. The selection panel ultimately decided not to recommend any candidate for the position. By an email of 1 April 2011 the complainant was informed by the Administration that he had not been selected and that it had been decided not to fill the position at that time.

In a letter of 29 April 2011 to the Director-General the complainant asserted that the selection procedure was flawed and he sought appointment to the aforementioned position. Having received no reply, on 12 May he reiterated his request and asked for a positive response by 20 May.

In May 2011 the complainant filed a notice of intention to appeal with the Headquarters Board of Appeal (HBA) in which he challenged the decision of 1 April.

By a letter of 9 July 2011 the complainant was notified that the Director-General had concluded that the correct selection procedures for the contested post had not been followed. She had decided to cancel the competition for vacancy notice HQ/10/IER/FT530, re-advertise the position at a later date and conduct a new competition (in the event that the position remained open for selection). On 12 July the complainant wrote to the Director-General and asserted that it would be irregular, unwarranted and unethical to conduct a new competition and he reiterated his earlier request to be appointed to the post. On 3 August 2011 he was informed that the position would not be filled for at least 12 months.

The internal appeal proceedings were subsequently suspended by agreement between the parties. In the absence of a settlement, on 5 May 2012 the complainant submitted a statement of appeal to the HBA.

The HBA transmitted its report to the Director-General on 27 January 2014. It concluded that the selection procedure had been tainted with several procedural flaws and that both the decision not to select any candidate for the position of Executive Secretary, HMN, and the subsequent decision by the Director-General to cancel the selection procedure were lawful. It recommended that the complainant's appeal be dismissed.

By a letter of 28 March 2014 the Director-General informed the complainant that although she did not agree with all of the HBA's findings, she shared its conclusion that there were serious procedural flaws in the selection procedure which warranted its being set aside. In addition, she endorsed its conclusion that the decision to cancel the competition was lawful and that there was no evidence of personal

prejudice or bad faith on the part of the selection panel or others. That is the impugned decision.

The complainant asks the Tribunal to set aside the Director-General's decisions not to appoint him to the post of Executive Secretary, HMN, to re-advertise that post, and to postpone the selection proceedings for at least 12 months. He seeks material damages in the amount of 30,000 Swiss francs, moral damages in the amount of 50,000 Swiss francs, and reimbursement of his legal fees in the amount of 20,000 Swiss francs.

WHO asks the Tribunal to dismiss the complaint in its entirety.

#### CONSIDERATIONS

1. The complainant impugns the 28 March 2014 decision of the Director-General to dismiss his internal appeal in accordance with the recommendations of the HBA. The complainant had appealed the decision, dated 1 April 2011, not to select him for the position of Executive Secretary, HMN, and not to fill the position at that stage. The HBA also considered the 9 July 2011 decisions to cancel the competition for vacancy notice HQ/10/IER/FT530 for procedural flaws in the selection procedure and to re-advertise the position and carry out the competition again if the position remained available for selection. The Tribunal notes that it was later decided, in November 2012, that the HMN would be dissolved for budgetary reasons and the post was consequently never re-advertised. In the 28 March 2014 decision, the Director-General confirmed her decision to cancel the competition for vacancy notice HQ/10/IER/FT530 as it was vitiated by procedural flaws. She noted that as the decision to cancel the competition was lawful, she did not examine the selection process in detail beyond considering if there was personal prejudice or bad faith. She agreed with the HBA that there was no evidence of personal prejudice or bad faith on the part of the selection panel or others.

2. In support of his claims, the complainant submits that the decision not to appoint him was based on violations of due process; that

the decision to cancel the competition violates the Tribunal's case law; and that the Administration mishandled his candidature due to prejudice.

3. The HBA identified the following four major flaws in the selection procedure which rendered the procedure unlawful and justified its cancellation:

- (a) irregular composition of the selection panel;
- (b) confidentiality issues with the selection;
- (c) an undated and unsigned selection report entailing the absence of a formal selection panel recommendation; and
- (d) the selection panel's recommendation was conveyed to the HMN Board prior to the Director-General's pending approval.

The HBA examined whether the panel had acted within its remit in not recommending any candidate for the post in question and found that it had. It found that there was no evidence of personal prejudice against the complainant and it therefore recommended that the appeal be dismissed.

4. The complaint is unfounded. The Tribunal considers that the irregular composition of a selection panel is a flaw which affects all of the candidates as it renders the procedure unlawful from the outset. The HBA found that WHO had chosen to follow an adapted procedure for the selection regarding vacancy notice HQ/10/IER/FT530, but that it did not provide evidence that such an adapted procedure had been properly authorized by the Director-General. Regardless, the Tribunal notes that even if the adapted procedure was lawful, the selection panel did not follow it properly. First, according to the adapted procedure, the selection panel was to be composed of four members, one of whom was to be a member of the HMN Board (in place of the Assistant Director-General from another cluster or staff member designated by her or him, as normally provided for in the relevant provisions). Instead, there were five selection panel members, two of whom were HMN Board members. Second, it appeared that only one of the selection panel members had signed a confidentiality undertaking. Third, the selection panel did not provide proof that all candidates had been informed by email that adapted selection proceedings would apply in the competition for the

position of Executive Secretary, HMN. The Tribunal notes that one of the two HMN Board members (the only selection panel member who had signed the confidentiality undertaking) had not taken part in the selection panel's interviews and final deliberations but there is no evidence that the candidates were advised of this change in composition, nor of how or why this decision was taken.

5. The complainant's claims of prejudice and conflict of interest are unfounded. The HBA found that the evidence provided by the complainant did not prove any prejudice or conflict of interest. The Tribunal also finds the claims to be unsubstantiated. The evidence provided by the complainant regarding the claim of conflict of interest on the part of one of the selection panel members is unconvincing. As noted by the HBA, the evidence provided by the complainant (a memorandum dated 12 June 2007) is irrelevant as its content makes no reference whatsoever to the selection panel member in question, and an undated letter from Ms G. provides no first-hand testimony and instead refers only to hearsay, i.e. what the complainant had reported to Ms G.

6. The Tribunal finds that the decision to cancel the selection proceedings regarding vacancy notice HQ/10/IER/FT530 was lawful. Considering that, there is no need to examine the complainant's non-selection, as the related claim is unfounded. The complainant requested the disclosure of documents including a copy of the selection report. The Tribunal notes that the complainant was provided with a copy of the regular and adapted selection procedures and a copy of the selection report, redacted to remove references to the other three shortlisted candidates. The complainant contends that the remaining documents were requested to inform him of the reasoning behind the decisions not to select him and to cancel the competition. The Tribunal finds that the complainant has been fully informed of the reasoning for the cancellation of the competition, i.e. procedural flaws, and as such, considering the subject of the present case, this request for documents was speculative. It is also useful to note that the 9 July 2011 decision was properly communicated to the complainant by the Director of Human Resources Management, on behalf of the Director-General, through a normal

administrative practice. In light of the above considerations, the complaint is unfounded and must be dismissed in its entirety. In the result, the complainant is not entitled to an award of damages.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 11 May 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ