



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/044

Judgment No.: UNDT/2012/011

Date: 23 January 2012

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Anne Coutin, Officer-in-Charge

XU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Stephen Margetts, ALS/OHRM, UN Secretariat

Application

1. The Applicant contests the decision not to select him for the post of Chinese Reviser, at the P-4 level, in the Chinese Translation Service, Documentation Division, Department for General Assembly and Conference Management, at the United Nations Secretariat in New York.

2. He requests rescission of the above decision, the right to be directly appointed to the next available P-4 post in New York or possibly elsewhere and, lastly, compensation for the injury suffered in an amount equivalent to at least two years' salary.

Facts

3. The Applicant, a staff member at the P-4 level in the Chinese Translation Section of the United Nations Office at Geneva ("UNOG"), applied in September 2010 for the post of Chinese Reviser, at the P-4 level, in the Chinese Translation Service of the United Nations Secretariat in New York. The vacancy announcement had been issued on 16 September 2010.

4. The hiring manager decided to set up a panel to assess the candidates and, on 12 November 2010, requested the Applicant, who was on leave at that time, to produce a number of documents relating to his professional experience.

5. The Applicant provided the documents requested and, along with seven other candidates, was found to meet the requirements for a preliminary evaluation.

6. When the panel had established the standard selection criteria, the candidates were requested to provide samples of their work. The Applicant sent some samples and was then requested to send additional ones, as those provided were not considered to meet the standard criteria. Although the Applicant sent additional samples, and then still more in response to a further request, the panel considered that only one of the six documents submitted complied with the criteria. The hiring manager nonetheless sent two of the samples provided by the

Applicant to two former training officers for evaluation according to the predetermined criteria.

7. On 8 December 2010, the work of the eight candidates was assessed by the training officers and five candidates, including the Applicant, were shortlisted for interview. One of the Applicant's samples received ratings of 45/100 and 55/100 and the other received ratings of 70/100 and 75/100. On the same day, the Applicant was invited to attend an interview, which was scheduled for 15 December 2010.

8. After the two training officers who had evaluated the candidates' work expressed doubts as to whether the Applicant's two samples were indeed his own work, the hiring manager asked the Chief of the Chinese Translation Section of UNOG to verify that the samples were the Applicant's work.

9. On 9 December 2010, the Head of the Chinese Translation Section of UNOG, after checking, stated that one of the two documents submitted by the Applicant, the one that had received the higher ratings, was not the Applicant's translation or self-revised translation, but the Applicant's revision of the work of another translator.

10. On the same day, the Applicant was informed of those facts and submitted another piece of work, which received ratings of 45/100 and 55/100. Those ratings, together with the previous ones, did not reach the threshold of 60/100 required for shortlisting for interview.

11. In an email dated 10 December 2010, the Applicant was informed that he had not been shortlisted for interview.

12. On 1 March 2011, the Applicant was informed by email that he had not been selected for the post in question.

13. On 17 March 2011, the Applicant requested management evaluation of the decision not to select him and on 4 May 2011, he received a reply stating that there had been no violation of his rights.

14. The Applicant submitted his application to the Tribunal on 26 July 2011. The Respondent transmitted his reply on 9 September 2011. Subsequently, in an additional memorandum, the Applicant requested further information from the Administration and on 29 September 2011, he submitted his observations on the Respondent's reply.

15. On 11 January 2012, the Tribunal held a hearing on the case. The Applicant appeared in person and Counsel for the Respondent took part by videoconference.

Parties' submissions

16. The Applicant's contentions are:

a. The decision not to select him was wrong as he had already performed the duties of the post in question and had been included in the roster of pre-approved candidates for similar posts;

b. The documents which he had submitted met the required criteria, but the hiring manager had focused on the only one of the seven documents that was a translation revised by him;

c. The hiring manager was biased against him because he had dared to contest the legality of some of her decisions and the Dispute Tribunal had criticized her behaviour in other cases. The assessments of the candidates' work were controlled and predetermined by the hiring manager;

d. The samples of candidates' work were just one element to be taken into account in the assessment and a candidate could not be excluded on the basis of that criterion alone, as it was unreliable and left to the discretion of the person assigning the marks;

e. He had all the professional competencies required for selection, which had been recognized by his inclusion in the roster of pre-approved candidates for similar P-4 posts. Moreover, the evaluations of his

professional conduct were more favourable than those of the other candidates and he had greater skills in various languages and more experience and seniority.

17. The Respondent's contentions are:

a. There is a presumption of the legality of administrative decisions and the Applicant bears the burden of proving the illegality of the contested decision;

b. The only reason that the Applicant had to provide seven samples of his work rather than two was that most of the work that he submitted did not meet the established criteria;

c. The performance history of a staff member does not give rise to any legitimate expectation of appointment, nor do roster candidates have any right to be selected for similar posts. Only a selection made in accordance with administrative instruction ST/AI/2010/3 confers that right;

d. It is within the discretion of the hiring manager to choose the method for selecting candidates. Candidates' work samples are a good way of assessing competencies in a work environment. They are specifically referred to in section 7.5 of administrative instruction ST/AI/2010/3. The panel correctly defined standard criteria for assessing the work of the candidates, who had been informed of the criteria and were responsible for meeting them;

e. The Applicant, like other candidates, had been requested to submit additional documents when those provided did not meet the required criteria. The hiring manager gave the Applicant every opportunity to submit documents meeting those criteria;

f. The Applicant was only excluded after he failed to attain a passing grade for his work.

Consideration

18. Whereas the Applicant, in an additional memorandum, requested the Administration to provide supplementary information, the Tribunal considers that it is in possession of all the information needed to issue a judgment.

19. In contesting the decision not to select him for the post of Chinese Reviser, at the P-4 level, in the Chinese Translation Service, Documentation Division, Department for General Assembly and Conference Management at the United Nations Secretariat in New York, the Applicant first maintains that he met all the selection criteria since he had been included in the roster of pre-approved candidates for posts with functions similar to those of the post in question.

20. According to section 9.4 of administrative instruction ST/AI/2010/3 (Staff selection system) which was in force at the time of the above selection:

Candidates for position-specific job openings up to and including at the D-1 level included in a list endorsed by a central review body other than the candidate selected for the specific position shall be placed on a roster of candidates pre-approved for similar functions at the level of the job opening, which shall be drawn from all duty stations for job openings in the Professional and above categories. The roster candidate shall be retained in a roster for a period of two years for male candidates and three years for female candidates after the first day of the month following the selection decision. Candidates included in the roster may be selected by the head of department/office for a subsequent job opening, without reference to a central review body.

21. Therefore, the fact that a staff member is included in a roster does not prevent the hiring manager from making a selection from among the candidates and does not give the roster candidate any priority for selection.

22. The Applicant further asserts that his candidacy could not be rejected on the sole grounds that the two work samples submitted to the panel failed to receive a passing grade.

23. The same instruction, in section 7.4, which covers pre-approval and evaluation of candidates, provides that:

The hiring or occupational group manager shall further evaluate all applicants released to him/her and shall prepare a shortlist of those who appear most qualified for the job opening based on a review of their documentation.

24. Section 7.5 continues:

Shortlisted candidates shall be assessed to determine whether they meet the technical requirements and competencies of the job opening. The assessment may include a competency-based interview and/or other appropriate evaluation mechanisms, such as, for example, written tests, work sample tests or assessment centres.

25. It follows from the above provisions that the hiring manager had broad discretion in the choice of the assessment method, taking into account the technical requirements for the post, and, in particular, that she was entitled to make use of an evaluation panel, as she did. The Tribunal considers that, by having two Chinese translation experts evaluate two samples of each candidate's work according to pre-defined criteria, the hiring manager complied with the above provisions, and it is not for the Tribunal to substitute its own assessment of the Applicant's work for that of the two examiners.

26. Thus, the hiring manager was justified in rejecting the Applicant's candidature for the sole reason that the ratings given him were below a pre-established threshold.

27. Lastly, although the Applicant submits that the hiring manager was biased against him and excluded him from the selection procedure because he had dared to contest the legality of some of her previous decisions, his allegations are not supported by any document in the case file and the Tribunal can only note that the eliminatory ratings that he received were given by two Chinese translation experts. Although the Applicant contests their independence, he does not provide any evidence that would call their professionalism into question.

28. Accordingly, as the Applicant has not established the illegality of the contested decision, the Tribunal must reject all of his requests.

Conclusion

29. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Jean-François Cousin

Dated this 23rd day of January 2012

Entered in the Register on this 23rd day of January 2012

(Signed)

Anne Coutin, Officer-in-Charge, Geneva Registry