UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2016/045-R.1
Judgment No.: UNDT/2019/150
Date: 15 October 2019
Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

CHHIKARA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Steven Dietrich, ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a Chief Aviation Safety Officer at the P-5 level on a fixed-term appointment with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo ("MONUSCO"), contests the decision not to select him for the post of Chief Aviation Section at the D-1 level at the United Nations Headquarters ("the Post") after he failed a written test. As compensation, in the Applicant's closing statements of 20 September and 11 October 2019, he requests two years of net-base salary in compensation, a nominal promotion to the D-1 level, costs for a manifest abuse of process and that the case be referred to the Secretary-General for accountability (in his application of 25 July 2016, he merely requested that the impugned decision be rescinded).

2. The Respondent admits in his closing statement of 4 October 2019 that some procedural irregularities were made in the selection process, but disagrees with the compensation amount, which he submits should be one-sixth of the difference between his P-5 level salary and the D-1 level salary that he would have obtained had he been promoted to the D-1 level for a two-year period. This admission is different from the submissions made in the reply of 29 August 2016 in which the Respondent contended that the application was without merit as the Applicant's candidacy received full and fair consideration.

3. By Judgment No. UNDT/NY/2017/012 issued on 6 March 2017, Judge Greceanu, who was initially assigned to the case, granted the application in part. After both parties appealed this Judgement, the Appeals Tribunal decided in *Chhikara* 2017-UNAT-792 of 27 October 2017 to remand the case to Judge Greceanu for "additional findings of fact" and "after affording the parties an opportunity to comment on this new evidence". On 31 December 2018, Judge Greceanu's tenure

with the Dispute Tribunal ended and, on 1 July 2019, the present case was assigned to the undersigned Judge. The Respondent filed the evidence referred to by the Appeals Tribunal and some additional evidence, upon the request of the Applicant. The parties then filed their closing submissions: 20 September (the Applicant), 4 October (the Respondent) and 11 October 2019 (the Applicant).

Facts

Preliminary observations regarding Judgment No. UNDT/NY/2017/012 and Chhikara *2017-UNAT-792*

4. Before presenting the factual background of the remanded case, it is first necessary to understand the instructions provided by the Appeals Tribunal in *Chhikara* 2017-UNAT-792 to the Dispute Tribunal when remanding the case—is this a *de novo* hearing of all the facts or did the Appeals Tribunal endorse, at least some, of the findings of fact made by the Dispute Tribunal in Judgment No. UNDT/NY/2017/012?

5. In Judgment No. UNDT/NY/2017/012, Judge Greceanu set out a factual chronology, which she stated had been "presented by the Respondent in his response to Order No. 246 (NY/2016)". Judge Greceanu further indicated that "its veracity has not been contested by the Applicant".

6. In *Chhikara* 2017-UNAT-792, the Appeals Tribunal first quoted the findings of facts set out in the Dispute Tribunal's Judgment No. UNDT/NY/2017/012, stating that these were "[t]he relevant facts on appeal, as established by the Dispute Tribunal". Thereafter, the Appeals Tribunal summarized the parties' submissions on appeal in which both parties challenged the findings of facts made in Judgment No. UNDT/NY/2017/012. The Respondent submitted in his appeal that the Dispute Tribunal "erred in fact and law when it concluded that [the Applicant] had not been

fully and fairly considered for the Post" but no more details were provided. The Applicant contended in his appeal that, "Contrary to its statement in the recitation of the facts, [the Applicant] did contest the facts as presented by the Secretary-General insofar as he contested the failure to produce the twenty-five [situational judgment, "STJ"] questions, despite being ordered by the [the Dispute Tribunal] to do so. [The Dispute Tribunal] further erred by including in its recitation of the facts a reference to the production of this evidence, which was never produced before [the Dispute Tribunal]".

7. In the subsequent considerations of *Chhikara* 2017-UNAT-792, the Appeals Tribunal endorsed the following factual findings made by the Dispute Tribunal when stating that (see para. 39):

> … As found by [the Dispute Tribunal], the written test contained two parts: part 1 consisted of 25 STJ questions and part 2 consisted of an essay. These two parts of the written test were separate and scored individually, and only the candidates passing the first part would be further assessed for part 2; and, only those passing part 2 would be invited for interviews. [The Applicant] failed part 1, as he received a score of 55 per cent and, therefore, was not considered further.

8. As regards the remaining of the findings of facts by the Dispute Tribunal, the Appeals Tribunal made no observations, but when remanding the case to the Dispute Tribunal in the final paragraph of the Judgment (para. 46), it stated that this was done "for additional findings of fact and to be judged anew by the same Judge, after affording the parties an opportunity to comment on the new evidence. Judgment No. UNDT/2017/012 is hereby vacated by operation of remand".

9. Accordingly, this Tribunal finds that it is only bound by the factual findings made by the Appeals Tribunal in para. 39 of *Chhikara* 2017-UNAT-792.

Factual background

10. The Post was advertised on Inspira (the United Nations online jobsite) from 20 April 2015 to 18 June 2015 and the Applicant applied for it.

11. Fourteen job candidates, including the Applicant, were shortlisted and invited to a written assessment, but two of them decided not to participate. The written assessment consisted of two parts: twenty-five STJ questions (part 1) and an essay (part 2). The grading methodology was set out in a marking guide, which had been prepared prior to the administration of the written test and, according to this guide, only candidates who received a 60 out of 100 points (or 60 percent) in part 1 would be further assessed for part 2.

12. After the written test was completed, all the job candidates' responses to the twenty-five questions and the essay were graded. Based on the twenty-five STJ questions, the Applicant scored the highest marks of all job candidates, namely 28 percent (or, as also indicated in the Excel spreadsheet produced by the Respondent in response to Order No. 110 (NY/2019) dated 22 July 2019: 0.277714467). None of the job candidates managed to reach the passing score of 60 percent (due to the applied methodology, only six candidates appear to have received positive scores, while the remaining six candidates got negative scores, i.e., below zero).

13. Subsequently, it was decided to eliminate SJT questions 6, 7, 10, 11 and 20 from overall rating as they, pursuant to the Respondent's response to Order No. 246 (NY/2016) dated 20 October 2016, displayed "poor reliability and validity of psychometric properties".

14. By excluding these questions, the scores of the job candidates significantly changed—now six candidates scored more than 60 percent, but not the Applicant, who was only deemed to have scored 55 percent. Based on the Excel spreadsheets

produced by the Respondent in response to Order No. 110 (NY/2019), even this information cannot be verified—the Applicant's grade of 55 percent simply does not appear to be stated in the spreadsheets; the spreadsheets are extremely difficult to read. Instead, this information follows from *Chhikara* 2017-UNAT-792, para. 39, and the Respondent's response to Order No. 246 (NY/2016), including the interoffice memorandum dated 11 April 2016 from the Executive Officer of the former Department of Peacekeeping Operations and Department of Field Support to the Chief, Management Evaluation Unit.

15. Regarding the responses to part 2, although the members of the selection panel had already graded the essay answers, it was then decided to disregard the results of this test and instead invite all job candidates who had successfully passed part 1 to the interview round (one candidate was not invited as it turned out that for other reasons, this person was not suitable for the Post at all). From the information provided by the Respondent (appended to his response to Order No. 123 (NY/2019) dated 29 August 2019) follows that the grades provided ranged from an average of 16.00 to 52.67 points, but it is nowhere stated what is the significance of these grades and the Applicant's grade is not even indicated even though it was apparently graded. After the interviews, two job candidates were found suitable and recommended to the Post, and one of them was eventually selected; a decision that was apparently made sometime towards the end of 2015 or in the beginning of 2016.

16. Although in the reply the Respondent stated otherwise, he now admits in his response to Order No. 110 (NY/2019) that "[t]he Hiring Manager has confirmed that she became aware of the job applicants' identifying information prior to scoring the job applicants' answers". In the Respondent's closing statement, it is further explained that, "[A]t the time of [Department of Field Support's ("DFS")] calculation of the final scores, the job applicants' identity was known to DFS. [The Examination and Testing Section in the Office of Human Resources] ("ETS/OHRM") had

inadvertently transmitted the scores to DFS on 25 September 2015 without removing the job applicants' identifying information from the scoring matrix".

Consideration

The issues of the present case

17. The basic issues of the present case can be described as follows:

a. Was the written test properly administered or did the Applicant's candidacy for the Post not receive a full and fair consideration?

b. If the selection process was flawed, what remedies is the Applicant entitled to?

Did the Applicant's candidacy for the Post receive full and fair consideration?

Applicable law and standards

18. The Appeals Tribunal has consistently held that the Dispute Tribunal's judicial review is limited and often refers to *Sanwidi* 2010-UNAT-084 (para. 42) in which it defined the scope of review as that "the role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate". The Appeals Tribunal further held that "the Dispute Tribunal is not conducting a "merit-based review, but a judicial review" explaining that a "[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision".

19. Specifically regarding promotion (and selection) cases, the Appeals Tribunal has adopted the principle of regularity by which if the Respondent is able "to even

minimally show that [an applicant's] candidature was given a full and fair consideration, then the presumption of law stands satisfied" where after the applicant "must show through clear and convincing evidence that [s/he] was denied a fair chance of promotion" in order to win the case (*Lemonnier* 2017-UNAT-762, para. 32).

20. The job opening for the post was advertised from 20 April to 18 June 2015 and is therefore governed by ST/AI/2010/3 (Staff selection system). The regulation of written tests is very sparse in the administrative instruction as it only stipulates in sec. 7.3 that "[s]hortlisted candidates shall be assessed to determine whether they meet the technical requirements and competencies of the job opening" and that the assessment "may include … appropriate evaluation mechanisms, such as, for example, written tests".

21. In the present case, in accordance with interoffice memorandum dated 11 April 2016 from the Executive Officer of the former Department of Peacekeeping Operations and Department of Field Support to the Chief, Management Evaluation Unit, "[t]he assessment methodology was determined in line with Section 9.4, Conducting Assessment Exercise of the Manual for the Hiring Manager" ("the Manual").

22. Section 9.4 of the "release 3.0" of the Manual dated 12 October 2012, however, only provides limited guidance to the present case in that the only relevant directives made are that (a) an assessment methodology should be adopted and shared with the assessors before the written test is administered and (b) that this methodology should be fairly and uniformly applied to all job candidates (this is based on sec. 9.4. providing that: "[i]n order to be fair to all applicants, the same method should be used for all applicants" and "[w]ith the pre-determined passing

grade, the assessors rate each individual applicant on the range of set indicators, using the prescribed performance scale and response guide" (see subsecs. 4 and 5)).

23. The jurisprudence of the Appeals Tribunal on how to administer written tests is also limited. In *Krioutchkov* 2017-UNAT-744, as relevant to the present case, the Appeals Tribunal endorsed para. 38, (a) the "no difference principle", meaning that any procedural irregularity must have impacted the applicant, (b) the "non-binding nature of the Manual", and (c) the "applicable principles governing the broad discretion of the administration in staff selection matters".

24. Based on these very general principles, and in the lack of any further instruction or guidance—at least, as relevant to the present case—the Tribunal sets out the following basic minimum standards that must apply when administering a written test:

a. Generally, while the Administration enjoys a broad discretion on how to administer a written test, it must nevertheless do so in a reasonable, just and transparent manner; otherwise, a job candidacy would not receive full and fair consideration;

b. As also stated in the Manual, any assessment must be undertaken on the basis of a "prescribed performance scale and response guide" and on a "predetermined passing grade". Accordingly, before a written test is administered, a proper and reasonable grading methodology must be adopted and shared with the graders;

c. If subsequent to the administration of the test, it becomes clear that mistakes were made in this methodology, or the written test turned out to be pointless in that no job candidates managed to pass it in accordance with the predetermined passing grade, then (a) a new written test must either be

administered or (b) variations must be made to the assessment methodology that do not prejudice any specific job candidates (the reverse impact of "the no difference principle").

d. Records of the grading must be developed that clearly describe how each job candidate was assessed, which would allow a third party, such as the Tribunal, to review and verify that the entire process was handled in a proper manner.

e. To avoid the process being perceived as biased, the assessment of the written tests must be conducted on a confidential and anonymous manner where no person with influence over the selection process has access to the names of the job candidates while the grading is pending.

The propriety of how the written test was administered

25. The Applicant, in essence, submits that the selection exercise was flawed for a number of reasons, including that the hiring manager manipulated the exercise in an ill-motivated attempt to exclude the Applicant from the interview round. The Respondent admits that "there were procedural irregularities in the selection exercise" and that these irregularities "pertain to the number of questions that were eliminated from the final scoring of part 1 of the written assessment, the situational judgment test (SJT), and the inadvertent disclosure of the identities of the job applicants to [the former Department for Field Services]".

26. In general, the Tribunal finds that the various mistakes that were made when administering the written test were so serious that the process did not comply with the basic standards as set out in the above. Referring to the principle of regularity as adopted by the Appeals Tribunal, the Respondent has therefore failed to demonstrate by a minimal showing that the Applicant's candidacy for the Post received a full and

fair consideration. The Tribunal, however, finds that while the process indeed appears to have been manipulated, the Applicant has not fully established that as a matter of fact, the decision-maker(s) were in bad faith.

27. Most importantly, the Tribunal is bewildered why only after the written test had been administered—at this point, all candidates had already submitted their test responses to the twenty-five STJ questions and their essays (part 1 and 2 of the written test) and the assessors had scored all these responses—it was decided that five STJ questions displayed "poor reliability and validity of psychometric properties". Any such variation to the grading methodology could—and should—clearly have been enacted before the written test was administered. Doing so at this stage indeed shows that someone intended to manipulate the test results and therefore also the selection process. Consequently, the Respondent has now admitted that the hiring manager actually knew the identity of the job candidates before grading the test responses. In addition to this, for no obvious reason, the results of the essay test (part 2 of the written test) were completely disregarded when deciding which job candidates were to go to the interview round.

28. Also, by eliminating the five STJ questions, the Tribunal finds that the parameters against which the scores were to be determined were changed to the Applicant's clear prejudice—in effect, he fell from being the best performing job candidate to falling below number six and not even qualifying for the interviews. While it could be argued that under the "no difference principle", the Applicant would not have passed the test in any event as his total score fell below the passing grade of 60 percent, his relative ranking compared with the other job candidates was, as a matter of fact, substantially changed. In this regard, the Tribunal notes that if the intention of the Administration was to rectify a situation in which no job candidates passed the written test—rather than eliminating the five out of twenty-five STJ questions and thereby changing the job candidates' relative ranking after the written

test completed—other options would have been available, as also stipulated in under the basic standards (redo the test or make variations that would not inappropriately prejudice any job candidates), but it does not appear that any such alternative solutions have even been considered. The Tribunal also notes that the predetermined grading scale, in itself, appears to have been imperfect—it defies logic how a result of a written test can be expressed as a negative percentage.

29. Regarding the records produced of the written test results, namely the Excel spreadsheets, the Tribunal finds that they were of such poor quality that it was impossible to review and verify any information provided by the Respondent regarding the test results. Basically, the spreadsheets were close to unreadable and made very little sense, if any, at all.

30. As for the underlying motivation of the decision-maker(s) for inappropriately influencing the selection process, it follows from the consistent jurisprudence of the Appeals Tribunal that the Applicant bears the burden of proving any allegation on ulterior motives (see, for instance, *Parker* 2010-UNAT-012 and *El Sadek* 2019-UNAT-900). The Appeals Tribunal has further found that "[t]he mental state of the decision-maker usually will … have to be proved on the basis of circumstantial evidence and inference drawn from that evidence" (see para. 39 in *He* 2016-UNAT-686, although the case concerned non-renewal). Albeit the serious nature of the irregularities and their consequences, the Tribunal finds that the Applicant has not fully substantiated that the decision-maker(s) were actually in bad faith—in particular, the Applicant has not shown that the decision-maker(s) deliberately intended to favorize a particular job candidate or held a bias against the Applicant, as opposed to them simply acting in a grossly negligent manner.

31. In light of the above, the Tribunal therefore finds that the administration of the written test was so irregular that it failed to comply with even the most very basic

standards to be expected from such exercise for which reason the Applicant's candidacy for the Post did not receive a full and fair consideration.

Relief

Compensation for damages under art. 10.5(b) of the Dispute Tribunal's Statute

32. The present case has been pending since June 2016 and concerns a selection decision that was taken in late 2015 or early 2016. It therefore now makes no sense to rescind this decision, as the Applicant initially requested in his application under art. 10.5(a) of the Statute of the Dispute Tribunal. Instead, at this point, the Tribunal finds that it would now only be reasonable to allow the Applicant to amend his submissions on relief as he has done in his closing statement and instead seek compensation for his harm. While the Respondent argues that any damages should be awarded as *in lieu* compensation for rescission on the basis of art. 10.5(a) of the Statute of the Dispute Tribunal, the Tribunal finds that since rescission is no longer a feasible option, the correct legal basis would be art. 10.5(b).

Loss of income

33. Article 10.5(b) of the Dispute Tribunal's Statute provides that an award for compensation for harm must be supported by evidence in that it provides that:

> 5. As part of its judgement, the Dispute Tribunal may only order one or both of the following:
>
> …
>
> (*b*) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

34. Both parties agree that the Applicant should be awarded compensation for his income loss on the basis of the principle of loss of chance, which the Appeals Tribunal has consistently endorsed as a method to calculate such a pecuniary loss in non-selection and/or non-promotion cases. While the Applicant submits that he should be awarded two years of net-base salary, the Respondent contends that he should be awarded one-sixth of the difference between a P-5 and a D-1 level salary for a maximum of two years.

35. The Tribunal agrees with the parties that the notion of loss of chance applies to the present case. When being excluded from the interviews, the Applicant was inappropriately deprived of a chance to be further considered for the Post and therefore suffered a potential income loss.

36. Regarding the quantification of the Applicant's loss, the Appeals Tribunal has held that it "will generally defer to [the Dispute Tribunal's] discretion in the award of damages as there is no set way for the trial court to set damages for loss of chance of promotion". Rather, "what [the Appeals Tribunal] would ensure is that [the Dispute Tribunal] was guided by two elements. The first element is the nature of the irregularity; the second is the chance that the staff member would have had to be promoted or selected had the correct procedure been followed" (see *Muratore* 2012-UNAT-245, para. 5, referring to *Lutta* 2011-UNAT-117). The Appeals Tribunal has further held that "each case must turn on its facts" when quantifying a loss of chance (*Leclerq* 2014-UNAT-429, para. 20). While the Dispute Tribunal is not obliged to "quantify" an applicant's chance of being selected (*Gusarova* 2014-UNAT-43, para. 37), if it does so, this may be based on the number of suitable job candidates remaining in the selection process (*Asariotis* 2015-UNAT-496, para. 31, and *Chhikara* 2017-UNAT-723, para. 54) and also be expressed in percentages (*Hastings* 2011-UNAT-109).

37. In the present case, the Tribunal notes that 12 job candidates participated in the written test, and out of 6 candidates that were subsequently invited to the interviews, 2 candidates were considered suitable—consequently, 4 candidates were regarded as not suitable after the interviews. That would indicate that had the written test been properly administered a maximum of 8 job candidates could potentially have been suitable for selection. Regarding the 6 candidates that were not invited to the interviews, based on the poor record for the written assessment, it is, however, not possible for the Tribunal to determine what their scores were had the five STJ questions not been eliminated. This could otherwise, at least, have given an indication of their suitability, but it would seem reasonable to assume that given their low ranking after the five STJ questions were eliminated, most of them would not have been suitable. Also, it is not possible for the Tribunal to give a qualified guess on how the job candidates would have performed had the essay (part 2) been properly taken into account, or how any of the candidates would have performed had the written test been all together redone.

38. At the same time, the Tribunal notes that the Applicant performed excellently in the written test before the five STJ questions were eliminated and has an impressive professional and academic background in aviation management, also compared to the successful candidate (at least, this is what he submits in his closing statement of 20 September 2019 and the contention is not denied by the Respondent in his closing statement of 4 October 2019). This suggests that he would have been a very strong contender for the Post had the written test been administered properly. The Tribunal further notes that, at this point, it would not be fair if any of the many irregularities would be counted in his disfavor.

39. Accordingly, the Tribunal therefore finds that the Applicant had a 50 percent chance of selection for the Post. As the Applicant served on a fixed-term appointment his income loss is to be determined as 50 percent of the difference between his salary

at the P-5 level and the salary he would have obtained at the D-1 level for two years, since fixed-term appointments are regularly granted such a time period (see, for instance, *Hastings* 2011-UNAT-2019 and *Krioutchkov* 2016-UNAT-691).

Specific performance—upgrade to the D-1 level for job application purposes

40. The Applicant requests that his appointment be upgraded to the D-1 level on a "notional" basis. Whereas the Tribunal may not likely have such power at all under the Dispute Tribunal's Statute, in the present case, as the Applicant's possibility for winning the Post in the selection process was only determined as a hypothetical chance of 50 percent, the Tribunal finds that no actual basis for even considering that such "notional" promotion exists.

Non-pecuniary damages

41. In accordance with art. 10.5(b) of the Statute of the Dispute Tribunal, any compensation for harm must be supported by evidence. The Applicant requests non-pecuniary damages for various matters, including "damage to professional reputation", "enduring loss of career prospects", greater job security alleging that current job is in a downsizing mission, and emotional harm from not relocating to New York where he could be joined by his family.

42. While the Tribunal observes that the selection process was indeed extremely poorly executed, the Applicant has, however, not provided any evidence that he suffered any non-pecuniary harm from any such damages and, consequently, the Tribunal must reject the claim.

Costs

43. The Applicant submits in his closing statement dated 20 September 2019 that he should be awarded compensation for the "false, misleading submissions made over

past three years to the Honorable Tribunal and to the Appellant and for the harm caused / fraud committed" and notes in his submission of 11 October 2019 that he seeks costs under art. 10.6 of the Statute of the Dispute Tribunal. The Respondent makes no submissions thereon (his last submission was dated 4 October 2019), but has admitted that serious irregularities were committed and that he initially provided incorrect information to the Tribunal.

44. Although the Applicant does not frame this claim directly as costs pursuant to art. 10.6 of the Dispute Tribunal's Statute in his closing statement of 20 September 2019, the Dispute Tribunal may still determine that "a party has manifestly abused the proceedings before it" and award costs against this party. The Tribunal further notes that in the 4 October 2019 closing statement, the Respondent had ample opportunity to respond to the Applicant's contention of 20 September 2019 that the Respondent's submissions provided to the Dispute Tribunal had been "false" and "misleading", but refrained from directly doing so.

45. The Tribunal notes that in *Bi Bea* 2013-UNAT-370 (para. 30), the Appeals Tribunal found that "[a] delay, in and of itself, is not a manifest abuse of proceedings", and to award costs against a party, the Dispute Tribunal must be satisfied on the evidence that in causing the delay, a party has "manifestly abused the proceedings". The Appeals Tribunal further held that "[t]he plain language of those words" means that on the evidence, the Dispute Tribunal must be convinced that "the delay was clearly and unmistakably a wrong or improper use of the proceedings of the court".

46. The Tribunal finds, if either deliberately or negligently—and in particular if represented by a lawyer—a party provides the Tribunal with decisive information that is wrong and misleading, this amounts to a manifest abuse of process of very serious nature, even if the lawyer is not at fault (in the present case, the problem might have

that Counsel was not provided with the correct information). Basically, such action puts the entire integrity of the judicial system at risk—it may not only lead to undue and costly delays, but also lead to straightforwardly incorrect decisions. However, the fact that the Respondent in this case, albeit extremely late in the process, admits to, at least some of, the irregularities, is a mitigating factor, which the Tribunal must take into account when determining a possible amount for the abuse.

47. The Tribunal notes that the Respondent in his reply of 29 August 2016 stated that:

> a. "The same grading scheme of a passing score of 60 out of 100 was applied to all applicants. All other applicants who did not earn a passing score were also screened out from further assessment"; and
>
> b. "[The] ETS/OHRM did not release the names of the job applicants to the hiring manager until after they had scored the tests. [reference to footnote omitted]".

48. Subsequently, but following the Dispute Tribunal's orders, the Respondent has admitted that the grading scheme was, in fact, changed in that five STJ questions were omitted from the scoring of the grades, which was not mentioned at all in the reply. Also, the Respondent has admitted that the hiring manager was actually informed of the names of the job candidates before s/he graded the tests.

49. The information provided by the Respondent was therefore not only wrong but also misleading. Also, had the Respondent diligently provided the correct information from the outset of the proceedings, this Tribunal is convinced that the case would have been closed much before now—in light of the Respondent's admission, the only issues to be determined would have been the extent of the irregularities (for instance, the Respondent has not admitted to all irregularities

identified in the present Judgment or that the decision was taken in bad faith as the Applicant has otherwise submitted, but which the Tribunal has found was not fully substantiated) and the possible amount of the compensation. Had the Respondent provided the Dispute Tribunal with the correct information from the outset of the case, this would undoubtedly have saved the internal justice system much energy and resources and also relieved the Applicant from having to go through a protracted and troublesome judicial process. Instead, before the Respondent provided the Dispute Tribunal with the correct facts and admitted some of the wrongdoings, the case went through the Dispute Tribunal to the Appeals Tribunal and back on remand to the Dispute Tribunal—a case that took this Tribunal less than 4 months to decide after receiving the correct information has been pending for almost 27 months. That the Respondent also understands that the information is decisive to the case follows from the fact that he now admits, at least in part, his liability. The Tribunal, however, notes that the Respondent has not provided any explanation as to why such wrong and misleading information was provided so late in the process, and that the Administration clearly had all this information at its disposal from the moment when the application was filed.

50. In other cases of delays, the Tribunal notes that although in the context of compensation under art. 10.5(b), the amounts awarded for delays have varied but that USD3,000 was considered "at the lower end" for "inordinate delays" in the context of a disciplinary process (*Masylkanova* 2016-UNAT-662, paras. 24 and 25).

51. Based on the gravity of the offense, but also counting the Respondent's admission as a mitigating factor, the Tribunal orders the Respondent to pay the Applicant USD3,000 in costs.

Referral for accountability

52. The Applicant contends in his submission of 11 October 2019 that the Tribunal should refer the present case to the Secretary-General "for possible action to enforce accountability" under art. 10.8 of the Dispute Tribunal's Statute. Considering the findings made in the present Judgment, the Tribunal, however, sees no need to do so.

Conclusion

53. The application is granted in part and the Respondent is to pay the Applicant:

a. An amount equivalent to 50 percent of the difference between his salary at the P-5 level and the salary he would have obtained at the D-1 level for two years for loss of chance; and

b. USD3,000 for manifestly abusing the process.

(Signed)
Judge Joelle Adda

Dated this 15th day of October 2019

Entered in the Register on this 15th day of October 2019

(Signed)
Nerea Suero Fontecha, Registrar, New York