



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2019-UNAT-919

**Krioutchkov
(Respondent/Applicant)**

v.

**Secretary-General of the United Nations
(Appellant/Respondent)**

JUDGMENT

Before:	Judge Deborah Thomas-Felix, Presiding Judge Dimitrios Raikos Judge Richard Lussick
Case No.:	2018-1218
Date:	29 March 2019
Registrar:	Weicheng Lin

Counsel for Mr. Krioutchkov: Mohamed Abdou, OSLA

Counsel for Secretary-General: Francisca Lagos Pola

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/104, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 17 October 2018, in the case of *Krioutchkov v. Secretary-General of the United Nations*. The Secretary-General filed the appeal on 16 November 2018, and Mr. Vladislav Krioutchkov filed his answer on 15 January 2019.

Facts and Procedure

2. Mr. Krioutchkov is a Russian Translator (P-3), holding a permanent appointment at the Economic and Social Commission for Asia and the Pacific, based in Bangkok.

3. On 5 August 2016, he applied for the position of Russian Reviser/Self-Revising Translator (P-4) at the United Nations Office at Vienna advertised under Job Opening (JO) Number 63349. On 1 May 2017, he was notified of his non-selection.

4. On 18 May 2017, Mr. Krioutchkov requested management evaluation of the decision not to select him for the JO and on 25 July 2017, the Under-Secretary-General for Management replied to Mr. Krioutchkov upholding the non-consideration and non-selection decision. On 20 October 2017, Mr. Krioutchkov filed an application with the UNDT contesting his non-consideration and non-selection.

5. On 17 October 2018, the UNDT issued Judgment No. UNDT/2018/104. The UNDT found that Mr. Krioutchkov's application had been erroneously screened out by a Human Resources Officer on the basis that Mr. Krioutchkov did not hold a first level university degree as required by the JO.

6. The UNDT noted that Mr. Krioutchkov had indicated in his Personal History Profile (PHP) in *Inspira* that he had obtained a "certificate/diploma" because the degree he had obtained from his university in the former Soviet Union was commonly referred to as "diploma". Moreover, when selecting in *Inspira* the "degree/diploma" awarded, candidates for vacancy announcements could only choose between five options of the Anglo-Saxon educational system, to the apparent exclusion of the terminology used by other educational systems. The UNDT noted that, had Mr. Krioutchkov referred to his academic qualifications by something other than its actual title, he would have taken the risk of misrepresenting his academic qualifications.

Furthermore, there was no explanation as to why Mr. Krioutchkov's translation of his attainment into English had not been taken into consideration by the Administration.

7. The UNDT found that Mr. Krioutchkov held a permanent appointment at the P-3 level and had previously been placed on a roster of pre-approved candidates at the P-4 level, which indicated that his education attainment had been verified and cleared by a Central Review Body. The fact that he no longer met the requirements for the same category of post on the basis of the same information he had consistently provided made it more likely than not that a Human Resources Officer had erroneously decided to pre-screen his application as not meeting the minimum educational requirement. There was no evidence to indicate that the questions asked in respect of education were in fact machine read, although the Secretary-General asserted that Mr. Krioutchkov's candidature had been "automatically" excluded.

8. The UNDT concluded that Mr. Krioutchkov's application had not been afforded full and fair consideration and that, as a result, his exclusion from the recruitment process for JO 63349 was unlawful. The UNDT rescinded the contested decision and in the alternative, awarded financial compensation in an amount equal to 25 per cent of the difference in net base salary, over a period of two years, at his grade and step at the time of the contested decision and the net base salary he would have received had he been selected for the advertised P-4 position.

Submissions

The Secretary-General's Appeal

9. The UNDT exceeded its competence and erred in fact when finding that a Human Resources Officer pre-screened Mr. Krioutchkov's candidature. The UNDT's finding is speculative. There is no evidence on record showing that a Human Resources Officer pre-screened the application process. The screening of candidates at this stage of the selection process is automated due to the high volume of job applications received by the Organization for job openings. An automated system pre-screens applications by checking the information entered by job applicants against the minimum requirements of the job opening.

10. The Appeals Tribunal has held that where the UNDT considers that information is lacking about a relevant issue, it can require the Administration to provide additional evidence. In the present case, if the UNDT considered that the automaticity of the screening process was

material to the case or required oral testimony on this point, it could have issued the appropriate orders to obtain this information.

11. The UNDT exceeded its competence and erred in fact when it found that a Human Resources Officer erroneously decided to pre-screen Mr. Krioutchkov's candidature as not meeting the minimal educational requirements, after noting that it was surprising that he had been previously rostered for a similar position using the same application. The UNDT is bound by the scope of the case before it and other selection processes and related decisions which were not included in Mr. Krioutchkov's request for management evaluation fall outside of the scope of the case.

12. The conclusion by the UNDT that the Organization did not properly exercise its duty of care or fair consideration of Mr. Krioutchkov's candidature because *Inspira* only provided for Anglo-Saxon terms remains unsupported and should be dismissed. The UNDT erred in fact by finding that *Inspira* did not reflect the variety of educational systems of all its Member States equally and that the Organization did not abide by its duty of care or fair consideration of Mr. Krioutchkov's candidature. The options available to Mr. Krioutchkov when applying for JO 63349 were not the five options set out by the UNDT. Rather, the options available to candidates when entering details on the "degree/diploma" tab in *Inspira* vary depending on what university has been selected by the candidate as the institution he or she attended. The language of the options available on the drop-down menu also varies depending on where the university is located. Contrary to the UNDT's finding, the options provided by *Inspira* are not limited to the five Anglo-Saxon degrees as set out by the UNDT

13. Given that the options available to Mr. Krioutchkov at the time he applied for JO 63349 were in Russian and that the options were reflective of the certificates that were given by the University he attended, there is no reasonable explanation as to why Mr. Krioutchkov erroneously selected "certificate/diploma" instead of the other options available to him. The Organization cannot be held responsible for incorrect information entered by candidates. Pursuant to Section 7.1 of the Administrative Instruction on Staff Selection (ST/AI/2010/3), applicants applying to job openings will be pre-screened on the basis of the information provided in their applications to determine whether they meet the minimum requirements for the job opening. Hence, if applicants to job openings provide information in their applications that show that they do not meet the minimum requirements for the job opening, they are screened out by *Inspira*.

14. The Secretary-General requests that the Appeals Tribunal vacate the UNDT Judgment in its entirety.

Mr. Krioutchkov's Answer

15. The UNDT's finding that the pre-screening was not automated is neither manifestly unreasonable nor material to the outcome of the case. The UNDT found that *Inspira* was a partially automated system which ran on parameters fed into by staff members of the United Nations. The UNDT thus properly contemplated the possibility that Mr. Krioutchkov might have been automatically excluded by the system, but correctly pointed out that such exclusion would have been the result of parameters administered and introduced by Human Resources Officers. Hence, the fact that holders of "diplomas", such as Mr. Krioutchkov, were excluded from the recruitment process is clearly the product of parameters and settings applied by officials of the Organization.

16. Given that Mr. Krioutchkov had already submitted other applications containing the same information about his education through *Inspira*, there was sufficient evidence for the UNDT to conclude that the relevant information was not machine read. Contrary to the Secretary-General's assertion, the UNDT was under no obligation to seek further evidence to clarify whether the questions asked in respect of education were machine read, particularly given the limited relevance of the issue. Even if the UNDT had erred in its findings, the contested decision would still have been unlawful. It is the Organization's responsibility to ensure that the pre-screening of applications is conducted in a fair and equitable manner. Whether the information was machine read or not does not negate the fact that Mr. Krioutchkov was not given full and fair consideration. As Mr. Krioutchkov met the minimum requirements for the post, he must have passed the pre-screening phase.

17. The UNDT was correct in finding that *Inspira* did not reflect the variety of the educational systems of all Member States. The fact that Mr. Krioutchkov was screened out on the basis of correct and accurate information about his education reveals a clear flaw in the system. The selection system did not account for the possibility that during the former Soviet era university degrees were commonly referred to as "diplomas". The UNDT was therefore correct to conclude that the Organization did not properly exercise its duty of care or fair consideration of Mr. Krioutchkov's candidature.

18. The Secretary-General improperly criticizes Mr. Krioutchkov for having selected “certificate/diploma” instead of the other five options available to him. Had Mr. Krioutchkov referred to his qualifications by something other than its actual name/title, he would have taken the risk of misrepresenting to the Organization his academic qualifications, which is an offence capable of being sanctioned.

19. The Secretary-General fails to clarify how Mr. Krioutchkov’s selection of “diploma” is not an accurate description of his academic qualifications. “Diploma” is the title used by the issuing academic institution; thus, the Secretary-General’s criticism is meritless.

20. In view of the foregoing, Mr. Krioutchkov requests that the Appeals Tribunal dismiss the appeal.

Considerations

21. We have considered all the grounds of this appeal and find that the issue of whether Mr. Krioutchkov’s application was prescreened by a Human Resources Officer is irrelevant in determining whether or not his candidature received full and fair consideration.

22. The main issue for the Appeals Tribunal to determine is whether, at the time when Mr. Krioutchkov made his application in 2016, the *Inspira* system provided all of the options as set out by the Secretary-General on appeal. This is a factual determination which, without the relevant evidence, cannot be made. The UNDT has failed to inquire by eliciting evidence as to what options were available in the *Inspira* system at the time of Mr. Krioutchkov’s application. This information is important to the determination of the case and it was the duty of the UNDT to require that parties provide this very pertinent information, among others, to assist with the determination of the case.

23. It is therefore the ruling of the Appeals Tribunal that the UNDT’s finding that *Inspira* did not reflect the variety of the educational system of all the Member States equally, and that Mr. Krioutchkov’s candidature had not been afforded full and fair consideration was not supported by the facts. Such a finding can only be made with proper evidence on the available features in the *Inspira* system at the time of Mr. Krioutchkov’s application and the choice which was made.

24. We therefore find that the UNDT erred on a question of fact which has resulted in a manifestly unreasonable decision. In the circumstances, the appeal is upheld and the Judgment of the UNDT is vacated. The case is remanded to the UNDT for additional findings of fact.

Judgment

25. Judgment No. UNDT/2018/104 is vacated in its entirety and the case is remanded to the UNDT for additional fact-finding.

Original and Authoritative Version: English

Dated this 29th day of March 2019 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Raikos

(Signed)

Judge Lussick

Entered in the Register on this 29th day of May 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar