



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

Judgment No. 2019-UNAT-924

**Krioutchkov
(Respondent/Applicant)**

v.

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

JUDGMENT

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| Before: | Judge Dimitrios Raikos, Presiding Judge Richard Lussick Judge Deborah Thomas-Felix |
| Case No.: | 2018-1217 |
| Date: | 28 June 2019 |
| Registrar: | Weicheng Lin |

Counsel for Mr. Krioutchkov: Mohamed Abdou, OSLA

Counsel for Secretary-General: Francisca Lagos Pola

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/103, 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 17 December 2018, and Mr. Vladislav Krioutchkov filed his answer on 5 April 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 30 November 2015, he applied to the position of Russian Reviser (P-4), in the Department of General Assembly and Conference Management (DGACM), in New York advertised under Job Opening (JO) Number 50523. On 17 June 2016, he was notified of his non-selection.

4. On 11 August 2016, Mr. Krioutchkov requested management evaluation of the decision not to consider and select him and on 30 September 2016, the Under-Secretary-General for Management replied to Mr. Krioutchkov upholding the non-consideration and non-selection decisions. On 30 November 2016, Mr. Krioutchkov filed an application with the UNDT contesting these decisions.

5. On 17 October 2018, the UNDT issued the impugned Judgment and 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. Also on 17 October 2018, the UNDT issued Judgment No. UNDT/2018/104, a nearly identical Judgment to the impugned Judgment. In that matter, the UNDT likewise found that Mr. Krioutchkov's candidacy to JO 63349 for a Russian Reviser/Self-Revising Translator (P-4) in Vienna had been erroneously screened out. The UNDT rescinded the decision and the Secretary-General appealed. This Tribunal issued its Judgment on that appeal on 29 March 2019 as Judgment No. 2019-UNAT-919 and remanded the case to the UNDT for further factual determinations.

6. With regard to the impugned Judgment, 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 a “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 risked 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 educational attainments 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 requirements. 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 50523 was unlawful. The UNDT rescinded the contested decision and in the alternative, awarded financial compensation in the amount of USD 2,500. In setting this amount, the UNDT noted that Mr. Krioutchkov had been placed on a roster twice in 2008 and in 2015, the latter being only two months before he applied to the JO. The UNDT further noted that he had 25 years of work experience as a Russian Translator, Reviser, and Interpreter with the United Nations in three duty stations. He also had received continuously positive performance appraisals including “exceeding expectations”. For these reasons, the UNDT concluded that he was a serious contender for the JO. The UNDT considered Mr. Krioutchkov’s request for compensation for

loss of opportunity to be fully compensated and rejected his claim for moral damages on grounds that he did not meet the requisite standard of proof.

9. As noted above, the Secretary-General appealed this Judgment on 17 December 2018. Mr. Krioutchkov filed his answer on 5 April 2019, after his request for leave to file his answer out of time, due to a technical error in the electronic filing portal, had been granted by the Appeals Tribunal.

Submissions

The Secretary-General's Appeal

10. The Secretary-General argues that the UNDT exceeded its competence and erred in fact when finding that a Human Resources Officer had pre-screened Mr. Krioutchkov's candidature. There is no evidence on record showing that a Human Resources Officer had pre-screened the application process. In contrast, there is evidence in the record indicating that the pre-screening process for JO 50523 would be an automated process. The JO expressly stated that "[a]pplications are pre-screened by the system, according to the published requirements of the job opening on the basis of the information provided in the application".

11. 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 had 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.

12. The UNDT exceeded its competence and erred in fact when it found that a Human Resources Officer had 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 PHP. The UNDT was 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 fell outside of the scope of this case.

13. The conclusion by the UNDT that the Organization did not properly exercise its duty of care or fairly consider 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. The options available to Mr. Krioutchkov when applying for JO 50523 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

14. Given that the options available to Mr. Krioutchkov at the time he applied for JO 50523 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 shows that they do not meet the minimum requirements for the job opening, they are screened out by *Inspira*.

15. Lastly, the Secretary-General argues that the UNDT erred in awarding Mr. Krioutchkov compensation in lieu of rescission when it concluded that he was a "serious contender" for JO 50523. The record showed that he was one of 81 candidates and the UNDT should not have assumed that he was a stronger candidate than the others as it did not have any information about the other candidates. Thus, the UNDT did not have information to assess his chances of selection. As a result, the UNDT's approach is bias in favour of Mr. Krioutchkov.

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

Mr. Krioutchkov's Answer

17. Mr. Krioutchkov argues that 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 it 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 the Organization.

18. 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, 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 should have passed the pre-screening phase.

19. Mr. Krioutchkov also argues that the UNDT correctly found that *Inspira* did not reflect the variety of the educational systems of all Member States. Mr. Krioutchkov was screened out on the basis of correct and accurate information about his education, which reveals a clear flaw in the selection system. 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.

20. Lastly, Mr. Krioutchkov argues that the Secretary-General improperly criticizes him for having selected "certificate/diploma" and the UNDT properly noted that had he 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. Furthermore, the Secretary-General fails to clarify how Mr. Krioutchkov's selection of "diploma" was not an

accurate description of his academic qualifications. “Diploma” was the title used by the issuing academic institution.

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

Considerations

22. 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.

23. The main issue for the Appeals Tribunal to determine is whether, at the time when Mr. Krioutchkov made his application in 2015, the *Inspira* system had 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 the parties provide this very pertinent information, among others, to assist with the determination of the case.

24. It is therefore the ruling of the Appeals Tribunal that the UNDT’s finding that *Inspira* did not reflect the variety of the educational systems of all of 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.

25. 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

26. Judgment No. UNDT/2018/103 is vacated in its entirety and the case is remanded to the UNDT for additional fact-finding.

Original and Authoritative Version: English

Dated this 28th day of June 2019 in New York, United States.

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Thomas-Felix

Entered in the Register on this 19th day of August 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar