



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2017/015
UNDT/GVA/2017/047
Judgment No.: UNDT/2018/113
Date: 21 November 2018
Original: English

Before: Judge Goolam Meeran

Registry: Geneva

Registrar: René M. Vargas M.

ABDELLAOUI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Jérôme Blanchard, UNOG

Introduction

1. This judgment concerns two applications filed by the Applicant in relation to the same Job Opening No. 62272 for the post of Chief, Arabic Translation Section (“ATS”) (P-5), Division of Conference Management (“DCM”), United Nations Office at Geneva (“UNOG”).

2. On 14 March 2017, the Applicant filed an application, Case No. UNDT/GVA/2017/015, contesting the decision not to short list her. The Respondent filed his reply on 8 May 2017.

3. On 29 June 2017, the Applicant filed a second application, Case No. UNDT/GVA/2017/047, contesting the decision not to select her for the above-referenced position. The Respondent filed his reply on 7 August 2017.

Facts

4. The Applicant is an Arabic Reviser (P-4), ATS/UNOG, on a permanent appointment.

5. The post of Chief, ATS/DCM, UNOG (P-5) was advertised in *Inspira* from 23 June to 21 August 2016. It contained the following requirement relating to professional experience:

A minimum of ten years of professional experience in translation, revision and/or in the provisions of language or language related services, of which preferably four years within the United Nations. Significant language-related management experience in international, regional or national institutions is required.

6. The central issue in this case is whether the Applicant is correct in asserting that she demonstrated in her application that she met this requirement and that in failing to shortlist her she was not given full and fair consideration. Alternatively, is the Respondent correct in submitting that looking at her application as a whole the Applicant did not meet this requirement.

7. Since the failure to shortlist the Applicant necessarily resulted in the Applicant not being considered for, or appointed, to the vacancy, it was appropriate in the exercise of its discretion for the Tribunal to subject both cases to an Order for combined proceedings.

8. Of the 103 candidates who applied, twenty-three, including the Applicant, were released to the Hiring Manager, who was the Chief of the Languages Service. Following the Hiring Manager's review, 17 candidates, including the Applicant and four other P-4s from ATS/DCM, UNOG, were deemed not suitable. The remaining six candidates were short listed for a written test, after which five candidates were invited to a competency based interview. After the interviews, two candidates were considered to have met all of the evaluation criteria and were placed on the recommended list, which was endorsed by the Central Review Board on 20 December 2016.

9. The recommendation was sent to the Director-General, UNOG, on 16 January 2017, and the selection decision was made on 17 January 2017. The Applicant was notified of her non-selection on 18 January 2017.

10. The Applicant complied with the requirements to request management evaluation of the decision not to invite her to the written assessment and the decision not to select her for the appointment.

Procedural history

11. On 6 October 2017, the Applicant filed a motion for production of documents pursuant to art. 18 of the Tribunal's Rules of Procedure and for a joinder of the two applications.

12. On 23 January 2018, the parties filed a joint motion, requesting a suspension of proceedings pending mediation of both cases. By Order No. 12 (GVA/2018) of 23 January 2018, the Tribunal ordered that the matters be suspended until 17 April 2018, in order to allow the parties time to explore an amicable resolution.

13. On 17 April 2018, Counsel for the Respondent filed a motion to return to formal proceedings, informing the Tribunal that the parties had been unable to resolve the matter amicably. The Respondent further requested leave to respond to the Applicant's motion of 6 October 2017.

14. By Order No. 78 (GVA/2018) of 18 April 2018, the Tribunal ordered the resumption of proceedings and that the Respondent file comments on the Applicant's motion of 6 October 2017, which he did on 2 May 2018. The Respondent initially objected to the matters being joined, arguing that the first application is not receivable. He also objected to the Applicant's motion for production of documents.

15. By Order No. 140 (GVA/2018), the Tribunal ordered that the two cases be subject to an order for combined proceedings.

16. A hearing on the merits was held on 12 and 13 November 2018. The Tribunal heard evidence from the Applicant and her witness, Ms. G.A., the Focal Point for Human Resources, Executive Office, DCM. Witnesses on behalf of the Respondent were Ms. V.C., a Human Resources Officer, Human Resources Management Service ("HRMS")/UNOG and Ms. M. K., the Chief, Languages Service who was the Hiring Manager. The Applicant was represented by Counsel up to and including the first day of the hearing. Thereafter, the Applicant was self-represented.

Parties' submissions

17. The Applicant's principal contentions are:

- a. Prior to the advertisement of the position, the Hiring Manager showed a pattern of bias, breach of good faith and abuse of managerial discretion against the Applicant, including denying her the opportunity to acquire more in-house managerial experience by not selecting the Applicant against a temporary P-5 vacancy for the Chief, Translation & Editorial Support Section in August 2015, despite her being on the roster for P-5 positions; when that temporary post was opened again in June 2016, additional and more stringent requirements were set out for this position; a former colleague of the Hiring

Manager from the ICC was selected to both these temporary vacancy announcements;

b. On another occasion, the Hiring Manager decided to cancel a vacancy announcement for a P-5 position (Senior Reviser, ATS) while telling the Applicant that she would (again) have been rostered had the vacancy announcement not been cancelled;

c. Further, the Applicant, after having been rostered again for a P-5 Chief of Unit position at the United Nations Office at Nairobi (“UNON”), asked the Hiring Manager to grant her an opportunity to rotate on the role of Officer-in-Charge in view of the upcoming vacancy of Chief, to increase her in-house managerial experience;

d. She had been the Focal Point for Interns from December 2012 until October 2015, when the OIC, appointed by the Hiring Manager, decided to assign that task to another staff member. As Focal Point, the Applicant supervised ten interns or more, and not two interns as alleged in the Respondent’s Reply in support of the contention that she did not have sufficient significant language related management experience;

e. The cover letter and ePAS are part of the application package; the Hiring Manager stressed in the 2015-16 ePAS that the Applicant’s willingness to take on direct supervisory responsibilities as part of the reform of the performance structure in the ATS was appreciated; during that cycle, the Hiring Manager appointed the Applicant as First Reporting Officer for P-3 colleagues;

f. She is already rostered for two P-5 positions, namely that of Chief of the Arabic Translation Unit, UNON, and as Senior Reviser (Arabic) in New York. Failure to include her in the roster for the post of Chief, ATS, was in contravention of sec. 9.4 of ST/AI/2010/3 and pursuant to sec. 7.2 of the administrative instruction, she should have automatically been invited for the written assessment;

- g. Alternatively, she should have been shortlisted pursuant to the Hiring Manager's Manual No. 4 (2012)—according to which a candidate shall be shortlisted if one “seemingly meets the basic evaluation criteria as outlined in the job opening, as well as any defined desirable qualification as outlined in the job opening”—on the basis that she met the basic evaluation criteria as outlined in the job opening and the desirable qualifications as well;
- h. Her profile is very similar to that of the successful candidate, in that they joined the United Nations in the same year and their managerial experience is comparable;
- i. The external candidate who was interviewed but not selected was given full and fair consideration, although she did not fulfil the requirement of ten years in house experience; by at the same time excluding the Applicant, the Administration violated staff regulation 4.4;
- j. The Administration acted in an arbitrary and discriminatory manner;
- k. She was exposed to a hostile working environment and the Hiring Manager denied the Applicant the opportunity to rotate on the position of OIC although she was on the roster for Chief positions; the Applicant's in-house and pre-UN managerial experience were downplayed or omitted by the Hiring Manager;
- l. The decision is tainted by a lack of good faith, prejudice and bias, unequal treatment. She suffered emotional stress and anxiety and prejudice to her reputation and lost a valuable opportunity for career advancement;
- m. The Applicant requests:
- i. to be included in the roster for the position of Chief, ATS;
 - ii. promotion to the post of Chief, ATS/DCM, UNOG;
 - iii. compensation of two-years net base salary in addition to legal costs, for the prejudice done to her career;

iv. compensation for the prejudice to her good name and reputation, and medically documented harm resulting from the consistently arbitrary and publicly disrespectful attitude of the Hiring Manager towards her.

18. The Respondent's principal contentions are:

a. Case No. UNDT/GVA/2017/015 is not receivable, since the decision not to shortlist the Applicant is merely a preparatory step that is not appealable under the Tribunal's Statute. After the selection process had been completed, the Applicant requested management evaluation of that final selection decision, thus precluding herself from relying on her first request to submit the present application. This contention was not pursued with any vigour at the hearing;

b. The decision not to shortlist the Applicant was not unreasonable, improperly motivated or procedurally flawed, and was based on valid grounds. The procedure under ST/AI/2010/3 was properly followed and the decision is lawful;

c. The Applicant did not fulfil the requirement of "significant language related management experience in international, regional or national institutions", as required by the JO in that her only experience, as indicated in her PHP, is the guidance and supervision of two interns since 2012, which is insufficient. The inclusion of this requirement was a lawful exercise of discretion and the same requirement had been included in the last three job openings of Chief of Section in DCM since 2013 and was consistently applied to all candidates. The addition of "is required" or lack thereof in previous JO does not change the fact that this had been a requirement for similar JOs since 2013;

d. The admitted failure by the Applicant to update her PHP cannot be attributable to the Organization;

e. The post was properly classified and advertised under a different job title and code to correctly reflect the managerial functions and its nature as a language position, which was in accordance with ST/AI/1998/9 on the System for classification of posts. The Chief of Section has to supervise three Senior Revisers (P-5), 20 Revisers/Translators (8 P-4 and 12 P-3) and one Document Assistant (G-6). Although the classification led to a change of Job Code the Applicant's argument that the Job Code was altered to exclude her from the list of rostered candidates is without merit since she did not meet the essential requirement of significant management experience;

f. Since the post of Chief of Section has different requirements than a position of Senior Reviser, the request for classification was proper and a different Job Code was properly assigned by the Classification Officer;

g. The Applicant had been rostered for two previous posts which had been advertised under the Job Code "Senior Reviser" P-5, which did not specifically require managerial functions. She could not have been rostered for a post of Chief of Section because irrespective of her being on the roster, or not, the assessment of her PHP would have been unchanged in that she did not meet the requirement of significant management experience which even a roster candidate, would have had to comply with;

h. The allegations of bias on the part of the Hiring Manager are unsubstantiated and should be disregarded since the reason for not shortlisting the Applicant was that she did not meet the required criterion of significant management experience;

i. The Applicant's candidature was given full and fair consideration, the proper procedures were followed and all relevant material has been taken into account. The applications should be rejected.

Consideration

19. This judgment concerns two separate applications against the decision not to *shortlist* the Applicant for the post of Chief, ATS/DCM, UNOG (Job opening

No. 62272) (Case No. UNDT/GVA/2017/015) and the decision not to *select* her for that post (Case No. UNDT/GVA/2017/047). Insofar as the Applicant refers to other selection exercises, these are not the subject of the present proceedings.

20. Before examining the issues that remained relevant after the hearing, the Tribunal recalls that in selection and appointment matters, the Administration enjoys broad discretion and the Tribunal's consideration is limited to whether the procedure laid down in the Staff Regulations and Rules was followed and whether the staff member was given full and fair consideration (*Abbassi* 2011-UNAT-110).

21. Further, the Appeals Tribunal has clarified that in non-selection cases, there is a rebuttable presumption that official acts are presumed to have been regularly performed. It stressed in *Rolland* 2011-UNAT-122 that:

26. There is always a presumption that official acts have been regularly performed. This is called a presumption of regularity. But this presumption is a rebuttable one. If the management is able to even minimally show that the Appellant's candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter the burden of proof shifts to the Appellant who must show through clear and convincing evidence that she was denied a fair chance of promotion.

22. The Appeals Tribunal has consistently held that "the burden of proving improper motives such as abuse of authority, discrimination, retaliation or harassment rests on the person making the allegations" (*see Nwuke* 2015-UNAT-056 and also *Jennings* 2011-UNAT-184).

23. Taking into account the documents on file and the evidence obtained at the hearing, the Tribunal considered that in order to determine the question whether the Applicant's candidature was given full and fair consideration it would be necessary to examine the following issues:

Issue No. 1 Classification exercise and lateral move requirements

24. Prior to the post being advertised it had been classified as a "geographical" rather than a "language" post. As a consequence, the lateral move requirements, which apply to geographical but not to language posts, would have been to the

Applicant's disadvantage. Following its classification as a language post this requirement was removed and staff at P-4 level, including the Applicant, were eligible to apply notwithstanding any lack of lateral moves. The Applicant conceded at the hearing that had this classification not occurred, she would not have been eligible. The Tribunal is satisfied by the evidence of the Hiring Manager that she was keen to effect the classification of the post to be consistent with its true nature as a language post, and thus to ensure that P-4 staff members within ATS would be eligible.

25. Clearly, the classification exercise that was undertaken prior to its advertisement in 2016 was favourable to the Applicant and cannot be used as an argument to impugn the decision.

Issue No. 2 Did the Applicant have "significant language related management experience in international, regional, or national institutions"?

26. The Applicant's argument that the classification was used as a means to add an "illegal" requirement, namely "significant language related management experience in international, regional, or national institutions is required" to exclude her, has no merit. The record shows that since 2013, the positions of Chief, Translation Sections of other languages within DCM/UNOG, equally contained that requirement under "work experience". The mere addition of the words "is required" does not amount to a material change in the requirement of management experience at the requisite level in the JO of Chief, ATS. The Tribunal heard reliable evidence that while in other JOs for Chiefs, Translation Section, DCM/UNOG (e.g. for French and Russian), the words "is required" were not added to "significant language related management experience in international, regional, or national institutions", it was always applied as a requirement rather than as a desirable competency. Any other interpretation of the terms of these other similar JOs would mean that neither the 10 years' work experience, nor the "significant language related management experience" would be a requirement for the positions of Chief, Translation Sections. The Tribunal is satisfied that the managerial experience that was required for the JO as Chief, ATS/DCM, was equally applied as a requirement for similar posts within DCM in the past.

27. The Tribunal sought clarification at the hearing as to the meaning of “significant language related management experience in international, regional, or national institutions”. It was satisfied by the evidence heard from the Hiring Manager that she considered that requirement to be met for all candidates who had either served as Chief of Unit/Section for one to three years or someone who frequently served as OIC in a position over a period of at least three years, and that overall, she would look at the “breadth and depth” of the managerial experience. She also clarified that whether a staff member is regularly acting as OIC depends on each service. For example, at the Arabic Translation Unit at UNON, there is only one P-5 hence the P-4 acts as OIC on a regular basis, whereas at UNOG, there are several P-5s Senior Revisers and it is almost always the P-5s who act as OIC in the absence of the Chief of Section.

28. In response to this aspect of Ms. M.K.’s evidence, the Applicant stated that had she known that was the standard applied by the Hiring Manager, she would not have applied for the post, since she conceded that she did not have that level of “significant language related management experience in international, regional, or national institutions”. The Tribunal suggested to Ms. M. K., the Hiring Manager, that she may consider the wisdom and advantage of introducing as much clarity as possible in JOs so that it will be clear to potential candidates how a particular selection criterion will be measured. That could have avoided misunderstandings and frustrations, on behalf of the Applicant and other candidates, who might not even have applied for the post. The Tribunal finds that this particular criterion was job related and that it was reasonable for the Hiring Manager to assess the Applicant as not meeting this criterion.

29. That said, the Tribunal observes with regret that in the response to the request for management evaluation and in the Respondent’s reply, the Administration insisted that the Applicant did not fulfil that requirement, since her only management experience was that of having supervised “two interns”. This dismissive response minimises the Applicant’s prior experience and is inconsistent with the Hiring Manager’s evidence that she made her assessment on the basis of an examination of the entirety of the Applicant’s written record at the shortlisting

stage and understood and was aware for example of the fact that while the Applicant supervised only two interns at a time, she had supervised several interns over the years. Nevertheless, she concluded that this was not sufficient to fulfil the managerial requirement, to the required degree and standard.

30. The Tribunal finds that the Hiring Manager did not abuse her discretion as alleged in that the requirement of “significant language related management experience in international, regional, or national institutions” for the post of Chief, ATS/DCM, is entirely reasonable, particularly in light of the complex managerial challenges within the ATS to which both the Applicant and the Hiring Manager testified.

Issue No. 3 Did the Applicant’s roster status have an impact on her non-selection?

31. The Applicant was on the P-5 roster for Senior Revisers. She argues that if the contested post had remained under the job code title of Senior Reviser—instead of Chief of Section—and/or if a job code association had been made prior to its publication, she would have been considered as a roster candidate and thus, shortlisted.

32. The Tribunal finds that even if the Applicant had been considered as a roster candidate, that would not have resulted in her being shortlisted or offered the position. The Tribunal heard evidence that after the eligibility screening undertaken by HRMS/UNOG, the Applicant’s name was forwarded to the Hiring Manager, together with others candidates. The Hiring Manager found that the Applicant failed to meet the requirement of “significant language related management experience in international, regional, or national institutions”, according to a reasonable determination of a standard that she consistently applied to that criterion. The Applicant herself conceded at the hearing that she did not meet that standard. The Hiring Manager further gave evidence that since this was not a recruitment from roster and since she decided to conduct a full-fledged selection exercise, whether a candidate was marked as a roster candidate, or not, had no bearing on the application of the shortlisting criteria.

Issue No. 4 Was the requirement of “significant language related management experience in international, regional, or national institutions” applied consistently?

33. The Tribunal takes note of the Applicant’s argument that although the selected candidate had a similar profile to hers, she was found to meet the management requirement and, unlike the Applicant, benefitted from the provisions of ST/AI/1999/9 with respect to gender parity.

34. The Tribunal heard evidence from the Hiring Manager as to the managerial experience of the selected candidate, who had been a Senior Reviser (P-5) at the Department of General Assembly and Conference Management, New York, since October 2014, and in that capacity acted as Programming Officer and managed several general service and professional staff members. The selected candidate had also worked as a P-4 Reviser at UNON. The Hiring Manager reiterated that at UNON, P-4s have more responsibilities and that the selected candidate had, in that capacity, regularly acted as OIC for a period of over four years. While the Applicant continues to argue that her experience was similar to hers, the evidence of the Hiring Manager was entirely credible. It was reasonable for her to arrive at the assessment that the selected candidate fulfilled the standard set for the criterion of “significant language related management experience in international, regional, or national institutions”.

35. The Applicant also argued that other shortlisted candidates did not have the required experience, but she failed to challenge the Hiring Manager thereon in cross examination.

36. The Tribunal is satisfied that the Hiring Manager applied the criterion consistently, and recalls that the Applicant herself conceded during the hearing that she did not possess the required standard of managerial experience.

Issue No. 5 Was the Applicant unduly denied the opportunity to acquire in-house managerial experience?

37. The Applicant also submits that the Hiring Manager unduly denied her the opportunity to acquire in-house managerial experience by not assigning her to act as OIC in March 2016. The Tribunal notes that the Hiring Manager joined the Languages Services in 2015 and that even if she had designated the Applicant to be OIC in March 2016, this would not have changed the fact that at the time of the JO, which was advertised in June 2016, the Applicant would not have fulfilled the requirement of “significant language related management experience in international, regional, or national institutions”. Further, the Applicant did not contest that decision through management evaluation and it is thus not properly before the Tribunal in the present proceedings.

Issue No. 6 Were the decisions motivated by extraneous factors?

38. The Applicant contends that the whole process leading to the contested decisions, and the contested decisions themselves were motivated by extraneous factors and that HRMS/UNOG colluded with the Hiring Manager to exclude her from the recruitment exercise.

39. There is no evidence whatsoever to support these allegations. In light of the evidence heard at the hearing, including from Ms. V.C. (Human Resources Officer, HRMS), Ms. M.K. (the Hiring Manager) and Ms. G. A., the Focal Point for Human Resources at the Executive Office, who was a witness called by the Applicant, it is apparent that the entire process—particularly the classification exercise—was undertaken in the interest of transparency and fairness.

40. The Tribunal is satisfied that the Administration provided a clear and lawful account of the process by which candidates were assessed and a satisfactory explanation for not considering the Applicant as a suitable candidate. The wide ranging allegations of impropriety in the selection process and the criticisms levelled against the Hiring Manager are without substance. There is no evidence of bias or other extraneous motive to call into question the manner in which the Applicant had been treated.

Case No. UNDT/GVA/2017/015
UNDT/GVA/2017/047
Judgment No. UNDT/2018/113

Judgment

The applications are dismissed.

(Signed)

Judge Goolam Meeran

Dated this 21st day of November 2018

Entered in the Register on this 21st day of November 2018

(Signed)

René M. Vargas M., Registrar, Geneva