



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

Judgment No. 2019-UNAT-928

**Abdellaoui
(Appellant)**

v.

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

JUDGMENT

Before: Judge Sabine Knierim, Presiding
Judge Richard Lussick
Judge John Raymond Murphy

Case No.: 2019-1224

Date: 28 June 2019

Registrar: Weicheng Lin

Counsel for Ms. Abdellaoui: Self-represented

Counsel for Secretary-General: Wambui Mwangi

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/113, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 21 November 2018, in the case of *Abdellaoui v. Secretary-General of the United Nations*. Ms. Naima Abdellaoui filed the appeal on 24 January 2019, and the Secretary-General filed his answer on 25 March 2019.

Facts and Procedure

2. Ms. Abdellaoui is an Arabic Reviser (P-4), on a permanent appointment in the Arabic Translation Section (ATS), Division of Conference Management (DCM) at the United Nations at Geneva (UNOG). She filed two applications before the UNDT: one contesting the decision not to short-list her and the other contesting the decision not to select her for the post of Chief, ATS at the P-5 level in DCM/UNOG. The UNDT ordered that the proceedings of the two cases be combined since the two contested decisions involved the same job vacancy. Ms. Abdellaoui satisfied the requirement of a management evaluation request for both contested decisions.

3. The post in issue was advertised in Inspira from June to August 2016 and contained the following requirement relating to professional experience:

A minimum of ten years of professional experience in translation, revision and/or in the provisions of language or language related services, of which preferably four years [were] within the United Nations. Significant language-related management experience in international, regional or national institutions is required.

4. Ms. Abdellaoui was one of 23 candidates released to the Hiring Manager, who was the Chief of the Language Service. Following the Hiring Manager's review, 17 candidates including Ms. Abdellaoui and four others serving at the P-4 level from ATS/DCM/UNOG were deemed not suitable. The remaining six candidates were short-listed for a written test, and thereafter, five candidates were invited to an interview. Two candidates were found to have met all the criteria and were placed on a recommended list, which was endorsed by the Central Review Board (CRB) on 20 December 2016. Ms. Abdellaoui was informed of her non-selection. The selected candidate was a female staff member, who had worked as a P-5 Senior Reviser at the ATS in New York since October 2014, and previously as a P-4 Reviser, ATS in Nairobi and New York since 2009.

5. In the impugned Judgment, the UNDT dismissed Ms. Abdellaoui's applications having found that she had been given full and fair consideration. The UNDT found that the Administration had provided a clear and lawful account of the process through which the candidates had been assessed and had provided a satisfactory explanation for not considering Ms. Abdellaoui as a suitable candidate. Ms. Abdellaoui's wide ranging allegations of impropriety in the selection process were without substance and there was no evidence of bias or extraneous motive. In particular, the UNDT found that the classification of the post prior to its announcement from a "geographical" to a "language" post removed the lateral move requirement to Ms. Abdellaoui's benefit. The UNDT found no merit to Ms. Abdellaoui's claim that the classification of the post was used to add an illegal requirement, namely, "significant language related management experience in international, regional, or national institutions" as this requirement had also been listed in vacancies of similar posts in other language units. At the hearing, the Hiring Manager testified that she considered this requirement was met if a candidate had either served as Chief for one to three years or frequently served as Officer-in-Charge (OIC), and that she would look at the breadth and depth of the managerial experience. The UNDT found that the Hiring Manager had applied this criterion consistently to all the candidates and that she did not abuse her discretion when she determined that Ms. Abdellaoui's supervision of interns over the years had not satisfied the requirement.

6. The UNDT further found that even if the post remained under the job code of Senior Reviser, for which Ms. Abdellaoui was rostered, she still would not have been shortlisted and offered the position because the Hiring Manger had decided to conduct a full selection exercise and not recruit from the roster. As to Ms. Abdellaoui's argument that the Hiring Manager prevented her from gaining managerial experience by not assigning her to act as OIC in March 2016, the UNDT noted that this still would not have changed the fact that at the time of the vacancy in June 2016 she did not have the requisite managerial experience. The UNDT noted that because she had failed to contest that decision before the Management Evaluation Unit, it was not an issue before it.

7. On 21 January 2019, as noted above, Ms. Abdellaoui appealed the UNDT Judgment. On 13 March 2019, she filed a motion for leave to adduce as additional evidence an undated document titled "CCISUA-wide Staff Survey on Discrimination, Sexual Harassment, Harassment and Abuse of Authority" (Survey). On 25 March 2019, the Secretary-General

filed his response requesting the Appeals Tribunal to reject her motion. On 27 March 2019, this Tribunal issued Order No. 343 (2019) denying Ms. Abdellaoui's request on the ground that she had failed to demonstrate how inclusion of this additional evidence complied with Article 2(5) of the Appeals Tribunal's Statute, which required exceptional circumstances.

Submissions

Ms. Abdellaoui's Appeal

8. Ms. Abdellaoui requests the Appeals Tribunal to rescind the contested decision and to appoint her to the post of Chief of ATS, UNOG. To make it possible, she requests this Tribunal to order the Under-Secretary-General for DCM to laterally move the incumbent from the post in issue to the vacant post of Chief, ATS in Vienna. She also requests reimbursement of her attorney's fees, the award of moral damages in the amount of two years' net base salary (NBS) for damage to her reputation and career prospects, and material damages in the amount of two years' net base salary for damage to her well-being and mental and physical health.

9. In support of her request, Ms. Abdellaoui argues that the UNDT erred in its case management as relates to the following: i) the consolidation of her two applications served the interests of the Administration only; ii) the UNDT should not have had a hearing which weakened her position as a self-represented party and there had been sufficient evidence already before it; iii) the Judge asked her and her counsel to discuss among themselves her requested damages, thus misleading her into believing that the UNDT acknowledged what she had gone through; and iv) the UNDT rejected her motion for witnesses to appear, and her other cases before UNDT were transferred from one judge to another.

10. In addition, Ms. Abdellaoui argues that the UNDT Judgment lacks impartiality as it condoned the Administration's discrimination when it did not implement recruitment equally to all female candidates and for condoning an improper reclassification of the post. In particular, the UNDT erred in fact in finding that prior to advertising the post it had been classified as "geographical" rather than as "language". The posts had been turned into language posts back in 2015 by the Hiring Manager before advertising two Chief posts in French and Chinese. She tried to revert the post back to a geographical classification as a pretext to depart from the two prior Chief vacancies and exclude her from fulfilling the

requirement of two lateral moves for P-5 positions. When this failed, the Hiring Manager resorted to reclassifying the post altogether. In turn, the UNDT erred in finding the reclassification was lawful as none of the conditions for requesting a reclassification had been met. The reclassification had changed the job title from “Senior Reviser” to “Chief” and the corresponding job codes in Inspira so she would not be flagged as rostered. Had she been flagged as rostered in Inspira she would have been included in the final list of recommended candidates regardless of the Hiring Manager’s opinion. This is what the Hiring Manager was trying to avoid and is evidence of her ulterior motive. Also, the UNDT failed to consider that the association of job titles for this position was carried out only after Ms. Abdellaoui had requested it, yet it should have been done before the post was even advertised.

11. The UNDT erred in finding that the managerial requirement in the vacancy was lawful as it was extremely vague and it had been listed in earlier P-5 Chief vacancies by the same Hiring Manger only as “desirable”. Introducing a new criterion violated Section 4.5 of Administrative Instruction ST/AI/2010/3 (Staff Selection System) as it first needed to have been approved by the CRB. Furthermore, not short-listing her violated the gender parity policies of the Organisation and Section 1.8(b) of Administrative Instruction ST/AI/1999/9 (Special measures for the achievement of gender equality) requiring the fullest regard be given to women already in service of the United Nations.

12. The UNDT erred in finding the Secretary-General’s evidence credible as his counsel had concealed the classification in his reply to her suspension of action request and minimized the number of interns she had supervised. The UNDT erred in finding that she conceded she did not have significant managerial experience. At the hearing, she only conceded that she had never been a Chief of Unit before. She also requested from the Hiring Manager the opportunity to serve as OiC but was unduly denied. The selected candidate also did not act as OiC for one to three years as that unit had a P-5 and she would have only served as OiC in the P-5’s absence. The UNDT erred in ignoring her contentions that the Hiring Manager had malice against her as evidenced by her actions impeding her applications to vacancies open prior to the one in issue.

13. The UNDT erred in not finding there were extraneous factors by ignoring the following: i) the Hiring Manager obstructed her career progress; ii) the Hiring Manager went to lengths to ensure her roster status would be obviated by changing the job title and code after her attempt to categorize the post back to geographical had failed; iii) the

Hiring Manager had rejected her requests to serve as OiC; iv) the Administration did not associate the job title prior to the recruitment; and v) the selected candidate was an external candidate who did not possess the requisite experience.

The Secretary-General's Answer

14. The Secretary-General requests this Tribunal to affirm the impugned Judgment and dismiss the appeal in its entirety. In support thereof, the Secretary-General argues that Ms. Abdellaoui fails to identify any reversible error in the Judgment; she merely disagrees with the Judgment and repeats the same arguments she made before the UNDT. The UNDT correctly concluded that the reclassification exercise was lawful. Ms. Abdellaoui's argument that the reclassification violated Administrative Instruction ST/AI/1998/9 (System for Classification of Posts) is a new argument not previously before the UNDT and cannot be introduced on appeal. Should this new argument be considered, the Secretary-General notes that Ms. Abdellaoui has already conceded that the roles and responsibilities set forth in the vacancy were identical to those for the Chiefs of French and Chinese translation sections as they had been changed to include a requirement for management experience. Thus, the inclusion of this requirement was lawful. As there was a change in the functions of the post that had occurred since the previous classification, the decision to reclassify the post of Chief, ATS, was in accordance with ST/AI/1998/9. Ms. Abdellaoui argues on appeal that the inconsistencies as to who requested the reclassification of the post is evidence of extraneous factors. Whether the request was made by the Executive Officer or the Hiring Manager was immaterial as all parties had agreed that the functions of the post materially had changed. Accordingly, the UNDT correctly found that she failed to meet her burden and concluded there was no evidence of improper motivation.

15. The UNDT correctly concluded that Ms. Abdellaoui's roster status had not impacted her non-selection. She was not considered a rostered candidate for the role of Chief, ATS, but her roster was for a Senior Reviser, which had a significantly different profile. Nonetheless, her roster status had no bearing on the short-listing criteria. As for the criteria, the UNDT correctly held that the requirement for managerial experience had been consistently applied. Notwithstanding the distinction between her supervisory experience over "two" interns versus "several" interns, the UNDT held that it was reasonable for the Hiring Manager to view that as insufficient. Ms. Abdellaoui has failed to show that the UNDT's conclusion was erroneous. She also fails to identify how the UNDT erred in light of the UNOG Gender Policy

Accountability Framework, ST/AI/1999/9, and the Secretary-General's 2017 System-Wide Strategy for Gender Parity. The successful candidate is a woman and her selection was consistent with these policies.

16. Lastly, the Secretary-General submits that there is no merit to Ms. Abdellaoui's argument that the UNDT Judge at the hearing should have done a thorough cross-examination on her behalf since she had dismissed her counsel on the first day of the hearing. Likewise, there is no merit in her argument that the UNDT erred in holding a hearing in the first place since it already had enough evidence to decide the case and the hearing only served to weaken her position. The UNDT does not have the responsibility to litigate on behalf of a party and decisions to hold a hearing and consider certain evidence is within the UNDT's discretion. The Secretary-General notes that Ms. Abdellaoui's allegation that his counsel colluded with her counsel against her is a serious claim for which there is no basis.

Considerations

Receivability of the application against the decision not to short-list Ms. Abdellaoui

17. As the decision not to short-list Ms. Abdellaoui is an internal step within the selection process, it is not an administrative decision. The only appealable decision in the present case is the decision not to select Ms. Abdellaoui for the position in question. Only this decision is final and bears direct legal consequences. The UNDT, consequently, should have only received Ms. Abdellaoui's application against the selection decision, but not against the decision not to short-list her. The decision not to short-list Ms. Abdellaoui will be examined as a part of the final non-selection decision.

Merits

18. At the outset, we must state that Ms. Abdellaoui's appeal is defective in that she does not clearly define the grounds of appeal as required under Article 2(1) of the Statute of the Appeals Tribunal. However, as she is self-represented, we take a generous approach and examine those allegations, which can be interpreted as falling into the scope of Article 2(1) of the Appeals Tribunal Statute.

Case management issues

19. We reject Ms. Abdellaoui's allegation that the case management of the UNDT was flawed. The UNDT has a broad discretion in managing its cases and we cannot see that this discretion was abused. The UNDT held an extensive hearing with several witnesses, which is the usual procedure when the facts of a case are unclear and/or the Dispute Tribunal has to deal with difficult legal issues. It undertook a thorough examination of the legality of the selection process.

Re-Classification of the Chief, ATS post in 2016

20. There is no merit in Ms. Abdellaoui's allegation that the post had been changed from a "geographical" to a "language" post as early as June 2015. Neither before the UNDT nor on appeal has Ms. Abdellaoui presented any evidence to support this allegation. To the contrary, both the documentary evidence and the witness statements during the oral hearing before the UNDT show that the post had originally been a geographical post and was only re-classified to a language post after a request by the Hiring Manager, Ms. Keating, dated 19 May 2016.

21. In addition, there is no merit in Ms. Abdellaoui's allegation that the Chief, ATS post in 2016 was re-classified in a way that it differed from the similar positions of Chief of the French Translation Section and Chief of the Chinese Translation Section advertised in June 2015. It is true that those job openings, under a Posting Title "Chief P-5", contained a Job Code Title "Senior Reviser", which obviously caused some confusion as "Senior Reviser" is also a P-5 position and, at the time, there were job openings with the same Job Code Title (Senior Reviser) but under a different Posting Title (Senior Reviser P-5).

22. However, it is obvious from the documentary evidence that, although both positions "Chief, ATS" and "Senior Reviser" are at the P-5 level, they can differ substantially with regard to duties and responsibilities. As can be seen from the 19 May 2016 reclassification request, the incumbent of the post of "Chief, ATS" has to supervise not only the P-4 Revisers and the P-3 Translators, but also the P-5 Senior Revisers while himself/herself being under direct supervision only of the Chief of Language Service, who is at the D-1 level. It is well understandable that management experience is required for such a position.

23. Comparing the job openings for the positions of Chiefs of the French, Chinese and Arabic Translation Sections, we cannot find any substantial differences. All three job openings contain the same requirement “significant language-related management experience in international, regional or national institutions”. The fact that, in the June 2015 job openings for the French and Chinese Translation Sections, this criterion was listed under “Work Experience” without the addition of “is required” has no legal relevance. There is no doubt, and it is not disputed, that the other experience requirement listed there (“a minimum of ten years of professional experience in translation and revision and/or in the provision of language or language-related services”) was not only a desirable criterion, but a required criterion. The same applies to the management experience. The Human Resources Officer in the Vacancy Management Unit of the Human Resources Management Section of UNOG confirmed in her witness statement before the UNDT that “[w]hen there is no mention, it is assumed that it is required”.

24. The post mentioned in Ms. Abdellaoui’s appeal, which does not contain this requirement, is not comparable to the Chief, ATS post of 2016, in question, as it is a Senior Reviser post. As for the job openings submitted with her appeal, we note that they were issued in 2018 and are thus not relevant to the present case.

25. Consequently, as the “management experience requirement”, at the time of Ms. Abdellaoui’s application for the Chief, ATS post of 2016, was an element in other job openings for the positions of Chief of Translation Section for the French and Chinese languages, we are satisfied that the re-classification of the post was lawful and reasonable.

Meaning, scope, and application of the requirement of “significant language-related management experience in international, regional or national institutions”

26. We agree with the UNDT that the Hiring Manager used a lawful and reasonable standard with regard to the requirement of “significant language-related management experience in international, regional or national institutions”. In her witness statement, the Hiring Manager testified that she considered this requirement to be met by all candidates who had either served as “Chief of Unit/Section” for at least one year or who had frequently served as OiC in a position over a period of at least three years, and, as a last resort, she would look at the “breadth and depth” of the managerial experience taking into account whether a candidate had managed performance over several cycles and acted as a programming officer for several years

in a complex duty station. Ms. Abdellaoui, in her appeal, does not present any convincing argument why this standard would be unlawful or unreasonable. Though it shows some flexibility, it is not “vague”. Neither does the Appeals Tribunal have a reason to doubt the UNDT’s finding that the abovementioned standard had been consistently applied to all the candidates for the position. On appeal, Ms. Abdellaoui does not present any evidence which could induce the Appeals Tribunal to assume that the standard had not been applied consistently.

27. Like the UNDT, we think it was obvious that Ms. Abdellaoui did not fulfill the requirement of significant management experience and it was thus lawful not to short-list and select her for the position in question. She herself concedes, in her personal history profile (the application form) and during the oral hearing, that her management experience related only to having acted as First Reporting Officer for her P-3 colleagues and to having trained translation interns. These tasks cannot be viewed as “significant language-related management experience in international, regional or national institutions”. This becomes especially apparent when comparing Ms. Abdellaoui’s management experience to that of the selected candidate, who had already worked on a P-5 Senior Reviser position in ATS, New York since October 2014 and on a P-4 Reviser position in ATS, Nairobi from 2010 until 2014 and ATS, New York from 2009 until 2010. In her testimony, the Hiring Manager pointed out that in a small duty station like Nairobi, a P-4 translator would more likely and more often act as OiC and, consequently, be able to gain such management experience, while in a bigger duty station like New York or Geneva, it would be almost always one of the P-5 staff members to act as OiC.

Impact of roster status

28. The UNDT did not err in stating that Ms. Abdellaoui’s roster status had no impact on the selection process. As explained above, Ms. Abdellaoui had been rostered against P-5 positions for job openings which did not contain the requirement of significant management experience. The UNDT correctly pointed out that the Hiring Manager conducted a full-fledged selection exercise and excluded Ms. Abdellaoui from further consideration because she had not fulfilled the requirement of significant management experience.

Opportunity to acquire managerial experience

29. We find that the UNDT did not err in stating that Ms. Abdellaoui had not been unduly denied the opportunity to acquire in-house managerial experience. Due to the situation of the ATS in Geneva, which is a rather big unit (the record indicates that this unit consisted of one P-5 Chief, three P-5 Senior Revisers, eight P-4 Revisers and twelve P-3 Translators), one P-4 Reviser like Ms. Abdellaoui will usually not act as OiC. When the P-5 Chief is away, it would be one of the P-5 Senior Revisers who would serve as OiC. It seems hardly possible to name a P-4 staff member as the OiC, while higher ranking P-5 staff members are on duty. We note that Ms. Abdellaoui, for family reasons, was not able to take up a position in another duty station and was thus restricted to the ATS in Geneva.

Extraneous factors and policy matters

30. We agree with the UNDT that Ms. Abdellaoui has not presented any evidence to show that the decision not to short-list and select her was motivated by extraneous factors.

31. As to the gender and “in house” policy of the United Nations, we note that a female P-5 staff member was selected for the position in question, which is in complete accordance with those policies.

Compensation for material and moral damages

32. As it was lawful not to short-list and select Ms. Abdellaoui for the post in question, the claim for compensation must be denied. Absent any illegality, there can be no compensation.

Judgment

33. The appeal is dismissed and Judgment No. UNDT/2018/113 is hereby affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Murphy

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

(Signed)

Weicheng Lin, Registrar