



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2016/005

Judgment No.: UNDT/2016/099

Date: 12 July 2016

Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Hafida Lahiouel

VAZELLE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Daniel Trup, OSLA

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, a Senior Political Affairs Officer at the P-5 level in the Department of Political Affairs, contests his “non-consideration for, and/or non-selection to, the D-1 post of Chief of Branch, Political Affairs, Office of Disarmament Affairs [(“the contested position”)] ... on the basis of an unlawful determination as to his eligibility.”

Facts

2. On 14 April 2015, Job Opening No. 40845 (“JO 40845”) was issued for the contested position. The closing date for applications was 13 June 2015. The job opening included the following requirements under the heading, “Work Experience” (emphasis added):

A minimum of fifteen years of progressively responsible experience in international relations, disarmament, international security, development and conflict resolution or related area is required. A minimum of five years of experience at the international level is required. Experience in office management including administration, budget preparation and human resources management is required. *Experience in facilitation and conducting of inter[-]governmental negotiating processes* as well as experience in handling a multidisciplinary portfolio of tasks and duties is required. Experience in planning and executing a work programme and managing a team is required. Experience in the UN system or a comparable international organization is desirable.

3. On 9 June 2015, the Applicant applied for the contested post.

4. According to the transmittal memorandum submitted by the hiring manager for JO 40845 to the Central Review Body (“the Transmittal Memorandum”), a total of 128 applicants “were screened eligible for the Hiring Manager’s assessment” and “[a]ll of the screened applicants were subjected to a thorough preliminary evaluation, which resulted in 98 applicants deemed to be not suitable”. A comparative review table submitted by the Respondent in evidence shows that the hiring manager

considered that the Applicant had not provided evidence in his application for JO 40845 to show that he had experience conducting inter-governmental negotiating processes. He was therefore one of the 98 applicants deemed by the hiring manager to be not suitable for the contested position.

5. By generic email dated 27 October 2015, the Applicant was informed that his application had been unsuccessful.

6. By email dated 29 October 2015, the Applicant sought clarification from the Office of Human Resources Management (“OHRM”) regarding his unsuccessful applications for a number of positions, including the contested position. He stated that he believed he met all the criteria of the relevant job openings. On 6 November 2015, the Applicant sent a further follow-up email seeking clarification.

7. By emails dated 13 and 16 November 2015, a Human Resources Officer from OHRM advised the Applicant to contact the relevant executive office and hiring manager for the relevant positions.

8. By email dated 1 December 2015, the Applicant contacted the Executive Office, Office for Disarmament Affairs, to seek clarification regarding his application for the contested position.

9. By email dated 7 December 2015, the Director and Deputy to the High Representative, Office for Disarmament Affairs, responded to the Applicant’s request for clarification. He stated (emphasis added):

... The Hiring Manager at the time has left [the Office of Disarmament Affairs].

I have checked with the notes from when your [personal history profile] was evaluated. You will recall that one of the requirements was “Experience in facilitation and conducting of inter[-]governmental negotiating processes”. While you had experience in your [personal history profile] on the facilitation component of this, *there was not evidence of your experience in the conduct of inter[-]governmental negotiating processes reflected in your [personal history profile].* You

were therefore not considered as fulfilling the stipulated requirements for the post.

From what I recall, as I was a panel member, there [were] 132 applicants and 14 candidates were interviewed.

10. On 17 December 2015, the Applicant submitted a request for management evaluation of the decision not to consider and/or select him for the contested position.

11. On 21 January 2016, the Under-Secretary-General for Management informed the Applicant that the Secretary-General had decided to uphold the decision to consider him ineligible for the contested post.

Applicant's submissions

12. The Applicant's principal contentions may be summarized as follows:

a. The Administration breached the Applicant's right to be given full and fair consideration for the contested position;

b. The sole reason provided by the Administration for the decision not to consider or select him for the contested position was that the Administration deemed him ineligible because he did not provide evidence of experience in inter-governmental negotiating processes. This assessment is wrong as a matter of fact and also as a matter of law;

c. The Administration's determination that the Applicant did not provide evidence of his experience in the conduct of inter-governmental negotiating processes was a palpably unreasonable conclusion to draw from a review of the Applicant's personal history profile. The substance of the Applicant's personal history profile clearly demonstrated that he met the relevant eligibility requirements for the position. The Administration thus erred on a question of fact;

d. OHRM already considered the Applicant eligible for the contested position. The Hiring Manager unlawfully sought to reassess the Applicant's

eligibility rather than to assess his suitability for the position, in violation of ST/AI/2010/3 (Staff selection system).

Respondent's submissions

13. The Respondent's principal contentions may be summarized as follows:
 - a. The Applicant did not demonstrate in his personal history profile that he met the work experience requirement of "conducting inter[-]governmental negotiating processes";
 - b. The Dispute Tribunal does not have the power to substitute its own views for that of the Organization in determining whether an applicant meets the work experience requirements for a job opening;
 - c. The Dispute Tribunal has recognized that, where the professional work experience requirement is drafted in broad terms, there is discretion as to what may be considered as relevant experience (*Dhanjee* UNDT/2014/029). The corollary of this principle is that where specific work experience is required for a position, job applicants must demonstrate in their applications that they possess the specific work experience;
 - d. The Applicant's allegations that there was an error of law are without merit. The pre-screening conducted by [OHRM] does not constitute a final determination as to whether a job applicant meets work experience requirements. The Hiring Manager did not reassess the Applicant's eligibility. The Hiring Manager assessed the Applicant's suitability by evaluating whether he met the work experience requirements set out in the job opening.

Relevant law

14. ST/AI/2010/3 (Staff selection system) provides, of relevance:

Section 2

General provisions

...

2.6 This instruction sets out the procedures applicable from the beginning to the end of the staff selection process. Manuals will be issued that provide guidance on the responsibilities of those concerned focusing on the head of department/office/mission, the hiring manager, the staff member/applicant, the central review body members, the recruiter, namely, the Office of Human Resources Management (OHRM), the Field Personnel Division of the Department of Field Support, executive offices and local human resources offices as well as the occupational group manager and expert panel. Should there be any inconsistency between the manuals and the text of the present instruction, the provisions of the instruction shall prevail.

Section 7

Pre-screening and assessment

7.1 Applicants applying to job openings will be pre-screened on the basis of the information provided in their application to determine whether they meet the minimum requirements of the job opening.

7.2 OHRM, the local human resources office or the Field Personnel Division of the Department of Field Support will release electronically to the hiring manager (for position-specific job openings) and occupational group manager (for generic job openings), within and/or shortly after the deadline of the job opening, the applications of candidates who have successfully passed the pre-screening process, together with the names of pre-approved eligible candidates, for consideration for selection.

...

7.4 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.

15. Chapter 9 of the Manual for the Hiring Manager on the Staff Selection System (Release 3.0, October 2012) (“Manual for the Hiring Manager”) states (emphasis added):

9.1 Overview

1. Applicants who have successfully passed the pre-screening process are released to the Hiring Manager on a daily basis within the posting period shortly after the posting of the job opening. ...

2. ... the Hiring Manager may conduct his/her preliminary evaluation of the applicants' academics, *work experience* and knowledge of languages immediately when an application is released to him/her ...

...

9.2 Evaluating Applicants

1. The standards set out below must be adhered to organization-wide in order to avoid variance in how evaluations and assessments are conducted and recorded.

2. In order to speed up the process, the Hiring Manager may start analyzing the applications of released applicants before the deadline date of the job opening. *Evaluating each application entails reviewing and documenting the findings of a preliminary analysis for each applicant as to whether he/she meets all, most, some or none of the stipulated requirements against the evaluation criteria stated in the job opening in terms of:*

- a. Academics
- b. *Experience*
- c. Language

...

3. During the preliminary evaluation of each applicant, the Hiring Manager will review and rate each applicant in the three areas (academic, language and experience). The Hiring Manager may place the applicant in one of the following lists

a. **Not Suitable** - these applicants are rated unsatisfactory in any one of the three areas (academic, language or experience). No general comments are required, however, it must be self-evident as to why the applicant is not suitable.

b. **Long List** - these applicants seemingly meet the basic evaluation criteria but may not meet the desired qualifications as outlined in the job opening. They are considered qualified for the job and should be placed on the long list for further consideration and possible movement to the short list. A rating is required for each area (academic, language and experience) but a general comment is **ONLY** required for staff members of the United Nations Secretariat.

c. **Short List** - these applicants seemingly meet the basic evaluation criteria as well as all defined desirable qualifications as outlined in the job opening. They are considered the most promising applicants for the job and should be convoked to an assessment exercise and/or interview to be conducted by the assessment panel. A rating is required for each area (academic, language and experience) and a general comment is required for ALL applicants.

Consideration

16. In *Abbassi* 2011-UNAT-110, the Appeals Tribunal set out the scope of review of appointments and promotions and stressed that:

23. In reviewing administrative decisions regarding appointments and promotions, the UNDT examines the following: (1) whether the procedure as laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration.

24. The Secretary-General has a broad discretion in making decisions regarding promotions and appointments. In reviewing such decisions, it is not the role of the UNDT or the Appeals Tribunal to substitute its own decision for that of the Secretary-General regarding the outcome of the selection process.

17. The Applicant's two primary submissions are that the Administration (a) erred in fact in finding that he did not provide evidence of his experience in conducting inter-governmental negotiating processes; and (b) erred in law, in that the hiring manager unlawfully sought to reassess his eligibility. Neither of these submissions is sustainable.

Was there an error of fact?

18. The Applicant submits that the determination that he did not provide evidence of experience in the conduct of inter-governmental negotiating processes was a palpably unreasonable conclusion to draw from a review of his personal history profile.

19. In *Charles* UNDT/2012/021 (upheld in *Charles* 2013-UNAT-284), the Appeals Tribunal stated (emphasis added):

29. The Applicant clearly does not accept that his work experience is insufficient to meet the post requirement. He wishes the Tribunal to assess his previous experience and rule on whether that is sufficient to meet the criteria required for this post. *The Tribunal has neither the power nor the ability to make such an assessment and substitute its assessment for that of the Respondent.* As stated in the United Nations Appeals Tribunal's judgment in *Rolland* 2011-UNAT-122, the role of the Tribunal is limited to determine whether an applicant received full and fair consideration of her/his candidature and not to enter into a substantive analysis of her/his application ...

20. In *Dhanjee* UNDT/2014/029 (upheld in *Dhanjee* 2015-UNAT-527), the Tribunal stated at paras. 31 and 32:

31. ... the Tribunal notes that in the instant case, the work experience required for the contested post as listed in the [vacancy announcement] was described in rather broad terms, thus opening the door to large discretion as to what could be considered relevant or irrelevant experience ...

32. Based on the above observation, it is clearly not for the Tribunal to substitute its own views and to elaborate on the assessment of those criteria by the [hiring manager], as long as the assessment itself was not based on obviously wrong facts that could be objectively verified, such as the misquotation of relevant time periods taken from a [personal history profile] to calculate the relevant work experience. This was certainly not the case here, and it was the [hiring manager] who had the authority and was in the best position to assess whether the Applicant's work experience was indeed meeting the requirement of the [vacancy announcement]. Despite the in-depth explanations provided by the Applicant as to the relevance of his work experience, and notwithstanding his understandable frustration that he was not even invited for the interview, the Tribunal does not find any evidence in the record before it that the [hiring manager]'s decision in this regard was unreasonable or tainted by extraneous motives, bias or discrimination towards him.

21. The Tribunal notes that in the present case, the requirement in JO 40845 that applicants have "experience in facilitation and conducting of inter[-]governmental negotiating processes" was somewhat vague. However, as stated in *Dhanjee*

UNDT/2014/029, it is the hiring manager who is in the best position to assess whether the requirements of a job opening have been fully met. Unless the assessment is based on obviously wrong facts, or is otherwise unreasonable, or tainted by extraneous factors, it is not for the Tribunal to intervene.

22. The Tribunal has reviewed the personal history profile submitted by the Applicant in his application for JO 40845 as well as the explanation provided in his application in this case explaining how he believes his personal history profile (including his cover letter) showed that he met the relevant work experience requirement. The Tribunal has also considered the Respondent's submission in the reply to the application in this case as to the meaning given to the relevant work experience requirement, namely, that such work experience would involve "leading or participating as a negotiator or advisor in inter-governmental processes where treaties or agreements are negotiated. The processes may be bilateral, plurilateral or multilateral." Having considered these documents and submissions, as well as the relevant case law quoted above, the Tribunal does not consider that the assessment of the hiring manager that the Applicant had not provided evidence of the relevant work experience was clearly erroneous or unreasonable so as to constitute an error of fact.

Was there an error of law?

23. The Applicant's submission that the Administration erred in law in unlawfully "(re)assessing" his eligibility for JO 40845 is not supported by a review of the relevant administrative issuances and case law. Section 7.4 of ST/AI/2010/3 specifically states that the hiring manager is to "further evaluate" all applicants released to him or her and to prepare a shortlist of those "most qualified for the job opening based on a review of the documentation." The instructional manuals on the staff selection system, referred to in sec. 2.6 of ST/AI/2010/3, also specifically state that the hiring manager is to assess the work experience requirements stipulated in a job opening (see, for example, sec. 9.2.2 of the Manual for the Hiring Manager). The hiring manager is generally in the best position to assess whether an applicant has met the specific work experience requirement set out in a job opening and it is not an

error of law for the hiring manager to conduct such an assessment (*Dhanjee* UNDT/2014/029).

Request for disclosure of evidence

24. In his application the Applicant requested the disclosure of evidence as follows: “any and all documents (including, but not limited to, internal notes, memoranda and/or correspondence) related to the Hiring Manager’s assessment of the Applicant’s eligibility.” Given the documentation provided by the Respondent in the reply to the application, and the foregoing findings, the Tribunal considers it unnecessary to grant the Applicant’s request for the disclosure of further evidence.

Conclusion

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

The application is dismissed.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 12th day of July 2016

Entered in the Register on this 12th day of July 2016

(Signed)

Hafida Lahiouel, Registrar, New York