



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

WANG

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Bettina Gerber, UNOG

Introduction

1. The Applicant is as a Chinese Translator at the P-3 level at the United Nations Office at Geneva (“UNOG”). On 3 August 2012, he filed an application challenging the decision not to select him for one of the two posts of Chinese Reviser, (“contested decision”) at the United Nations Office at Geneva, advertised under job opening number 11-LAN-UN OFFICE AT GENEVA-21443-R-GENEVA.

Facts

2. On 6 December 2011, UNOG advertised two posts of Chinese Reviser at the P-4 level in Geneva with 4 February 2012 as the deadline for receiving applications. The Applicant applied on 13 January 2012.

3. On 21 February 2012, the Applicant and five other candidates sat for a written test which was evaluated on the same month by three Senior Chinese Revisers. Following the written test results, five candidates—including the Applicant—were selected to participate in a competency-based interview.

4. The competency-based interview was conducted on 13 and 14 March 2012 with the Chief, Chinese Translation Section, UNOG, a senior Chinese Reviser and the Chief, Russian Translation Section, UNOG, as assessment panel members.

5. On 23 March 2012, the Applicant sought to know if the written test had been graded and requested if he could review his examination; however, this request was rejected. On 30 March 2012, an Associate Administrative Officer in the Division of Conference Management transmitted a memorandum to the Central Review Committee (“CRC”) listing five recommended candidates with the Applicant being one of them.

6. On 12 April 2012, the CRC endorsed the list of recommended candidates and recommended that the Director-General of UNOG proceed with the final selection of the candidate. Subsequently, by memorandum dated 17 April 2012, the Chief of the Chinese Translation Section submitted to the Director-General

UNOG, his selection request in favour of two of the recommended candidates endorsed by the CRC: one Ms. L. Y. and Ms. C. Y.

7. On 30 April 2012, the Officer-in-Charge, Division of Administration submitted the above-mentioned selection recommendation to the Director-General, UNOG, for his final approval. In his submission, he *inter-alia* indicated that as at “31 March 2012, the representation of women in all categories at UNOG was 45% and 39% in senior positions.” Subsequently, on 1 May 2012, the Director-General, UNOG, approved the selection of the two recommended candidates: Ms. L. Y. and Ms. C. Y.

8. On 4 May 2012, the selected candidates were informed of their selection to the posts, and the Applicant received the contested decision which further informed him that he was being placed on a roster of pre-approved candidates for potential consideration for future United Nations Secretariat job openings with similar functions for a period of two years (“roster”).

9. On 11 May 2012, the Applicant filed a request for management evaluation of the contested decision and, on 16 July 2012, the management evaluation unit replied that the Secretary-General had decided to uphold it.

10. On 3 August 2012, the Applicant lodged his application with the Tribunal challenging the contested decision. The Respondent filed a reply on 3 September 2012 with some annexes filed as *ex-parte*.

11. By Order No. 139 (GVA/2012) of 10 September 2012, the Tribunal granted the Applicant access to a redacted version of the Respondent’s annexes filed *ex-parte* and, on 24 September 2012, the Applicant filed his comments to the Respondent’s reply.

12. On 4 October 2012, the Applicant filed a motion for production of documents. In his motion, the Applicant requested the production of the written tests administered to the shortlisted candidates as part of the selection process to verify the scores.

13. The Tribunal, by Order No. 51 (GVA/2013) of 3 May 2013, rejected the Applicant's motion and ordered the Respondent to provide supporting documents concerning one of the selected candidate's work experience, evidence of the "established monthly workload standard" of United Nations translators, and the calculation method to determine the ratio of the selected candidate's part-time experience to full-time employment within the United Nations. On 17 May 2013, the Respondent filed the requested documents/information.

14. By Order No. 68 (GVA/2013) of 30 May 2013, the Tribunal gave notice to the parties of a hearing to be held on 19 June 2013.

15. On 5 June 2013, the Applicant filed a motion requesting the Tribunal to summon five staff members as witnesses. By order No. 73 (GVA/2013) of 5 June 2013, the Tribunal requested the Applicant to provide the reasons for requesting the witnesses listed in his motion, and gave the Respondent the possibility to comment on the Applicant's motion and its subsequent rationale.

16. By Order No. 81 (GVA/2013) of 17 June 2013, the Tribunal summoned to the hearing two witnesses, namely the Chief, Chinese Translation Section, UNOG and a Senior Human Resources Officer, Human Resources Management Service, UNOG. The hearing was held on 19 June 2013 in which the Applicant, Counsel for the Respondent and witnesses appeared in person.

Contentions of the parties

17. The Applicant's main contentions are that:

- a. The written test for the posts was conducted and evaluated in a flawed manner, there was no transparency or full anonymity and that some of the evaluators of the written test were negatively biased towards him;
- b. There was total disregard for age, seniority and education experience in the selection exercises which opened the way for favouritism and manipulation;

c. The decision not to select him and instead place him on the roster is discriminative against male translators since roster membership remains valid for three years for women and two years for men, which is in violation of the United Nations Charter on placing restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality;

d. The selected candidates were the youngest with less professional experience, which ruins the career prospect of senior candidates; furthermore, one of the selected candidates did not have the requisite work experience required for the posts;

e. The consideration of part-time employment while a candidate is a full-time student does not have any legal or reasonable basis, since such practice constitutes counting education experience simultaneously as work experience. Additionally, studying full-time precludes working part-time;

f. According to legislation in the People's Republic of China, when students use spare time to work and earn money to support their studies, such employment is not regarded as gainful;

g. It cannot be established that the selected persons are better translators and better qualified and suited for the posts than him;

h. He is a victim of harassment and abuse of authority.

18. The Applicant prayed the Tribunal to rescind the selection decision.

19. The Respondent's main contentions are that:

a. The selection process was correctly carried out, the selected candidates met the requirement for the advertised posts and the decision not to select the Applicant was lawful;

b. The Applicant received full and fair consideration, there is no evidence of bias, discrimination or prejudice either on the part of the

assessment panel or the hiring manager because the Applicant was recommended for the posts;

c. The Applicant bears the burden of proving through clear and convincing evidence that he was denied a fair chance of promotion;

d. The aim of the written test was to shortlist successful candidates for a competency-based interview; since the Applicant was interviewed, the written test did not prejudice him;

e. The three evaluators of the written test scored the tests independently and anonymously;

f. A staff member has no right to promotion and favourable performance reports and seniority cannot be considered as giving rise to an expectancy of promotion;

g. The Secretary-General has broad discretion in matters of appointment and promotion;

h. If relevant work experience is gained parallel to graduate studies, it has to be taken into consideration.

20. The Respondent prayed the Tribunal to dismiss the application in its entirety.

Consideration

21. It is trite that the Tribunal's role in matters relating to appointment and promotion is to examine whether the selection process was carried out in an improper, irregular or otherwise flawed manner, to assess whether the resulting decision was tainted by extraneous factors, undue consideration or was manifestly unreasonable. (See *Tsoneva* 2010-UNAT-045, *Rolland* 2011-UNAT-122, *Charles* 2012-UNAT-242).

22. The Tribunal has power to examine and to rescind a selection decision in appointment related matters, where there is evidence of bias (whether actual or

apparent), discrimination, failure to give a party full and fair consideration and in the face of irrefutable procedural irregularities (*Majbri* 2012-UNAT-200). It is not the Tribunal's role to substitute its own decision for that of the Secretary-General (*Abbassi* 2011-UNAT-110).

Issues

23. In his application, the Applicant raised matters in relation to work place harassment and abuse of authority. The Tribunal informed him at the hearing that such matters were not properly before it and that he should follow the suitable channels to address them. The Applicant clarified that his respective allegations were to be considered as background information only. In light of the above, in this Judgment the allegations of work place harassment and abuse of authority raised by the Applicant will not be addressed.

24. The issues in this case for determination by the Tribunal are:

- a. Whether one of the selected candidates fulfilled all the requirements for the advertised posts; and
- b. Whether the Applicant received full and fair consideration during the selection process for the advertised posts.

Did one of the selected candidates fulfil the requirements for the contested post?

25. It is largely part of the Applicant's case that one of the selected candidates, Ms. C. Y., did not fulfill the work experience requirement for the posts. It is clear that the selection of a candidate who does not meet the published criteria for a post renders the selection process irregular.

26. The work experience required for the advertised posts was as follows:

At least five years of translation experience in a broad range of subjects dealt with by the United Nations (political, social, legal, economic, financial, administrative, scientific and technical), with a recognized specialization in a particular substantive, technical or administrative area. Preferably including three years within the United Nations and some experience of self-revision.

27. The Respondent provided the Tribunal with Ms. C. Y.'s employment history at the United Nations, a copy of the Personal History Profile ("PHP") she used to apply for the advertised posts and recommendation letters from the Applicant's previous employers.

28. From the documentary evidence, the Tribunal finds that as of the time of submitting her application for the advertised posts, Ms. C. Y. had three years, 11 months and 17 days of relevant work experience at the United Nations.¹

29. In the PHP she used to apply for the advertised posts, Ms. C. Y. indicated that from 1 September 2005 to 30 June 2007, she was pursuing her masters' studies full-time while she worked part-time as a translator at a private company in Beijing, from 1 July 2005 to 30 June 2007, where she translated "on average 20,000 words counted in English per month".

30. A letter of recommendation dated 19 February 2008 from the Applicant's previous employer, indicates that Ms. C. Y. worked as a part-time translator at its company as from July 2005, and that she had translated "some 30,000 words per month" while she worked there.

31. The Respondent submitted that according to the programme budget for the biennium 1990-1991,² a translator's workload at the United Nations is 1,650 words per day which translates to 34,560 words per month. Consequently, Ms. C. Y.'s experience of translating at least 20,000 words per month at the private company in Beijing on a part-time basis for two years amounted to 57.8% of a translator's workload at the United Nations. HRMS, UNOG determined that this percentage was equivalent to one year and one month of relevant work experience.

32. The Senior Human Resources Officer, HRMS, UNOG testified that only professional experience gained after the first degree is considered by the

¹ 2 July 2007 to 28 September 2007, 3 December 2007 to 31 December 2007, 13 June 2008 to 3 February 2012 (date on which she applied for the position).

² A/C.5/45/1 (Work-load standards for various categories of conference-servicing staff, including clerical and typing staff, and work-load statistics for the various conference services in the 1986-1987 and 1988-1989 bienniums) of 3 March 1990.

Organization as relevant work experience. She added that when a candidate indicates that he/she worked part-time, then the total duration of employment would be reduced by half and considered as relevant experience to be attributed to the candidate. Additionally, she testified that in situations where it is indicated that the staff member was studying while working, professional experience gained is partially counted if deemed as relevant professional experience. HRMS, UNOG counts this experience and uses its discretion to determine what percentage to accord it.

33. This method of calculation is also in line with paragraph 8 of the “Guidelines for determination of level and step on recruitment to the professional category and above” (“the guidelines”) which provides that “work experience can be acquired on a full-time or part-time basis. Work experience acquired on a part-time basis should be credited proportionately to the time worked. This applies to self-employment, including consultancies, internships and volunteer work.”

34. Ms. C. Y. worked part-time for two years while being a full-time student. In this case, the selected candidate’s two-year part-time experience was converted to one year and one month of relevant work experience. Regardless of national law, this conversion is acceptable and not unreasonable. Although the work-load standards of 1990 might be considered as out-dated, it is within the Administration’s discretion to apply such a calculation method as long as its use cannot be considered as arbitrary or otherwise irregular.

35. Therefore, the one year one month of relevant work experience—computed from Ms. C. Y.’s part-time experience while studying—added to her three years, 11 months and 27 days of post-studies relevant work experience gave her a total relevant work experience of a little more than five years.

Was the Applicant accorded full and fair consideration in the selection process for the posts?

36. One of the Applicant's main contentions arises from the administration of the written test, that the Applicant alleges to have been subject to manipulation and to lack transparency and anonymity. Furthermore, the Applicant alleges that the written test evaluators were negatively biased towards him.

37. The Applicant also takes issue with the method used to award the scores. He sought to rely on "Draft guidelines for harmonization of materials used in language competitive examination of November 2010" as the legal document governing the conduct of written tests.

38. The Respondent argued that the purpose of the written test was to short-list candidates to be invited for a competency-based interview. Respondent's counsel conceded at the hearing that at the time the written test for the advertised posts was administered, there were no written rules or guidelines governing written tests other than the provisions of the Inspira Hiring Manager's Manual ("Inspira manual").³

39. Section 7.5 of ST/AI/2010/3 (Staff Selection System) provides that candidates shall be assessed to determine whether they meet the requirements for the job opening; it further provides that the assessment may include the competency-based interview and other appropriate evaluation mechanisms, such as written tests.

40. The then applicable Inspira manual contained some guidelines on the determination of assessment methods by the Hiring Manager. Section 5.3.5 (Determining Assessment Methodologies) directs Hiring Managers to prepare knowledge based test for the candidates—which may take various forms—to "assist in the evaluation of [their] substantial knowledge against the requirements of the vacant position".

³ Hiring Manager's Manual, Instructional Manual for the Hiring Manager on the Staff Selection System (Inspira), United Nations, 7 April 2011 (Release 1.1)

41. The Manual further provided that the selected assessment method “forms part of the evaluation criteria” and among the elements to be borne in mind by Hiring Managers in conducting assessment exercise is the applicable rating system.

42. Unfortunately, no further details and or reference is made to the cited applicable rating system. The Hiring Manager in the instant case, who was also the Chief, Chinese Section, UNOG, testified that other than selecting the text to be translated and the parameters to be observed by the evaluators in the conduct of the written test, he was not involved in the administration or assessment of the written test. He further testified that he was not aware of any uniform standard for the administration and evaluation of written tests in the Organization, other than the basic outline contained in the Inspira manual, and that since each department seemed to use its own assessment method, he was not aware of the particularities of each of them.

43. The Hiring Manager further testified that he based the evaluation method for the advertised posts on the one used when engaging in contractual work arrangements with UNOG. He also attested that he developed a quality control form with seven items for evaluation: accuracy, knowledge of subject matter, attention to detail, readability, terminology, grammar and style, and that each of the items had a maximum score of four points thereby making 28 points the maximum evaluation score.

44. In the absence of a guiding mechanism for the conduct of written test, the Hiring Manager had, indeed, the discretion to prepare a standard for the written test assessment. From the above discussion and evaluation of the evidence, the Tribunal finds that the evaluation method used was reasonable and that the Applicant and other candidates for the advertised posts were accorded full and fair consideration during the conduct of the written test.

45. Additionally, despite his allegations regarding the written test, the Applicant was successful in the test and was invited to a competency based interview. This, however, should not be interpreted to mean that the fact of being invited to a

competency-based interview after a successful written test would prevail over any flaws that may have been detected concerning the written test.

Conclusion

46. In view of the foregoing, the application is dismissed in its entirety.

(Signed)

Judge Thomas Laker

Dated this 31st day of July 2013

Entered in the Register on this 31st day of July 2013

(Signed)

René M. Vargas M., Registrar, Geneva