



Before: Judge Francesco Buffa

Registry: Geneva

Registrar: René M. Vargas M.

KRIOUTCHKOV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Mohamed Abdou, OSLA

Counsel for Respondent:

Alan Gutman, AAS/ALD/OHRM, UN Secretariat

Introduction

1. By application filed on 20 October 2017, the Applicant contested his non-consideration and eventual non-selection for the position of Russian Reviser/Self-Revising Translator (P-4), United Nations Office at Vienna, advertised under job opening number 63349 (“JO 63349”).
2. The United Nations Dispute Tribunal (“UNDT”) adjudicated the matter by Judgment *Krioutchkov* No. UNDT/2018/104 dated 17 October 2018, which rescinded the contested administrative decision and set compensation in lieu of rescission.
3. The Secretary-General appealed the above-mentioned Judgment and, by Judgment *Krioutchkov* 2019-UNAT-919, the United Nations Appeals Tribunal (“UNAT”) set aside the UNDT Judgment and remanded the matter for additional fact-finding.
4. The remanded case was registered under Case No. UNDT/GVA/2017/089/R1 and assigned to the undersigned Judge.

Facts and Procedural History

5. The Applicant is a Russian Translator, holding a permanent appointment at the P-3 level, step XV, at the Economic and Social Commission for Asia and the Pacific (“ESCAP”), based in Bangkok, Thailand.
6. On 5 August 2016, he applied for JO 63349 and on 1 May 2017 he received a notification that his candidature was unsuccessful.
7. In its above-mentioned Judgment, the UNDT found that the Applicant’s candidature was not given full and fair consideration, *inter alia*, because he was screened out despite holding the degree required in JO 63349 and having competed previously for similar positions as a rostered candidate.

8. In his appeal before UNAT, the Secretary-General argued that the Applicant was screened out by the Inspira system because he had indicated to have a certificate/diploma instead of a university degree, which was the minimum educational qualification required for the job opening in question. In this connection, the Applicant argued that the Organization knew that he had the educational qualification required for JO 63349 and nevertheless failed to consider his application fairly.

9. In its decision, UNAT stated that it was necessary to elicit evidence as to what options concerning education and university degrees were available in the Inspira system at the relevant time and as to the choice(s) made by the Applicant when applying to JO 63349.

10. By Order No. 76 (GVA/2019) of 11 October 2019, this Tribunal invited the Respondent to submit all documentary evidence about the above-mentioned options at the material time, namely August 2016, particularly in the Applicant's country of nationality. The Tribunal allowed such documentary evidence to include screen shots of Inspira and its drop-down menus at the relevant time and/or witness statements about the available functionality.

11. The Respondent submitted a witness statement by a Human Resources Officer who served as Acting Unit Chief, Headquarters Staffing Section ("HSS"), Office of Human Resources Management ("OHRM"), from March 2014 to June 2015 and as Unit Chief, HSS, OHRM, from 11 September 2017 to 31 December 2018, together with a copy of the 2012 "Manual for the Applicant on the Staff Selection System (inspira)" hereinafter "the Inspira Applicant's Manual".

12. The Applicant commented on the Respondent's submission and affirmed that he chose "Specialist Diploma" in the drop-down menu offered by Inspira, among the different options available, at the time he submitted his candidature for JO 63349.

13. In response to this Tribunal's Order No. 98 (GVA/2019) of 20 November 2019, the parties agreed to the case being adjudicated on the papers and submitted closing submissions.

Consideration

14. The educational requirement under JO 63349 was a “first-level degree from a university or from an institution of equivalent status” and to “have passed the United Nations Language Competitive Examination (LCE) for Russian Translators”.

15. It results from the file, and it is uncontested by the parties, that the Applicant holds a Diploma in Economics from the *Moskovskij Gosudarstvennyj Institut Mezdunarodnyh Otnosenij* (the Moscow State Institute of International Relations, also known as “MGIMO”), that his attendance years were from 1980 to 1986, and that this was known to the Administration for quite a long time in light of the different positions to which the Applicant applied to, was considered for and even rostered for some of them.

16. It also results from the record that the Applicant, when applying for JO 63349, indicated in his personal history profile (“PHP”) that his highest level of education was a “Certificate/Diploma” obtained from MGIMO. In addition to the exact title of his degree in Russian, the Applicant indicated in his PHP that his degree’s title in English was a “MASTER’S DEGREE, Diploma in Economics”.

17. In its 17 October 2018 Judgment, the UNDT, *inter alia*, affirmed that in Inspira, candidates to a job opening only had five Anglo-Saxon driven options to qualify their education degree and that this was not consistent with the proper exercise of the Organization’s duty of care, which resulted in a finding of lack of full and fair consideration of the Applicant’s candidature. UNAT, however, found essential to verify whether Inspira had indeed that limitation or reflected the variety of education systems of all United Nations Member States.

18. Sec. 3.3.4.4.b. of the Inspira Applicant’s Manual, related to the “Education” section of job openings, provides that when evaluating candidates’ academic credentials, the Organization is guided by the World Higher Education Database (“WHED”) compiled by the United Nations Educational, Scientific and Cultural Organization (“UNESCO”) and the International Association of Universities (“IAU”).

19. The Manual further provides that “taking fully into account that the Member States have different education systems, the United Nations references the credential level determined by competent national authorities conferred by an institution in the participating countries provided in the IAU/UNESCO List”, and that this “credential level is therefore referenced and used to determine the equivalence of [a candidate’s] degree”.

20. According to the witness statement that the Respondent entered as evidence, the Inspira Applicant’s Manual was available to all Inspira account holders in 2016 and, more importantly, the WHED was embedded in Inspira. The latter means that the education degree information used when generating a candidate’s PHP comes from a pre-defined list of options provided to candidates.

21. The evidence on file also shows that when selecting MGIMO as the educational institution attended, Inspira presented a candidate with the following options for academic titles: *Bakalavr, Certificate/Diploma, Doktor Nauk, Kandidat Nauk, Magistr., and Specialist Diploma*. The candidate’s choice was then reflected under the item “Degree obtained” in the PHP generated for submission when applying to a job opening.

22. In the case at hand, the Applicant’s PHP for JO 63349 shows the degree obtained as “Certificate/Diploma”, which according to the referencing process outlined above to determine the equivalence of a degree results in a level lower than that of a “recognized first level degree”. It follows that the Applicant failed to indicate that he possessed the degree required by JO 63349.

23. That the Applicant made the above choice is further supported by his assertion in his application and in his closing submission that qualifying his degree as a “Specialist Diploma” would have been incorrect. Such a choice resulted in his candidature being excluded by the automated screening system in Inspira.

24. The Tribunal notes that in the context of the re-examination of his case, the Applicant now argues that he selected “Specialist Diploma” (see para. 12 above), which equates to a “Masters or equivalent”, and therefore that he met the education

requirement in JO 63349. This assertion is unsupported by the documentary evidence on file.

25. The Applicant incorrectly entered his education details and, consequently, Inspira automatically screened him out as not meeting the minimum educational requirement for the job opening, namely to possess a first level university degree. Consequently, his candidature was lawfully not released to the hiring manager.

26. Administrative instruction ST/AI/2010/3 (Staff Selection System) as well as the applicable staff rules referred therein were properly followed and applied by the Administration and, in particular, sec. 7.1 of said instruction, which provides that job applicants will be pre-screened on the basis of the information provided in their job application to determine whether they meet the minimum requirements of the job opening, and sec. 5.1, which specifies that applications cannot be amended following their submission.

27. In the present case, the Organization cannot be held responsible for incorrect information entered by the Applicant that resulted in his screening out of the recruitment process.

28. In its Judgment remanding the matter, UNAT stated that the lawfulness of the screening out of the Applicant's candidature does not hinge on whether the Administration knew or could/should have known that the Applicant's degree was of higher level than the one indicated in his PHP.

29. UNAT also found that the issue of whether the Applicant's candidature was pre-screened by a Human Resources Officer is irrelevant in determining whether his candidature received full and fair consideration. Hence, implicitly considering that the outcome of the pre-screening exercise was exclusively relevant to assess the lawfulness of the contested administrative decision.

30. Finally, the Applicant's claim concerning the loss of concrete chances for career development due to limited or no mobility within the UN translators' professional group is not relevant for the adjudication of the present case, where the Applicant challenges, and is entitled only to challenge, a specific administrative

decision and not a general administrative practice. Although in abstract this could be relevant for the examination of damages, it is not relevant in the present case in view of the finding that the contested administrative decision was lawful.

Conclusion

In the view of the foregoing, the application is dismissed.

(Signed)

Judge Francesco Buffa

Dated this 20th day of December 2019

Entered in the Register on this 20th day of December 2019

(Signed)

René M. Vargas M., Registrar, Geneva