



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

Judgment No. 2020-UNAT-1071

**Vladislav Krioutchkov
(Appellant)**

v.

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

JUDGMENT

Before: Judge Sabine Knierim, Presiding
Judge Martha Halfeld
Judge Dimitrios Raikos

Case No.: 2020-1365

Date: 30 October 2020

Registrar: Weicheng Lin

Counsel for Appellant: Mohamed Abdou, OSLA

Counsel for Respondent: André Luiz Pereira de Oliveira

JUDGE SABINE KNIERIM, PRESIDING.

1. Mr. Krioutchkov appeals Judgment No. UNDT/2019/185, which dismissed his application on remand and concluded that the contested decision of the Administration not to consider his candidacy for Job Opening (JO) 63349 was lawful. For reasons set out below, we affirm the UNDT Judgment.

Facts and Procedure

2. Mr. Krioutchkov is a P-3 Russian Translator with the Economic and Social Commission for Asia and the Pacific (ESCAP), Bangkok, Thailand. This case arose from his non-selection to the post of Russian Reviser/Self Revising at the P-4 level with the United Nations Office at Vienna (UNOV; JO No. 63349), for which Mr. Krioutchkov applied on 5 August 2016. The JO required a candidate to have a “first-level degree from a university or from an institution of equivalent status”. The JO advised the candidate to “refer to the At-a-Glance on ‘The Application Process’ and the Instructional Manual for the Applicants, which can be accessed by clicking on ‘Manuals’ hyper-link on the upper right side of the inspira account-holder homepage”. The JO instructed the job applicants to “provide complete and accurate information pertaining to their personal profile and qualifications, including but not limited to, their education, work experience, and language skills, according to the instructions provided on inspira. Applicants will be disqualified from consideration if they do not demonstrate in their application that they meet the evaluation criteria of the job opening and the applicable internal legislations of the United Nations. Applicants are solely responsible for providing complete and accurate information at the time of application ...”

3. Mr. Krioutchkov filed an application against the decision not to select him for JO 63349 with the Dispute Tribunal, which issued Judgment No. UNDT/2018/104 (first UNDT Judgment) on 17 October 2018. The UNDT found that Mr. Krioutchkov’s application for JO 63349 had been erroneously screened out by a human resources officer on the basis that he did not hold a first level university degree as required by the JO, and that his exclusion from the recruitment process was unlawful. The UNDT ordered that the non-selection decision be rescinded or Mr. Krioutchkov be paid an in-lieu compensation equal to 25% of the difference for two years between his salary and the salary he would have received at the P-4 level.

4. The Secretary-General appealed the first UNDT Judgment. In Judgment No. 2019-UNAT-919, the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) held that the UNDT's finding that Inspira did not reflect the variety of the educational systems of all the Member States equally was not supported by the facts. It therefore vacated the first UNDT Judgment and remanded the case to the UNDT for additional fact-finding.

5. On 20 December 2019, the UNDT issued the second UNDT Judgment No. UNDT/2019/185, in which it dismissed Mr. Krioutchkov's application on remand and concluded that the contested decision not to consider his candidacy for JO 63349 was lawful. The UNDT found that, at the time Mr. Krioutchkov applied for JO 63349 in 2016, the World Higher Education Database (WHED) was embedded in Inspira. Consequently, when Mr. Krioutchkov selected *Moskovskij Gosudarstvennyj Institut Meždunarodnyh Otnošenij* (MGIMO; the Moscow State Institute of International Relations) as the educational institution attended, Inspira presented him with a pre-defined list of options for academic titles: *Bakalavr*, *Certificate/Diploma*, *Doktor Nauk*, *Kandidat Nauk*, *Magistr.*, and *Specialist Diploma*. Mr. Krioutchkov selected "Certificate/Diploma". That option resulted in a level lower than that of a "recognized first level degree". Consequently, Mr. Krioutchkov's candidature was excluded by the automated screening system in Inspira as not meeting the minimum educational requirement for JO 63349, and his candidature was not released to the hiring manager. The UNDT concluded that the Organization could not be held responsible for the incorrect information which Mr. Krioutchkov had entered, and which led to his candidature being screened out of the recruitment process.

6. Mr. Krioutchkov filed an appeal on 18 February 2020. The Secretary-General filed an answer on 20 April 2020.

Submissions

Mr. Krioutchkov's Appeal

7. Mr. Krioutchkov requests that the Appeals Tribunal vacate the second UNDT Judgment, rescind the contested decision or order payment of reasonable compensation as an alternative to rescission.

8. Mr. Krioutchkov submits that the UNDT made a series of legal and factual errors that led to an erroneous finding that his disqualification from the selection process was not unlawful. The UNDT failed to implement the Appeals Tribunal Judgment No. 2019-UNAT-919 remanding his case to the UNDT for additional fact-finding as to whether the Inspira reflected the variety of the educational systems of all the Member States equally in 2016. It failed to address the central issue of the Inspira adaptability to the Russian/Soviet education system.

9. Moreover, the Dispute Tribunal erred in finding, without any reasoning, analysis or factual support, that Mr. Krioutchkov had incorrectly entered his educational details in his application, and that he should have ticked the “Specialist Diploma” option. The UNDT did not consider the arguments that he had put forward in this regard, especially in his closing submissions. In addition to his academic title in Russian, Mr. Krioutchkov’s personal history profile (PHP) contained detailed information about his degree, in English, which was sufficiently clear for the Administration to reach a proper determination on his eligibility.

10. Additionally, the UNDT placed too much emphasis on irrelevant factors such as the automated nature of the pre-screening process and failed to consider directly relevant factors such as the lack of guidance and information in respect of the referencing of the academic degrees, especially regarding the “Specialist Diploma” option, even in the Inspira Applicant’s Manual, on which the UNDT had heavily relied.

The Secretary-General’s Answer

11. The UNDT was correct in finding that the Administration had complied with the requirements of Administrative Instruction ST/AI/2010/3 (Staff selection system).

12. Mr. Krioutchkov has failed to substantiate any alleged errors by the Dispute Tribunal, much less establish how any such error resulted in a manifestly unreasonable decision. There is no evidence indicating that the Dispute Tribunal failed to consider the relevant facts or submissions or that it decided the Judgment with a predetermined view. The Dispute Tribunal correctly found that Mr. Krioutchkov had ticked the “Certificate/Diploma” option in his application and it was on the basis of this fact that the Dispute Tribunal determined that he had been correctly screened out of the recruitment process.

13. The Dispute Tribunal correctly implemented Judgment No. 2019-UNAT-919 when it requested the Organization to provide the specific pieces of evidence and examined the Inspira system in detail. Relying on the IAU/UNESCO List, which had been established with the participation of the competent national authorities including Russia, to compare different education systems provided a fair opportunity for candidates from different systems to enter their degrees. The Dispute Tribunal addressed the factual and legal issues in dispute, highlighting the correctness and the adequacy of the credentials provided by the IAU/UNESCO List. The options in Inspira reflect the variety of the education systems of all the Member States of the United Nations and are based in the rational criteria inserted in the WHED. The Inspira allows for candidates from a wide range of educational systems to enter their education and have it considered in a fair and equal manner.

14. Mr. Krioutchkov has failed to demonstrate that the facts considered by the Dispute Tribunal were irrelevant, that the Administration had failed to provide guidance in Inspira regarding how he should have correctly reflected his educational background in his application, or that the Dispute Tribunal erred in finding that he had incorrectly entered his education details in his application.

Considerations

15. The issue on appeal is whether the UNDT erred in finding, within the context of the relevant UNAT directive on remand, that the non-consideration and eventual non-selection of Mr. Krioutchkov for the position of Russian Reviser/Self Revising at the P-4 level with the UNOV, advertised under JO No. 63349, was lawful.

16. Before embarking on a consideration of the specific arguments made on appeal in this case, it is apposite to recap the jurisprudence of the Appeals Tribunal regarding the scope and exercise of judicial review in relation to matters of appointments and promotions.

17. In terms of the discretion vested in the Administration, under Article 101(1) of the United Nations Charter and Staff Regulations 1.2(c) and 4.1, the Secretary-General has broad discretion in matters of staff selection. The jurisprudence of the Appeals Tribunal has clarified that, in reviewing such decisions, it is the role of the Tribunals to assess whether the applicable regulations and rules have been applied and whether they were applied in a fair,

transparent and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration.¹

18. The UNDT correctly applied the foregoing principles in considering Mr. Krioutchkov's challenge to the selection process. As discussed in more detail below, the UNDT did not make any errors of law or fact in dismissing his application.

19. The educational requirement under JO 63349 was, *inter alia*, a "first-level degree from a university or from an institution of equivalent status".

20. In JO 63349, the candidates were further instructed that "[f]or more detailed guidance, applicants may refer to the At-a-Glance on the 'Application Process' and the Instructional Manual for the Applicant, which can be accessed by clicking on 'Manual' hyper-link on the upper-right side of inspira account-holder homepage". The JO 63349 advertisement also stated that, in relation to the requirements of the job opening,

[a]pplicants must provide complete and accurate information pertaining to their personal profile and qualifications, including but not limited to, their education, work experience, and language skills (...) Applicants will be disqualified from consideration if they do not demonstrate in their application that they meet the evaluation criteria of the job opening and the applicable internal legislations of the United Nations. Applicants are solely responsible for providing complete and accurate information at the time of application: no amendment, addition, deletion, revision or modification shall be made to applications that have been submitted.

21. Further, paragraph 3.3.4.4.b. of the 2012 "Manual for the Applicant on the Staff Selection System (inspira)" (Manual), related to the "Education" requirement of job openings, provides that when evaluating candidates' academic credentials, the Organization is guided by the WHED compiled by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Association of Universities (IAU).

22. The Manual also provides that "[t]aking fully into account that the Member States have different education systems, the United Nations references the credential level determined by competent national authorities conferred by an institution in the participating

¹ *Verma v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-829 and citations therein; *Riecan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-802, para. 13.

countries provided in the IAU/UNESCO List”, and that this “credential level is therefore referenced and used to determine the equivalence of [a candidate’s] degree”.

23. In the present case, as per the evidence on file established by the UNDT, when selecting the MGIMO as the educational institution attended, Inspira presented a candidate with the following options for academic titles: *Bakalavr*, Certificate/Diploma, *Doktor Nauk*, *Kandidat Nauk*, *Magistr*, and Specialist Diploma. The candidate’s choice was then reflected under the item “Degree obtained” in the personal history profile (PHP) generated for submission when applying to a job opening. Mr. Krioutchkov, when applying for JO 63349, indicated in his PHP that his highest level of education was a “Certificate/Diploma” obtained from the MGIMO. He also indicated in his PHP that his degree’s title in English was a “MASTER’S DEGREE, Diploma in Economics”.

24. In the course of reviewing what options concerning education and university degrees were available in the Inspira system at the relevant time and as to the choice(s) made by Mr. Krioutchkov when applying to JO 63349, the UNDT Judge first found that the Inspira Applicant’s Manual was available to all Inspira account holders in 2016 and, more importantly, the WHED was embedded in Inspira, i.e., the education degree information used when generating a candidate’s PHP came from a pre-defined list of options provided to candidates.² Then, the UNDT proceeded to find that Mr. Krioutchkov’s PHP for JO 63349 showed the degree obtained as “Certificate/Diploma”, which, according to the referencing process to determine the equivalence of a degree, resulted in a level lower than that of a “recognized first level degree”.³

25. Based on these findings, the UNDT concluded that Mr. Krioutchkov failed to indicate that he possessed the degree required by JO 63349, since he incorrectly entered his education details, and consequently his candidature was lawfully not released to the hiring manager because Inspira automatically screened him out as not meeting the minimum educational requirement for the job opening, namely to possess a first-level university degree.⁴

² Impugned Judgment, para. 20.

³ *Infra.*, para. 22.

⁴ *Infra.*, paras. 22 and 25.

26. Mr. Krioutchkov takes issue with the UNDT's findings and conclusions by arguing that it committed a series of legal and factual errors which, taken collectively or separately, led to a manifestly unreasonable outcome, namely, the finding that his disqualification from the selection process was not unlawful. In particular, Mr. Krioutchkov submits that the UNDT failed to implement the Appeals Tribunal's Judgment No. 2019-UNAT-919, as it did not reach any conclusion as to whether or not the Inspira application system did reflect the variety of the educational systems of all of the Member States equally. In this respect, he contends that the options available in Inspira regarding the educational requirements did not enable him to reflect his academic degree from the *Moskovskij Gosudarstvennyj Institut Mezdunarodnyh Otnosenij*. In this regard, he submits that his degree bears the title "Diploma" (not "Specialist Diploma") and is recognized in Russia as equivalent to a Master's degree, and, therefore, the Inspira system did not properly reflect the specificities of the Russian education system.

27. Finally, Mr. Krioutchkov argues that "the UNDT erred in finding that [he] had incorrectly entered his education details in his application for the job opening. In so doing, the UNDT did not address [his] arguments concerning the accuracy of his choice." Specifically, Mr. Krioutchkov claims that, by selecting the option "Diploma" in Inspira, he accurately and truthfully reflected his academic qualifications in his PHP, since the literal title of his degree in Russian was "Diploma", which is a post-graduate qualification equivalent to a Master's degree, as he filled in the PHP correctly.

28. The Appeals Tribunal does not find any merit in these grounds of appeal. The facts, as established by the UNDT, show that at the time Mr. Krioutchkov applied for JO 63349 he ticked the option "Certificate/Diploma," even though he allegedly held a master's degree. Mr. Krioutchkov had been made aware that he had to provide correct information to be deemed eligible for the position, as the provision of incomplete or inaccurate application would render him ineligible for the position and he had access to the relevant Manual at the material moment, i.e., when he applied for JO 63349. Moreover, as already noted, the Manual provided information on the educational levels adopted by the Organization as set out in the IAU/UNESCO List and agreed upon by the Member States, and the pertinent Table inserted in Section 3.4.4 of the Manual was very clear in indicating that the option "Certificate/Diploma" should have been clicked only if Mr. Krioutchkov had held a degree

lower than Bachelor's. The same table also established that the option "Master's or equivalent" should be clicked if Mr. Krioutchkov held an Advanced/Post Graduate Degree.

29. Consequently, as the Secretary-General correctly avers, Mr. Krioutchkov was in position and had every opportunity to properly enter his degree in the Inspira system, which reflected the variety of educational systems of all of the Member States equally. Nevertheless, Mr. Krioutchkov, while indicating that he had attended the MGIMO, chose, from the drop-down menu in Inspira under the tab "Degree/Diploma", which automatically offered him six options (i) *Bakalavr*; (ii) Certificate/Diploma; (iii) *Doctor Nauk*; (iv) *Kandidat Nauk*; (v) *Magistr*; and (vi) Specialist Diploma, to tick Certificate/Diploma, which as such did not meet the educational requirements for JO 63349, resulting in his screening out of the recruitment process. Hence, as the UNDT correctly found, the Organization correctly excluded him for not meeting the educational requirement, as he had not entered his educational credentials accurately. Concomitantly, Mr. Krioutchkov's arguments to the contrary, *to wit*, that the UNDT failed to implement the Appeals Tribunal Judgment No. 2019-UNAT-919 remanding his case to the UNDT for additional fact-finding as to whether Inspira reflected the variety of the educational systems of all the Member States equally in 2016, and that it failed to address the central issue of the Inspira adaptability to the Russian/Soviet education system, are without merit.

30. In the premises, the UNDT did not err in finding that the contested decision was lawful. We can detect no error on the part of the UNDT. We affirm the Judgment of the Dispute Tribunal and dismiss the appeal. Because of our foregoing decision, no questions of further relief for Mr. Krioutchkov arise. Specifically, our conclusion that the UNDT did not make any errors of law or fact in dismissing Mr. Krioutchkov's challenge of the decision to not consider and eventually not select him for the position of Russian Reviser/Self Revising at the P-4 level with the UNOV advertised under JO 63349 precludes the Appeals Tribunal from awarding compensation. Since no illegality was found, there is no justification for the award of any compensation. As this Tribunal stated before, "compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair".⁵

⁵ *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 34, which cites *Kucherov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-669, para. 33, which in turn cites *Wishah v. Commissioner-General of the United Nations Relief and*

31. Accordingly, having failed to establish any error of law or fact by the UNDT, the appeal against Judgment No. UNDT/2019/185 fails.

Judgment

32. The appeal is dismissed and Judgment No. UNDT/2019/185 is affirmed.

Original and Authoritative Version: English

Dated this 30th day of October 2020.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 18th day of December 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar