



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

FAUST

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. By application filed on 13 June 2015, the Applicant contests the decision not to select her for the P-2 post of Associate Programme Officer at the United Nations Framework Convention on Climate Change (UNFCCC).

2. The application was served on the Respondent who filed his reply on 16 July 2015.

Facts

3. The Applicant joined the UNFCCC on 1 September 2010, as Programme Administrative Assistant (G-5) with the Information Technology Services (“ITS”), under a fixed-term appointment (“FTA”), through 30 November 2012.

4. On 8 October 2012, the Applicant was informed that her temporary assignment to the post of Associate Programme Management Officer (P-2), in the Interim Secretariat of the Green Climate Fund (“ISGCF”), UNFCCC, had been accepted for an initial period of six months. The Applicant accepted the temporary assignment on 9 October 2012 and received a special post allowance (“SPA”) at the P-2 level effective 1 November 2012. She remained on an FTA with the UNFCCC, and initially retained a lien on the G-5 position with the UNFCCC, which she released on 22 August 2013.

5. The ISGCF became independent and moved to the Republic of Korea on 1 January 2014. On 10 January 2014, the Applicant was offered a temporary assignment with the Sustainable Development Mechanism (“SDM”), UNFCCC, as Administrative Assistant (G-5), effective 1 January 2014. That assignment was successively extended on three occasions until 31 December 2014.

6. On 4 July 2014, SDM internally advertised the post of Associate Programme Officer (P-2) within the SDM Finance Team, UNFCCC. The Applicant and three other internal candidates applied to the post. Three candidates, including the Applicant, were found eligible by the Human Resources Unit (“HRU”), UNFCCC and were forwarded to the direct supervisor of the

position, Ms. Camay Ho, Programme Management Officer (P-3), SDM. The latter determined that all three candidates be invited to take the written test. The test had been prepared by Ms. Ho and approved by HRU.

7. Each test was color-coded, without the names, for each candidate, and sent to Ms. Ho for assessment/scoring. She returned the results of the written test/assessment to HRU, UNFCCC, on 11 September 2014. Thereafter, HRU, UNFCCC, notified Ms. Ho of the names of the candidates associated with each color-coded test. On the basis of the results of the written test, the three candidates—including the Applicant—were invited for a competency-based interview, since they all passed the 50% threshold for the test. The Applicant's score in the test was 55%, whereas that of the two other candidates was 67% and 97%.

8. The Applicant and the two other candidates who had taken the test were invited for a competency-based interview, with the following interview members:

- a. Ms. Sharon Taylor, Programme Officer, SDM/Programme Support and Coordination ("PSC") Team Leader (P-4), Panel Chair and Hiring Manager;
- b. Ms. Camay Ho (Programme Management Officer (P-3), SDM/PSC/Finance);
- c. Mr. Alexander Saier (Public Information Officer (P-3), Communications and Outreach Programme);
- d. Ms. Karen Milka (Associate Programme Management Officer (P-2), Executive Direction and Management and Legal Affairs Programmes);
- e. Ms. Catherina Denoo (Human Resources Officer (P-3), HRU), as *ex officio* member of the Panel);
- f. Ms. Addis Assefa, rapporteur.

9. The Applicant was interviewed on 1 October 2014. The minutes of the interview show that the Panel found that she only fully demonstrated one of the four competencies for the post. As a result of this, it did not recommend her for the post. The Panel also found that the two other candidates met all of the competencies for the post, and recommended one of them for selection.

10. On 9 October 2014, Ms. Taylor, the Hiring Manager, prepared a record of the evaluation of the candidates against the applicable evaluation criteria, which was sent to all the members of the Panel for their comments and approval and which they later provided. On the basis of that assessment, the Panel recommended that the Head of Programme, Director, SDM, consider the recommended candidate for selection.

11. On 31 October 2014, the Director, SDM, recommended said candidate for selection to the Executive Secretary who, in turn, submitted the selection process for evaluation to the UNFCCC Review Board on 3 November 2014. This evaluation was completed on 18 November 2014, finding that “the evaluation criteria [had been] properly applied and the applicable procedures [had been] followed”. The recommendation was approved by the Deputy Executive Secretary, UNFCCC, on 19 November 2014, and the Executive Director, UNFCCC, appointed the recommended candidate to the position.

12. The Applicant was informed that she had not been selected for the advertised position by memorandum dated 25 November 2014.

13. On 18 January 2015, the Applicant filed a complaint for harassment and abuse of authority against Ms. Taylor and the Director, SDM. On 4 December 2015, upon the completion of an investigation, the Executive Secretary, UNFCCC, informed the Applicant that she had concluded that the reported conduct did not constitute a violation of the provisions of ST/SGB/2008/5, and that she had decided to close the case. The Applicant filed an appeal against this decision, which the Tribunal rejected as not receivable in Judgment *Faust* UNDT/2016/018. The Appeals Tribunal dismissed the appeal and affirmed the UNDT judgment during its 21st session in New York from 17 to 28 October 2016.

Procedural history

14. By Order No. 162 (GVA/2016) of 18 August 2016, the parties were convoked to a case management discussion (“CMD”) that was held on 14 September 2016. During the CMD, both parties informed the Tribunal that they agreed to a decision being rendered on the papers.

15. During the CMD, and by Order No.188 (GVA/2016) of 16 September 2016, the Tribunal asked the parties to make further submissions.

16. On 6 October 2016, both parties made submissions pursuant to the Tribunal’s Order No. 188 (GVA/2016). The Applicant made an additional submission pursuant to said order on 16 October 2016.

17. By Order No. 201 (GVA/2016) of 11 October 2016, the Tribunal allowed the parties to file closing submissions, which they did on 25 October 2016.

Parties’ submissions

18. The Applicant’s principal contentions are:

a. The recruitment process was flawed and not in accordance with the applicable rules and regulations; she was not given full and fair consideration;

b. Ms. Taylor and not Ms. Ho was the Hiring Manager for the post; the former and not the latter is accountable to the Head of the Programme, to wit, the Director, SDM, and is responsible for managing the staff in the Programme Support and Coordination, as per sec. 2.4 of the Recruitment and Selection Standard Operating Procedure (“SoP”); in various meetings, Ms. Taylor informed her team of the approximate timing of the interviews, that she was working on the composition of the Panel, etc., thus clearly demonstrating that she was the Hiring Manager; this was witnessed by several staff members; Ms. Taylor also acted as Chair of the Interview Panel, ensured that the draft evaluation report was circulated to Panel

members and made the selection recommendation to the Head of Programme;

c. The Respondent did not provide evidence that it was Ms. Ho who established the selection Panel but rather stated that it was “SDM”, thus providing evidence that Ms. Ho was not the Hiring Manager;

d. It is Ms. Taylor, as Hiring Manager, who should have prepared the test, not Ms. Ho;

e. While she successfully passed the test, the fact that it was not reviewed and approved by Ms. Taylor as the Hiring Manager and that the tests for two G-5 positions were the same is questionable; the written test did not allow an adequate assessment of the candidates’ technical skills and expertise;

f. Further, according to page 22 of the SoP, the selection Panel “participates in the technical assessment (at least one member along with the hiring manager); in the present case, the evaluation of the test was done by Ms. Ho alone, which was against the plain text of the SoP;

g. The test should not have been approved by Human Resources, but rather drafted or approved by Ms. Taylor as Hiring Manager, and should not have been the only determining factor in assessing the technical skills of the candidates; the written assessment cannot be found to have been done in a fair or objective manner;

h. In light of her educational and professional background, Ms. Taylor cannot reasonably be considered a “subject matter expert” as per the required rules;

i. If candidates are assessed with respect to competencies, they can reasonably expect that panel members themselves fulfil the required competencies, which was not the case of at least one Panel member with respect to teamwork;

- j. The appointment of Ms. Ho to sit on the Panel constituted a conflict of interest; her team had clear tensions with her in light of her lack of teamwork and leadership, and communication skills, which required the intervention of a Coach; Ms. Ho had allegedly also filed a complaint against Ms. Taylor, which is further proof that the composition of the Panel was flawed and could not ensure full and fair consideration of the candidates;
- k. The interview Panel protocol with respect to the Applicant is erroneous to such an extent that it cannot be “unintentional”; it is evidence that she was not afforded a fair and objective assessment;
- l. It is contradictory for the Panel to find that the Applicant did not demonstrate expert knowledge in the area of finance when that expertise had been established, first, when she was found suitable and, second, through her performance at the written test that she passed successfully;
- m. The Panel should have limited its assessment to the behavioural competencies, and not to the technical knowledge;
- n. The Review Board did not demonstrate the level of accountability required from it;
- o. She filed a report with the UNFCCC Executive Secretary on 18 January 2015, providing a detailed report of harassment and abuse of authority by Ms. Taylor and Ms. Ho; while the Executive Secretary concluded in a letter dated 4 December 2015 that there had been no violation of ST/SGB/2008/5, that decision was the subject of Judgment *Faust* UNDT/2016/018, which the Applicant appealed with the Appeals Tribunal;
- p. Had the recruitment process been conducted correctly, she would have had a significant chance of success of being selected for the post; and

q. As remedies, the Applicant requests recognition that the process was flawed, and financial compensation for the negative impact the process had on her professional reputation, and for the negative impact the termination of her contract, which was directly triggered by the non-selection decision, had on her future career prospects within UNFCCC and the UN.

19. The Respondent's principal contentions are:

a. The Applicant's claim with respect to the written test is without merit, and immaterial, since she passed it successfully; the Applicant thus failed to demonstrate that the alleged breach of procedure impacted on her full and fair consideration;

b. The Respondent initially argued that, contrary to the Applicant's allegations, the test was in fact prepared by Ms. Ho as Hiring Manager. In a later submission, submitted upon the Tribunal's inquiry, the Respondent noted that the Hiring Manager was in fact Ms. Taylor and not Ms. Ho and that he had made his initial statement with respect to the Hiring Manager in error; he explained that Ms. Taylor requested Ms. Ho, who was one of the Panel members, to provide assistance with the assessment of the technical written test results, in accordance with sec. 5.13 of the staff selection system (AG/2014/4);

c. The substance of the written questions was relevant for the job opening, and the written test for the P-2 post was substantially different from that for the G-5 post opened at the same time at SDM;

d. The interview panel was constituted in accordance with the Rules and established standards under the SoP; all interview panel members received the required competency-based training and had the requisite experience and knowledge; two panel members (Ms. Taylor and Ms. Ho) were from within the hiring unit; the Applicant did not show how the alleged interpersonal issues between these two managers impacted on her right to be fully and fairly considered; Ms. Ho and Ms. Milka were subject-matter experts;

e. The Panel acted within its mandate under sec. 9.1 of the SoP when it made the assessment that the Applicant “did not demonstrate expert knowledge in the area of finance”;

f. The Applicant’s allegations that the decision was based on extraneous considerations are without merit, and she did not meet the burden of proof in this respect; and

g. There is no basis for the Applicant’s request for compensation, and the application should be rejected.

Consideration

20. The Applicant contests the decision not to select her for the P-2 post of Associate Programme Officer, SDM/Finance, UNFCCC. She argues that she was not afforded a full, fair and objective assessment in the selection procedure and requests 24 months of net base salary as financial compensation.

21. The Applicant argues *inter alia*, that:

i. The written test was not done in accordance with the applicable rules and regulations;

ii. The composition of the interview panel was also not in conformity with the applicable rules and regulations;

iii. The interview report showed bias against her; and

iv. The review board did not fulfil its mandate.

22. The Respondent argues that the Applicant was fully and fairly considered, that the Hiring Manager, Ms. Taylor, properly sought assistance from Ms. Ho in assessing the written test and, also, that the interview panel was properly constituted, according to the applicable rules.

23. The Tribunal has to address the question of whether the recruitment process for the P-2 position at SDM/Finance was tainted by any unlawfulness, and if the Applicant should be granted 24 months of net salary as compensation.

Applicable legal provisions

24. The Respondent mistakenly argues that the provisions of AG/2014/4 (UNFCCC Staff selection system) are applicable to the present case. However, these rules only came into force on 31 October 2014, and sec. VII of that instruction provides under 7.1 that:

Candidates for vacancies that have been advertised before the entry into force of these administrative guidelines shall be considered under the system in place at the time the position was advertised.

25. Since the vacancy announcement for the post under review was issued on 4 July 2014, the Applicant is correct in stating that the applicable instruction is AG/2011/3 of 1 November 2011.

26. AG/2011/3 (UNFCCC Staff selection system) relevantly provides:

2.1.6 *Interview Panel*: a panel normally comprised of at least three members, with two being subject matter experts at the same or higher level of the post, at least one being female and one being from outside of the work unit where the post is located. For a D-2 level post the panel should normally be comprised of at least three members, with two being from outside the Programme, and at least one female. Normally, panel members should represent diverse nationalities. Panel members shall be free of any interest in the recruitment process that would constitute a conflict of interest.

...

2.1.9 *Hiring manager*: the official responsible for the filling of a vacant position. The hiring manager is accountable to his/her head of programme to ensure the delivery of mandated activities by effectively and efficiently managing staff and resources placed under his or her supervision.

...

2.1.12 *Review Board*: joint advisory body established under the UNFCCC secretariat administrative guideline on Review Bodies (AG/2007/5) or any amendments thereto.

...

3.3 Pursuant to the administrative guideline on Review Bodies (AG/2007/5), paragraphs 4.5 to 4.7, selection decisions are made by the Executive Secretary upon receipt of advice from the Review Board that the evaluation criteria have been properly applied and that the applicable procedures have been followed.

...

Consideration and selection

5.13 The hiring manager shall evaluate eligible candidates and roster candidates transmitted by the Human Resources Unit for consideration and decide on the short list for further assessment. In doing so, he or she shall give fullest consideration to internal candidates. Interviews are required for all short-listed candidates. Interviews shall be conducted by a panel, as defined in paragraph 2.1 above, convened by the hiring manager and approved by the HRU. The HRU shall advise on other necessary assessment tools, such as tests, presentations, and/or other evaluation mechanisms to ensure a comprehensive assessment of all technical, generic or specific evaluation criteria indicated in the Recruitment Profile form.

5.14 The head of programme shall recommend a candidate for approval by the Executive Secretary based on a reasoned and documented record of the evaluation of the proposed candidate against the applicable evaluation criteria prepared by the hiring manager.

...

5.15 The head of programme's recommendation shall be supported by the recommendation of the Review Board.

...

Review Board

5.17 Except as provided for in paragraph 5.16 above, the Review Board shall review the proposal made by the head of programme for filling a vacancy, in accordance with the administrative guideline on Review Bodies (AG/2007/5 Amend. 1).

Decision

5.18 Except in instances covered by paragraph 5.16 above, the selection of a suitable candidate shall be made by the Executive Secretary upon receipt of the advice by the Review Board or the ad

hoc group referred to in paragraph 4.1 above. The advice of the review body shall be given due consideration.

...

8.1 This administrative guideline and its annex shall enter into force on 1 November 2011.

27. In accordance with sec. 8.5.2 of the SoP, “[t]he hiring manager is responsible for designing questions for technical assessment”.

Legal issues

28. To enable the Tribunal to decide on the lawfulness of the recruitment procedure, the Applicant has to provide the set of factual circumstances that purport such allegation.

29. It is a well-settled principle that the burden of proving any allegations of ill-motivation or extraneous factors is incumbent on an applicant (*Jennings* 2011-UNAT-184, *Obdeijn* 2012-UNAT-201, *Beqai* 2014-UNAT-434). Besides, the Appeals Tribunal held in *Rolland* 2011-UNAT-122 that official acts are presumed to have been regularly performed; accordingly, in recruitment procedures, if the Administration is able to even minimally show that a staff member’s candidature was given full and fair consideration, the burden of proof shifts to the candidate, who must show that she or he was denied a fair chance.

Who had the authority to act as the Hiring Manager and how did this impact the legality of the recruitment process?

30. One of the Applicant’s argument in support of her allegations of bias and unlawfulness is that it was Ms. Ho and not Ms. Taylor who prepared the written test, and that Ms. Taylor did not even approve it.

31. According to sec. 2.4 of the SoP, the Hiring Manager is accountable to his/her head of Programme to ensure the delivery of mandated activities by effectively and efficiently managing staff and resources placed under his or her supervision”. Upon the Tribunal’s inquiry, the Respondent admitted that it was Ms. Taylor, and not Ms. Ho, who was the Hiring Manager for the contested post.

32. The Tribunal is of the view that the SDM organigram, as well as the terms of the vacancy announcement, support the argument that it was Ms. Taylor and not Ms. Ho who was the hiring manager.

33. Further, the SoP provides under sec. 7.2 that:

As a general rule, the hiring manager is one of the panel members and will chair of (sic) the panel, particularly for a vacancy up to the P-5 level. However, this may vary, depending on the specific circumstances of the vacancy.

34. In the case at hand, Ms. Taylor was the Chair of the Panel and, in that capacity, also prepared the report of interviews, which according to sec. 5.14 of the instruction falls on the Hiring Manager. Ms. Taylor also made the final recommendation for selection to the Director, SDM.

35. The Tribunal notes, however, that it was Ms. Ho, and not Ms. Taylor, who prepared the written assessment test. It also took into account the Respondent's argument that Ms. Taylor sought the assistance of Ms. Ho in the correction of the test, in accordance with the relevant rules. Finally, the Tribunal took note of the Applicant's statement, filed upon the court's inquiry, that the question of who acted as Hiring Manager (Ms. Ho or Ms. Taylor) was not determinant for the final outcome of the selection process, since, as she put it "both Ms. Taylor and Ms. Ho were biased against [her]".

36. The Tribunal notes that while the relevant rules provide for the possibility for the hiring manager to seek assistance in the correction of the test, they do not seem to provide for the possibility to seek such assistance to design the test. This is, however, what happened in the case at hand. The Respondent did not provide any evidence, either, that Ms. Taylor formally delegated that task to Ms. Ho.

37. The foregoing notwithstanding, and after a careful consideration of the case, the Tribunal came to the conclusion that the Applicant was not able to establish a congruent link between Ms. Ho's intervention in the preparation of the written test and her non-selection for the contested post.

38. Indeed, the Tribunal noted that despite the allegations of bias against her, both with respect to Ms. Ho and Ms. Taylor, the Applicant successfully passed the test and was, consequently, invited for the interview. She was, however, eliminated by the Interview Panel, on the basis of her performance at the interview. Thus, the question whether Ms. Ho could legally design and correct the test, on behalf of Ms. Taylor who was the hiring manager, was not determinant on the outcome of the present selection process. The Tribunal also emphasizes that the test was anonymous to safeguard the identity of the applicants and ensure an impartial evaluation.

39. Moreover, it is not for the Tribunal to substitute its assessment to that of the Administration with respect to the content of the test, which remains within the Administration's discretion. The Tribunal can only interfere with the content of the test if it is convinced that it was manifestly unreasonable. None of the Applicant's arguments establishes that this was so in the case at hand. It is also certainly not for the Applicant to decide what kind of questions should or should not have been included in the test.

40. If indeed the test for the G-5 post was simply a "scaled down" version of that for the P-2 post, that does not appear to be manifestly unreasonable either.

41. The Tribunal thus sees no reason to find that the design, conduct and evaluation of the written assessment constituted a violation of the Applicant's right to full and fair consideration.

The composition of the Interview panel

42. The Applicant argues that the interview panel was improperly constituted because the members who were appointed were not experts in finance.

43. As far as this argument is concerned, the Tribunal emphasizes that both the jurisprudence of the UNDT and of the Appeals Tribunal confirm that it is for the Administration to select the composition of an interview panel according to established criteria.

44. In *Aliko* 2015-UNAT-540 (affirming *Aliko* UNDT/2014/042), the Appeals Tribunal relevantly stated:

The Administration disposes of considerable discretion in determining who is an “expert” for the purpose of [UNOPS Recruitment – Instructions and Procedures, section 14.7.3(b)(i)(2)] and considers that it can legitimately be argued that in view of the similarity of the management functions of the Director, IAIG, and those of the disputed post, the Director, IAIG, was an expert under the ... rule. Moreover, and maybe more importantly, the Tribunal finds that there can be no doubt that the Programme Manager ... though he was sitting on the Panel as a “client representative” – beyond what was required by the applicable rules – also fulfilled the criteria of a technical expert. ... Indeed, ... he certainly had in-depth knowledge with respect to the skills and expertise required for the disputed post. This is supported by the fact that it was in fact him, together with the Director, SWOC, who marked the written test which [Mr. Aliko] ... passed successfully.

45. In *Tiwathia* UNDT/2015/021 the Tribunal “deemed that an expert sitting in a panel set up to recruit the senior head of a medical unit, did not necessarily need to be a doctor; an expert on management could be considered as a subject matter expert for this post, as it required managerial skills”. In line with this, the Tribunal also considered in *Krioutchkov* UNDT/2016/052 that the Chief of a different translation service (Spanish) would be a subject-matter expert for a post of translator at the Russian translation Section.

46. The contested post is that of Associate Programme Officer in the SDM Finance Team, and the incumbent is responsible for supporting effective financial and budget management, as well as for the coordination of administrative activities. The Respondent noted that the subject matter experts in the panel were Ms. Ho and Ms. Milka. Ms. Ho has a Bachelor in accountancy and is a certified accountant. She also has relevant work experience in audit-risk management, financial analysis and financial management. Ms. Milka has a Bachelor in social science, and work experience in financial management since 1994. In light of the standards set by the above jurisprudence, the Tribunal is satisfied that both Ms. Ho and Ms. Milka were experts within the meaning of sec. 2.1.6 of AG/2011/3 (UNFCCC Staff selection system) in the selection process for the contested post.

47. Further, the Tribunal notes that the SoP only requires that the panel members passed the competency based interview course, which they did. Hence, the Tribunal finds the alleged lack by any of the Panel members of any of the competencies linked to the contested post not only unproven, but also irrelevant for the regularity of the selection exercise.

48. The Applicant also argues that the composition of the panel shows bias against her because there were personal issues between her and both Ms. Ho and Ms. Taylor, and that she was victim of harassment.

49. However, the Applicant did not require, at any time, the recusal of Ms. Ho or Ms. Taylor from the panel. Further, she filed an official complaint for abuse of authority only in January 2015, that is far after the completion of the present selection exercise.

50. The Tribunal notes that while the Applicant appealed the 4 December 2015 decision of the Executive Secretary, UNFCCC, that there was no violation of ST/SGB/2008/5, it rejected her application, which it found to be irreceivable (Judgment *Faust* UNDT/2016/018). Indeed, the Applicant appealed said judgment, and the Appeals Tribunal upheld the UNDT judgment.

51. It follows that the Tribunal cannot, for the purpose of these proceedings, enter into a substantive consideration of the decision that was the subject of judgment *Faust* UNDT/2016/018. However, having analysed the instant case's file, the Tribunal concludes that the Applicant has not proven the factual grounds that could support a harassment allegation. The participation of Ms. Taylor, as hiring manager, and of Ms. Ho, as a member of the Panel, which the Applicant did not contest at the relevant time, was thus lawful and there is no indication of bias against the Applicant.

52. The Tribunal further noted that the other Panel members, against whom the Applicant did not raise any argument of bias, agreed to the interview report concluding that the Applicant was not to be recommended for the post. There is no indication at all that these Panel members were in any way influenced by Ms. Ho or by Ms. Taylor.

Were technical skills to be part of the interview or did the panel overstep its mandate?

53. The vacancy announcement stated that “candidates may be invited for assessment of their technical/professional knowledge. The final stage of the selection process consists of a competency based interview to assess skills and aptitudes required to successfully perform the functions of the post. The following set of competencies for this particular post will be applied: Being accountable, communicating with impact, working with teams, delivering results”.

54. The SoP relevantly provides in sec. 9.1 that “[t]he competency based assessment should focus on all these factors – not just the application of technical expertise – to ensure effective performance in the vacant post”.

55. The panel’s assessment on the Applicant states that she “didn’t demonstrate expert knowledge on the area of finance”. Under the relevant rules, the Panel was mandated to assess both the technical skills and the competencies contained in the vacancy announcement. Therefore, it did not overstep its mandate when it also made a statement and an evaluation of the Applicant’s technical expertise at the interview stage.

56. Section 9.9.2 of the SoP provides that an overall rating of “acceptable” may be given if “[a]ll competencies are rated at ‘acceptable’ level or above except one at ‘acceptable with reservation level’”. The interview panel assessed the Applicant as “acceptable with reservation” under four out of five competencies. The remaining competency was assessed as “acceptable”. The Applicant’s view that the Panel was unable, e.g., to understand the basic relevancy of the examples she gave, and to demonstrate a basic understanding of expenditure reports, financial rules and regulations, or what constitutes teamwork, is simply her personal opinion. The Tribunal has no reason to question the validity of the Panel’s views, and certainly cannot substitute its own views to that of the Panel. Indeed, the Tribunal cannot replace the interview panel’s assessment for its own because this would fall out of the scope of its jurisdiction.

57. Full judicial review does not imply replacing the Administration and its discretion but rather to ascertain whether the rules of fairness, transparency and accountability were followed during the recruitment procedure.

58. In the present case, the Applicant did not show that the procedure was biased against her, or that her right to full and fair consideration was violated through any procedural flaws.

59. On the contrary, the Tribunal is satisfied that the panel was composed of experienced experts, that technical skills were evaluated through an anonymous test and that the interview bore in mind a relevant set of skills that it found the Applicant didn't possess.

60. With respect to the demand for compensation, the Tribunal has not identified any flaws or bias in the procedure to justify such compensation. Moreover, even if the procedure was biased (which is certainly not the case) the Applicant did not provide any relevant evidence of harm in this case as requested by art. 10.5.(b) of its Statute. As a consequence, the Applicant is not entitled to any compensation.

Decision

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

The application is dismissed.

(Signed)

Judge Teresa Bravo

Dated this 6th day of December 2016

Entered in the Register on this 6th day of December 2016

(Signed)

René M. Vargas M., Registrar, Geneva