

**C.**  
**v.**  
**WTO**

**136th Session**

**Judgment No. 4677**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr G. C. against the World Trade Organization (WTO) on 27 April 2020 and corrected on 29 May, WTO's reply of 31 August 2020, the complainant's rejoinder of 12 November 2020, corrected on 19 November, and WTO's surrejoinder of 29 January 2021;

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 challenges the decision not to select him to positions advertised internally.

On 12 July 2019, WTO issued vacancy notice INT/F/19-45 to fill two G-10 positions of Counsellor, Senior Dispute Settlement Lawyer, in the Rules Division. This vacancy notice was published for an internal competition.

The complainant, a G-9 Counsellor in the Legal Affairs Division, applied for the positions and was informed on 20 August 2019 that his profile did not meet the requirements of the advertised positions and that the vacancy notice would shortly be posted externally due to the limited number of applicants meeting the minimum requirements. On that

same day, the complainant requested, pursuant to Staff Rule 114.1bis, a statement of reasons specifying the minimum requirements that he did not meet and the basis for such finding.

The following day, on 21 August 2019, the complainant requested the Director-General to review the 20 August decision. He asked, *inter alia*, that the vacancy notice be withdrawn and a new call for expression of interest issued. He added that it “may be advisable for the Director-General” to suspend the recruitment process pending resolution of the “complaints triggered by the minimum requirements at issue” bearing in mind that the Human Resources Division (HRD) had indicated its intention to rapidly post an external vacancy notice.

On 22 August 2019, WTO issued vacancy notice EXT/F/19-55 advertising an external competition for the same positions. However, some of the requirements that were laid down in vacancy notice INT/F/19-45 were modified. The complainant did not apply.

On 4 September 2019, HRD replied to the complainant’s request for statement of reasons of 20 August 2019 indicating that he did not meet the requirements of “extensive supervisory experience” and of “significant recent practical experience in the conduct of or participation in domestic trade remedies proceedings”.

The complainant’s request for review was rejected in late September 2019. He filed an appeal with the Joint Appeals Board (JAB) shortly afterwards, on 26 September 2019, challenging the decision of 20 August 2019, and asking, in particular, that the contested vacancy notice be withdrawn and a new call for expression of interest be issued listing minimum requirements that correspond to the “neutral” ones reflected in earlier vacancy notices. If the positions were to remain unfilled, then a revised vacancy notice should be issued, and a proper internal recruitment exercise carried out. He added that it “may be advisable for the Director-General” to suspend the contested recruitment process pending resolution of the “complaints triggered by the minimum requirements at issue” bearing in mind that HRD had indicated that a vacancy notice for an external competition would rapidly be posted. The complainant challenged the decision of 20 August 2019 to reject his application on the ground that the applied minimum requirements

violated the applicable rules on recruitment. He nevertheless added that the case “[was] really about” the minimum requirements that were mentioned in the vacancy notice and that served as the basis to reject his application. In his view, the minimum requirements were not objective evaluation criteria; they were inequitable and contrary to the spirit of WTO policies on professional development. He gave specific examples of the requirements that, in his view, violated the benchmark standard for a G-10 legal officer’s position, including the position of Senior Dispute Settlement Lawyer.

In its report of 18 December 2019, the JAB concluded that vacancy notice INT/F/19-45 was flawed because central elements of the benchmark standard for G-10 positions of Senior Dispute Settlement Lawyers were omitted in the listed minimum requirements. Consequently, the decision of 20 August 2019 rejecting the complainant’s application was also flawed. The JAB recalled that, according to the Tribunal’s case law, when a recruitment process is flawed, the competition must be resumed from the point where the process was flawed.

On 29 January 2020, the complainant was notified of the Director-General’s decision to reject his appeal. The Director-General rejected the JAB’s conclusion that the vacancy notice was flawed. He considered that the contested vacancy notice reflected all the minimum requirements set forth in the applicable benchmark standard for G-10 positions of Senior Dispute Settlement Lawyers. Hence, he decided to maintain the decision of 20 August 2019 and to continue the recruitment process for the two vacant positions as there was an urgent need to fill them. That is the impugned decision.

The complainant asks the Tribunal to award him material damages. He claims a “conservative” one-time payment of 10,000 Swiss francs, explaining that had he been promoted to G-10 his annual salary would have increased by more than 7,000 francs per year. In the alternative, he seeks 10,000 Swiss francs in punitive damages.

WTO asks the Tribunal to reject the complaint as lacking a cause of action insofar as, in his rejoinder, the complainant seeks to challenge the outcome of the competition that was conducted on the basis of

vacancy notice EXT/F/19-55. It argues that the complaint is otherwise unfounded.

### CONSIDERATIONS

1. In his internal appeal, the complainant submitted that two of the minimum requirements listed in vacancy notice INT/F/19-45 to fill two G-10 positions of Counsellor, Senior Dispute Settlement Lawyer in the Rules Division were unlawful, namely the one requiring recent and practical experience in domestic litigation (“recent experience, in the quantitative, legal, and policy aspects of dumping and subsidization analysis in the context of domestic trade remedies investigations”; “[s]ignificant recent practical experience in the conduct of or participation in domestic trade remedies proceedings also is required, with recent experience in a domestic trade remedies authority a considerable advantage”) and the one requiring “extensive supervisory experience”.

In his internal appeal, the complainant alleged that these two minimum requirements were unlawful because:

- (a) they had not been required in previous vacancy notices for the same position;
- (b) they were inconsistent with the job description and the requirements for the G-10 positions of Counsellor, Senior Dispute Settlement Lawyer, which fall within the ambit of the generic Senior Legal Officer’s position described in the control benchmark (job classification standard); and
- (c) they were discriminatory against serving staff members and were tailored in order to favour one particular external candidate; in fact, since no serving staff members but one met such additional requirements, the Organization issued a further vacancy notice open to external candidates.

In addition, in his internal appeal, the complainant contended that vacancy notice INT/F/19-45 did not include knowledge and experience in the WTO dispute settlement processes as a minimum requirement.

The Joint Appeals Board (JAB) rejected the complainant's pleas related to the two minimum requirements on recent and significant experience in domestic trade remedies and extensive supervisory experience, and upheld the one related to the lack of the minimum requirement on knowledge and experience in the WTO dispute settlement process.

In brief, the JAB observed that the requirements relating to domestic trade remedies and extensive supervisory experience were not inconsistent with:

- the principle of equal opportunity for eligible staff members to compete for internal positions and the principle that the evaluation criteria must be objective and fact-based (principles enshrined in paragraphs 11(a) and (b) of Administrative Memorandum No. 976); and
- the control benchmark which lists only minimum requirements but does not preclude the provision of additional ones in order to meet changing or future needs of the Organization. The JAB noted that the job classification standard allowed for flexibility as the benchmark states “[s]pecific experience in a relevant field within an operational Division’s areas of responsibility may be required for some positions at this level”.

As to the circumstance that the internal vacancy notice overlooked the minimum requirement of knowledge and experience in the WTO dispute settlement processes, the JAB considered the vacancy notice flawed. According to the JAB, a vacancy notice cannot omit central requirements listed in the job classification standard applicable to the G-10 positions of Counsellor, Senior Dispute Settlement Lawyer, and such omission violates the principle of *tu patere legem quam ipse fecisti*, which forbids the Administration to ignore the rules it has itself defined.

The impugned decision endorsed the JAB's report insofar as it found the two requirements on recent and significant experience in domestic trade remedies and extensive supervisory experience lawful, and disagreed with it insofar as it considered unlawful the omission of the requirement related to knowledge and experience in the WTO

dispute settlement process, which was prescribed in the benchmark standard. In this respect, the impugned decision noted that even though the vacancy notice did not use the specific language of the benchmark standard, it properly reflected the said minimum requirement “in its broader language”.

2. The complainant, in the present complaint, repeats the arguments of his internal appeal in his account of events and recalls the JAB’s conclusions, but he does not advance specific pleas against the impugned decision and the JAB’s report in the part regarding the two aforementioned requirements, namely recent and significant experience in domestic trade remedies, and extensive supervisory experience. Nor does he refer in his complaint to the content of his internal appeal in order to contest the impugned decision and the JAB’s report to this extent. He merely challenges the impugned decision insofar as it does not endorse the JAB’s finding that the internal vacancy notice was flawed to the extent it omitted the minimum requirement prescribed by the benchmark standard on knowledge of the WTO settlement dispute process.

As a result, the Tribunal considers that the impugned decision has not been challenged on the issue of the two additional requirements and thus the Tribunal will not examine such issue.

Although the Tribunal is of the opinion that the complainant has not advanced specific pleas against the impugned decision and the JAB’s report in the part regarding the two requirements of recent and significant experience in domestic trade remedies, and extensive supervisory experience, it adds, for the sake of completeness, that, even if it were the complainant’s intention to challenge the impugned decision and the JAB’s report in this regard, his pleas would be unfounded. The Tribunal agrees with the JAB’s arguments regarding the two contested minimum requirements, which are, in the circumstances of the case, reasonable, proportionate, non-discriminatory, and permissible pursuant to the benchmark standard which, for the G-10 positions of Counsellor, Senior Dispute Settlement Lawyer, stated under the heading “Practical experience required”: “[s]pecific experience in a relevant field within

an operational Division's areas of responsibility may be required for some positions at this level”.

3. The complainant’s further pleas against the impugned decision are unfounded. The Tribunal is satisfied that the vacancy notice listed the minimum requirement related to knowledge and experience in the WTO dispute settlement process, even though it did not use the exact wording contained in the benchmark standard. The benchmark standard for the G-10 positions at stake, under the heading “[d]ifficulty of work”, read, in the relevant part:

“Duties at this level require [...] detailed knowledge of the provisions of the relevant WTO Agreements and a good understanding of the WTO system as a whole, as well as the economic and other principles on which it is based. [...] [T]he incumbent must have thorough knowledge of the dispute settlement process, of all applicable rules and procedures, and of specific laws relevant to the dispute as well as the legislative and legal framework of the trade area under dispute, and have a good knowledge of all pertinent WTO regulations, legal provisions and precedents.”

The internal vacancy notice read: “[a] successful candidate [...] must have an excellent knowledge of economic and legal issues relating to the WTO, including in particular in the area of trade remedies. This includes thorough knowledge of the WTO Agreements within the Division’s areas of responsibility”. Thus, the vacancy notice reflected, in a more concise wording, the requirements encapsulated in the benchmark standard, of knowledge of the WTO system as a whole and of the particular area of trade remedies, which also embrace, as explained by the Director-General in the impugned decision, knowledge of the dispute settlement process. In any event, even if there was a material discrepancy between the benchmark standard and the vacancy notice, that did not prejudice the complainant in the internal competition. No one was appointed to the position as a result of that competition.

4. Since the initial decision and the impugned decision are lawful, the complainant is not entitled to an award of material or punitive damages.

5. In addition, the Tribunal finds that the complainant's observations regarding the selection of another staff member in the external recruiting process, initiated on the basis of an external vacancy notice, are outside the scope of the present complaint, as the complainant himself admits.

6. In these circumstances, the complaint will be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 15 May 2023, Mr Michael F. Moore, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

DRAŽEN PETROVIĆ