



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

REHMAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Miles Hastie, UNICEF

Introduction

1. By application filed on 1 February 2016, the Applicant contests the decision not to select her for the post of Programme Assistant, GS-6, Polio Section, UNICEF in Islamabad, Pakistan, “and [a] non-transparent selection process”.
2. The Respondent filed his reply on 1 March 2016.

Facts

3. The Applicant joined UNICEF, Islamabad, Pakistan, on 1 November 2006, as Project Assistant, GS-5, on a temporary fixed-term contract with the Construction Unit. On 17 March 2010, she was selected as Program Assistant GS-6, Construction Unit, and her appointment expired on 31 December 2012. She was granted a fixed-term contract as Programme Assistant, GS-6, Education Section, on 1 January 2013 and was separated from service on 31 December 2015, upon the expiration of her fixed-term contract.
4. The Applicant applied to the post of Programme Assistant (GS-6), Polio Section, UNICEF, Islamabad, Pakistan, and on 18 November 2015, she participated in a written test for it. The test consisted of four questions with a total of eighty points to be awarded, and had a forty points passing mark. The two assessors awarded the Applicant eleven and twelve points respectively, and she was thus not invited for an interview.
5. By email of 17 December 2015, the Applicant asked the Chief, Human Resources, UNICEF, Pakistan, to be given the marks she received in the written test for the post of Programme Assistant (GS-6), Polio Section, and those of two other tests she had taken for two other positions.
6. By email of 21 December 2015, the Chief, Human Resources, UNICEF, Pakistan, informed the Applicant that while she had scored sufficiently in one of the three tests, and she would therefore be invited for an interview for that post, she had not passed the threshold for the other two posts, including the post of Programme Assistant (GS-6), Polio Section. She was also informed that under

UNICEF's selection policy, it was not required to share the results of the written tests.

7. On 29 December 2015, the Applicant requested management evaluation "to review/examine the process of shortlisting and [the] written test result for the position of Programme Assistant (GS-6)". She received a response upholding the decision not to select her for the post on 8 January 2016.

8. Only two candidates successfully passed the test for the GS-6 post at the Polio Section, and were invited for an interview. However, during the interview, none of them was found suitable and the post was re-advertised on 5 January 2016. The Applicant applied for the re-advertised post and was interviewed, with other candidates, after passing the written test. She was, however, not recommended for the re-advertised post after the interview.

9. On 7 March 2016, the Applicant filed a request for submission of additional documents by the Respondent, and by Order No. 40 (GVA/2016) of 7 May 2016, the Respondent was invited to file comments thereon, which he did on 14 March 2016. The Applicant's motion was granted by Order No. 52 (GVA/2016) of 17 March 2016, and the Respondent was asked to file the requested documents on an *ex parte* basis.

10. By Order No. 243 (GVA/2016) of 14 December 2016, the Tribunal granted the Applicant access to the documents that the Respondent had filed *ex parte*, partly redacted and on an under seal basis. It further invited the Applicant to respond to the disclosed documents by 30 December 2016, and the parties to comment on the need for an oral hearing by 6 January 2017.

11. On 29 December 2016, the Applicant filed a motion requesting that the documents disclosed to her be produced in Excel format. The Respondent replied to the motion on 3 January 2017, pursuant to para. 6 of Practice Direction No. 5. The Respondent's submission and its annexes were filed on an *ex parte* basis, and he requested the Tribunal to order that the Excel files he provided be kept under seal.

12. On 6 January 2017, pursuant to Order No. 243 (GVA/2016) of 14 December 2016, the Applicant informed the Tribunal that she considered that an oral hearing was necessary in this case, and referred to four staff members involved in the selection process who should be called as witnesses. On the same day, the Respondent informed the Tribunal that he considered that no hearing was necessary, and suggested that if it were decided to hold a hearing, “[the Applicant] first give[s] testimonial evidence of how there *has been* (not “*could be*”) ‘editing or tempering to enhance or deprive the status of any favourite or malicious candidate’”. Furthermore, the Respondent argued that only thereafter should the Tribunal decide about the reasonableness to hear evidence from the four witnesses suggested by the Applicant.

13. By Order No. 13 (GVA/2017) of 19 January 2017, the parties were convoked to a case management discussion, which was held on 25 January 2017. By Order No. 23 (GVA/2017) of 25 January 2017, the Tribunal requested the Respondent to file additional documents, invited the Applicant to comment thereon, and convoked the parties to a hearing on the merits.

14. The hearing on the merits was held on 2 and 3 March 2017, with the Applicant appearing by phone and Counsel for the Respondent by videoconference. The Applicant, the Human Resources Assistant who administered the written test for the GS-6 post at the Polio Section, and the Chief, Human Resources Section, UNICEF, Islamabad, Pakistan, were heard as witnesses. The Tribunal decided that the two remaining witnesses suggested by the Applicant, namely the two assessors of the test, were not relevant.

15. After the hearing, and with leave from the Tribunal, both parties made one additional filing on 3 and 5 March 2017, respectively. By Order No. 64 (GVA/2017) of 7 March 2017, the parties were invited to submit comments on their respective filings. Both parties made an additional filing, pursuant to Order No. 64 (GVA/2017).

Parties' submissions

16. The Applicant's principal contentions are:

- a. After she filed a request for management evaluation of the decision not to renew her appointment, in which she referred to discrimination against her, management was biased against her;
- b. As a qualified candidate on an abolished post, with full command and required competence in the relevant field for the GS-6 Polio Section post, and as an internal candidate, her candidature could be rejected at the interview stage only with a strong justification; therefore, management decided to stop her candidature at an earlier stage;
- c. She could have been reassigned against the post, pursuant to sec. 10.4 of UNICEF CF/EXD/2009-008 (Staff Selection), but no consideration was given thereto;
- d. When the post was re-advertised, she was denied her status as an internal candidate on an abolished post;
- e. The requirement of a transparent and fair selection process provided for in the UNICEF Staff Selection Policy (CF/EXD/2009-008) was not met; the written test was done and submitted in soft version, not in PDF or any protected format, and candidates did not have to sign the hard copy; thus, the data in these written tests could be easily changed to the detriment or the advantage any of the candidates; it is not clear what measures were taken to protect the written test;
- f. She does not question the written test assessment, but the test filed by the Respondent as "the Applicant's test" is not the one she submitted on 18 November 2015; since she submitted the test in soft format and was not asked to sign a hard copy, it was easy for UNICEF to alter it; the metadata shows that the test was again opened and modified on 19 November 2015;

g. Before the coding, the written tests could be easily recognised by the candidates' names and subject to alteration; her test was "totally tampered" with;

h. The fact that the Human Resources Assistant who administered the test sent it to two staff members who worked at the Polio Section, rather than sending them directly to the two assessors, is questionable; also, he sent the tests to these two staff members only on 20 November 2015, so the tests had been in the custody of Human Resources for three days, without any protection;

i. Although the Human Resources Assistant was a consultant, he performed staff functions when he administered the test, this was in contradiction with Administrative Instruction CF/AI/2013-001 about Consultants and individual contractors;

j. There is a contradiction with respect to who coded the test: the Respondent said in his reply that it was done by the Human Resources Section, whereas the two assessors in their declarations filed with the Tribunal said that the coding was done by the Hiring Unit;

k. No regard was given to the management evaluation process, since the post was re-advertised on 5 January 2016, prior to the completion of the management evaluation she had filed on 29 December 2015;

l. The external candidates who were shortlisted for the interview did not fulfil the requirements of the UNICEF Staff Selection System and of the advertised post; the shortlisting was also contrary to the United Nations Staff Rules;

m. Her performance evaluation reports show that she was a meritorious candidate who fulfils the requirements of the post; the decision was biased and not based on merit; and

n. She asks the Tribunal, *inter alia*, to make directions to reassign her service contract for the available GS-6 Programme Assistant post, Polio Section, UNICEF, Islamabad, until her vacant post of Programme Assistant, GS-6, Education Section, gets funded; to make orders to (re-)conduct the written test by a secure and transparent method, and re-conduct the selection process.

17. The Respondent's principal contentions are:

a. While the Administration has a discretion in recruitment matters, it must act in good faith and respect relevant procedures, and its decisions shall not be arbitrary or otherwise motivated by extraneous factors. The Applicant has the burden of proving that the procedure was violated, that the decision was biased or that irrelevant material was considered or relevant material ignored;

b. The test was prepared by a subject-matter expert and the candidates' answers were stored and then coded (i.e., assigning a numeric code to each candidate's written test) by the Human Resources Section, before they were transmitted to the two subject-matter expert assessors, together with a "scoring key"; the two-assessors blind-assessed the test and the evidence confirms that the substance of the test submitted by the Applicant and the coded test submitted to the assessors is identical; the only changes made to the Applicant's written test, to safeguard its anonymity, were:

- i. adding code "002" at the top of each page; and
- ii. replacing, under the answer to question 2, part 1, the name indicated by the Applicant as addressee of a letter ("Mr. Amjad Khan Afridi") by "ABC", and the Applicant's own name, which she had also included in the letter in question, by "XYZ".

- c. In fact, when the Applicant initially filed a complaint into alleged tempering with the test, which is a serious allegation of fraud, she did not identify a single character that had been added or altered in her test that she herself had written;
- d. The evidence confirms that no other changes were made to the Applicant's written test; the Applicant herself was not able to show that any substantive alterations were made to her test, and failed to meet the burden of proof in this respect;
- e. If the tests had been signed by the candidates, the anonymity would not have been ensured; also, if the candidates had been asked to submit the excel files as PDF documents, the assessors would not have been able to see the formulae used, hence, the process used by each candidate; the test was properly protected and not tampered with;
- f. While two candidates were interviewed after having passed the written test, none of them was recommended. Therefore, the post was re-advertised, and the Applicant had the opportunity to submit her candidature; and
- g. The application should be dismissed as moot and without merit.

Consideration

18. It is well established that the Secretary-General has broad discretion in matters of appointment and promotions, and that it is not the role of the Dispute Tribunal or the Appeals Tribunal to substitute its own decision for that of the Secretary-General regarding the outcome of a selection process (*Abbassi* 2011-UNAT-110). When reviewing such decisions, the Tribunal is limited to examine "(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" (*Abbassi* 2011-UNAT-110; *Majbri* 2012-UNAT-200; *Ljungdell* 2012-UNAT-265).

19. The Appeals Tribunal further ruled in *Rolland* 2011-UNAT-122 that official acts are presumed to have been regularly performed. Accordingly, in a recruitment procedure, 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 then be able to show through clear and convincing evidence that a fair chance for selection was denied.

20. The decision not to select the Applicant to the post of GS-6, Polio Section, UNICEF, Islamabad, was based on her failure to pass the threshold of the written test administered on 18 November 2015 to shortlist candidates for interviews. Indeed, while the passing threshold had been set at 40 out of a total of 80 points (50%), the average points attributed to the Applicant by the two independent assessors was 11.5.

21. The Applicant sustains that her candidature was not given full and fair consideration, and that UNICEF discriminated against her. The Tribunal notes that the Applicant does not argue that the *assessment* of her test was not done properly; rather, she submits that her written test was tampered with after she had submitted it in soft version, without signature, to the Human Resources Assistant.

22. However, the Applicant does not specify who allegedly tampered with her test, nor does she explain when and how this would have happened. Nevertheless, in a submission dated 5 March 2017, following the hearing on the merits, she presented to the Tribunal a copy of a complaint she had submitted on 21 March 2016 to the Office of Internal Audit and Investigations (OIAI) for abuse of authority and discrimination by Ms. Beverly Mitchell, Chief, Human Resources, UNICEF, Islamabad. In that complaint, the Applicant noted that she was shocked when she saw the version of her test that was provided to the Tribunal by the Respondent in his reply to her application dated 1 March 2016, since it was "tampered and edited either by Ms. Beverley (sic) or upon her instructions and directions as it was in her custody in soft version".

23. Before the Tribunal, the Applicant further mentioned that the test was not protected when it was in the custody of the Human Resources Section from 18 November to 20 November 2015, and that it was possible e.g., for the Human Resources Assistant who administered the test to modify it when he saved it on his laptop, which he may have taken home.

24. Before entering into an analysis of the Applicant's arguments, the Tribunal recalls what it pointed out in *Simmons* UNDT-2013-050, namely that:

Allegations of bias and prejudice are easy to make and usually extremely difficult to prove because of the absence of affirmative evidence. Accordingly, the Tribunal must be prepared to draw inferences from the primary facts. If the facts established do not reasonably point to the possibility of bias or prejudice that will normally be the end of the matter. However, where they may tend to show that the possibility of bias, prejudice or improper considerations may possibly have infected the process the onus shifts to the Respondent to show that bias or prejudice did not in any sense whatsoever taint the selection process and final outcome.

25. With this in mind, the Tribunal looked closely into the alleged alteration of the Applicant's written test, by examining the available documentary evidence and the oral evidence heard at the hearing.

26. First, it took note of the written statement made by Ms. Beverley Mitchell, Chief, Human Resources, UNICEF, Islamabad, certifying, after reviewing the office's record, that the test submitted by the Applicant was identical to her coded test submitted to the two assessors for scoring. In her oral evidence, Ms. Mitchell slightly corrected her statement and noted that the only alterations undertaken on the document were:

- a. The code number added at the top of each page (Code No. 002); and
- b. The replacement of two names the Applicant had written under Question 2, part 1, where candidates were asked to write a letter. Concretely, the name of "Mr. Amjad Khan Afridi", who the Applicant had put as the addressee of the letter, was replaced by "ABC", and the

Applicant's own name, which she had put in the letter, was replaced by "XYZ", to safeguard the anonymity of the test.

27. These changes were necessary as the Applicant had failed to follow the instructions directed at ensuring that the name of a test candidate did not appear on the test.

28. The above was also confirmed by an email Ms. Mitchell wrote to Counsel for the Respondent on 21 February 2016, which in its relevant part reads as follows:

When individuals write the test the original test file is saved with their name so we can track back each document to the actual individual. That test is then coded by HR and sent to the evaluators to ensure the candidates remain anonymous. During the coding process the HR person has a quick scan through the test to ensure the candidate has not inadvertently identified themselves. For example, if part of the test is to write a letter and the candidate signs their name to the bottom of the letter then clearly they are not anonymous anymore, so HR will delete the name. [The Applicant] had written her name on the test somewhere and it needed to be removed.

After the tests are coded HR is provided with the test key from the SME so that the coded tests and the key are sent to the two evaluators. In this particular case HR received the key a couple of days after the tests had been coded and sent to the evaluators.

Without the test key (and HR did not have the test key until after tests were coded and submitted to the evaluators) it would be difficult for HR to tamper with the test in any effective way (i.e. make it better or worse) as it's a technical test so without the test key HR wouldn't know how to change the test for the better/worse. It would also be difficult for the SMEs evaluating the tests to tamper with the test in any effective way as the candidate identity isn't known to the evaluators and the evaluators mark the tests separately. I've pulled the original copy of [the Applicant's] test for this particular competition and the one that was coded and sent to evaluators and both tests are identical, so I'm not seeing anything that looks suspicious.

29. While Ms. Mitchell thus also confirmed that tests could potentially be modified, she gave evidence at the hearing that in the case at hand, apart from the above changes mentioned, no further alteration, and more specifically no substantive change, had been made to the Applicant's test.

30. The Applicant gave evidence that she took the test on a computer provided by UNICEF in the test room, in Islamabad, and that at the end of the test, her test files were saved on an USB stick by the Human Resources Assistant who administered the test. The Applicant expressed concern that she was not given, or could not keep, a paper or electronic copy of her test files, nor was she requested to send it to UNICEF via email. She stressed that since the test files were not protected, nor signed, it was possible and easy for UNICEF to alter them. She insisted that the test submitted to the Tribunal as being her test was not her test, and that it had been considerably altered.

31. The Human Resources Assistant who administered the test, Mr. Ikhtiar Mohammad Khan, confirmed in his evidence that he saved the Applicant's test on an USB stick, and then on his work computer. He further confirmed that after the Applicant's test was coded by the Human Resources Unit, he sent it to Mr. Terumi and Mr. Kevin, on 20 November 2015. When asked if it would have been possible for him to alter the test after he had received and stored it on his computer and before he sent it to Mr. Terumi and Mr. Kevin, he answered negatively adding that his work ethics would not allow him to do such a thing, and that, in any event, it would not make any sense to do so.

32. The Tribunal is concerned about the lack of protection of the test while it was in the custody of Human Resources, and also by the fact that the administration of the test was confined to a Human Resources Assistant, who was not a staff member but a consultant at the relevant time. He was no longer in employment of UNICEF at the time of the hearing. The Tribunal does not question the integrity of that Human Resources Assistant. On the contrary, the evidence provided by Mr. Khan was credible and the Tribunal commends him for having put a considerable amount of his time at its disposal to give evidence before it.

33. The foregoing notwithstanding, the Tribunal is concerned that UNICEF entrusted a delicate matter, such as the administration of a recruitment test, to a person who was not subject to the Staff Rules and Regulations, and therefore to the standards of accountability and integrity that relate to them, but merely to UNICEF Administrative Instruction governing Consultants and individual contractors (CF/AI/2013-001 Amend 2). Further, by entrusting what appears to be staff functions to the Human Resources Assistant, who was recruited as a consultant, it appears that the Administration may have contravened sec.1.1(a) and sec. 3.5 of CF/AI/2013-001 Amend 2.

34. However, as stated above, the evidence of the Human Resources Assistant was clear and left no doubt that he did not in any way alter or manipulate the administration of the test to the Applicant's detriment. Thus, any irregularity to entrust the administration of the test to the Human Resources Assistant did not, in this specific case, have any impact on the Applicant's right to full and fair consideration.

35. Indeed, the Tribunal is of the view that the record and the oral evidence heard during the hearing do not allow for any inference that the Applicant's test was altered. Indeed, Counsel for the Respondent and the Tribunal probed the Applicant's evidence to get a clearer picture as to what parts of the test, if any, she thought had been tampered with. The Tribunal notes that despite very specific questions asked to the Applicant, she was not in a position to give any convincing evidence as to what concretely had been altered in her test, and where. Rather, the Applicant made very general statements such as "this is not my test" and that it was "totally tampered".

36. The Applicant stated, specifically, that there was a white space under her answer to Question 1 (on her test coded 002), between "[i]f I need to raise any Contract in the system:" and the first bullet point starting with "[f]irst, I will check all the signed approved TOR's are there;". The Applicant stressed that she recalled having inserted an organigram after "[i]f I need to raise any contract in the system;".

37. The Tribunal notes, first, that there is a very small white space of around three centimetres between the two quotes and finds it difficult to accept that an organigram that would have fitted in such a small space. Second, the Tribunal considers that it appears coherent to add after “[i]f I need to raise any Contract in the system;” a first bullet point “[f]irst, I will check all the signed approved TOR’s are there”, rather than inserting an organigram between the two. The Tribunal was thus not satisfied that the Applicant’s recollection in this matter was correct, and that it constituted convincing evidence that her test had been altered. Despite being asked to do so, the Applicant was not able to provide any other concrete example of what had been allegedly altered in her test.

38. The Tribunal further notes that the Applicant was first given a copy of her coded test (Code No. 002) already on 1 March 2016, when UNICEF submitted its reply to the present application, and attached the Applicant’s coded test to Ms. Mitchell’s statement that it was identical to the one that the Applicant handed over. She did thus receive a copy of what UNICEF sustained to be her coded test relatively close to the date on which she had undertaken it on 18 November 2015. One could therefore assume that at that time, the Applicant’s memory of what she had written in her test was still relatively fresh.

39. The Tribunal observes that in her complaint to OIAI of 21 March 2016, the Applicant noted that she was shocked when she saw the version of her test that was provided to the Tribunal by the Respondent on 1 March 2016, since it was “tampered and edited either by Ms. Beverley (sic) or upon her instructions and directions as it was in her custody in soft version”. She did, however, not refer to specific alterations of the test that were allegedly undertaken. Indeed, the Tribunal is concerned that the Applicant, when she first received a copy of what was filed by UNICEF as being her test, did not point out concrete elements of the alleged alteration either to the Tribunal or to OIAI.

40. The Applicant made several court filings and asked for additional documents, many of which were provided, but did not raise the issue of specific alterations at any point. She simply made some general allegations that since she did not submit her test in hard copy, and signed it, it would have been easy and possible to alter her or the other candidates' tests, to disadvantage or advantage one or the other. The Applicant did not, at any time close to receiving the copy of the test, point to concrete alterations that had allegedly been made to it. The Tribunal believes that if, indeed, the Applicant had noticed, at that point in time, that the substance of her test had been (as she stated "totally") altered, she would and should have drawn the attention of the Tribunal to the very specific elements of the test that had, in her recollection, been changed. Quite the contrary, and as noted above, when probed during her evidence both by Counsel for the Respondent and by the Tribunal, the Applicant was unable to provide specific and convincing examples of how and where her test had been altered, and by whom.

41. In that respect, the Tribunal further notes that the Applicant admitted that none of the persons involved in the administration of the test had worked with her in the Education Section, UNICEF, Islamabad. Also, at the time, none of them had been the subject of a complaint of harassment by the Applicant, or had they otherwise anything to do with the alleged harassment that the Applicant states she had been subjected to by UNICEF management in the office.

42. The only person against whom the Applicant filed a complaint for harassment was Ms. Beverly Mitchell. However, the Tribunal observes that not only did Ms. Mitchell not have any specific role in this particular recruitment exercise (let alone in the administration of the test), but also, and as importantly, the Applicant filed a complaint of harassment by Ms. Mitchell only much later, namely in March 2016. Her allegation, contained in the complaint filed on 21 March 2016, that the test was altered by or upon instruction from Ms. Mitchell was not substantiated by any evidence.

43. In addition to the lack of evidence in respect of the alteration of the Applicant's test, the Tribunal finds that she was not able to identify and prove a potential motive that any of the persons involved in the processing and administration of the test could have had to influence, in any way, the outcome of the selection process to the detriment of the Applicant. Therefore, and in the absence of any evidence that her test was substantively altered, the Applicant's argument that the decision not to select her for the contested post was influenced by extraneous factors must fail.

44. Finally, the Applicant argued at the hearing that she could, and should, have been laterally reassigned to the contested post pursuant to sec. 10.4 of UNICEF CF/EXD/2013-004 (Staff selection). The Tribunal notes that while in light of the wording of that provision ("may be reassigned"), such a lateral reassignment may have been under the Administration's discretion, it was certainly not mandatory to consider the Applicant for it.

45. For the sake of argument, and in view of the remedies the Applicant requested, the Tribunal finds it noteworthy to recall that while two of the candidates, other than the Applicant, successfully passed the written test in the first selection exercise, they were not found suitable by the interview panel. Therefore, the vacancy announcement for the contested post was re-advertised the Applicant reapplied and, this time, successfully passed the written test.

46. The Tribunal notes that the Applicant's argument that the UNICEF Administration altered her test to exclude her, is somewhat contradicted by the fact that when the post was re-advertised, she was again invited to sit the test, which she passed successfully. She was subsequently invited for an interview, but was not found suitable and, hence, was not recommended for the post. The Applicant informed the Tribunal that she did not formally contest her non-selection to the contested post through the internal justice system after that second selection exercise, since she considered that an application would not have been receivable, in light of Judgment *Rehman* UNDT/2016/121.

47. She further argued that the timing of the second selection process was such that she had lost her status as an internal candidate on an abolished post and, hence, she was being disadvantaged. While this second selection exercise is not properly before it, the Tribunal notes that the Applicant failed at the level of the interview, hence her non-selection appears to be unrelated to her status as an external or internal candidate.

48. The foregoing notwithstanding, the Tribunal observes that even if it had found an irregularity in the first selection process that could have resulted in a finding that the Applicant's right to be given full and fair consideration was violated, it would not have been in a position, given the limitations of its Statute, to grant her the requested relief, namely, the repetition of the selection exercise. This had already occurred, with the Applicant participating. Thus, any rescission of the contested decision through the present proceedings would not serve any purpose, as the relief sought cannot be granted due to the supervening events.

49. In this respect, the Tribunal recalls what the Tribunal held in *Garcia Iglesias* UNDT/2015/035, namely that an application against the initial non-selection decision may be found not receivable, since moot, in case a vacancy announcement is re-advertised and the Applicant reapplies to the new vacancy announcement, and is (again) not selected as a result of the second selection exercise.

50. For the reasons outlined above, the Tribunal finds that in the present case, the relief requested by the Applicant is moot, hence, could not have been granted by the Tribunal even if it had found that the contested decision was illegal. Also, with respect to any losses, and in light of her failing at the interview stage in the second selection exercise, the Tribunal cannot but find that the Applicant's chances of success in the first selection exercise were very low.

51. On a separate issue, the Tribunal also took note of the Respondent's submissions made at the hearing that in order to ensure anonymity, it was not possible to have the candidates sign their actual tests. Furthermore, to fully reflect the candidates' performance at the test, it was not an option to convert the Excel files to PDF format, since the latter would not reflect the formulae used by the candidates. Evidence was given in this respect, and the Tribunal finds that formulae are only accessible in an Excel file. The Applicant herself agreed on these two points during the hearing.

52. The foregoing notwithstanding, the Tribunal suggests that for the future, in order to allow candidates, and the Tribunal when necessary, to compare tests that are assessed as "theirs" with the copies submitted by them in a given test, it may be prudent to have candidates send their test results as an attachments to an emails, instead of copying them on a USB stick from the Organization's computer on which the test was undertaken.

Conclusion

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

The application is rejected.

(Signed)

Judge Rowan Downing

Dated this 15th day of March 2017

Entered in the Register on this 15th day of March 2017

(Signed)

René M. Vargas M., Registrar, Geneva