



**Before:** Judge Francesco Buffa

**Registry:** Geneva

**Registrar:** René M. Vargas M.

KRIOUTCHKOV

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Mohamed Abdou, OSLA

**Counsel for Respondent:**

Alan Gutman, AAS/ALD/OHRM, UN Secretariat

## **Introduction**

1. By application filed on 13 December 2016, the Applicant contested the decision not to evaluate his candidature for, as well as his non-selection to, the position of Russian Translator (P-3), at the United Nations Office at Nairobi (“UNON”), advertised under job opening number 15-LAN-UNON-39481-F-NAIROBI (L) (“JO 39481”).
2. The United Nations Dispute Tribunal (“UNDT”) adjudicated the matter by Judgment *Krioutchkov* No. UNDT/2018/093 dated 21 September 2018, which rescinded the mentioned decision and set compensation in lieu of rescission.
3. The Secretary-General appealed the above-mentioned Judgment and, by Judgment *Krioutchkov* 2019-UNAT-920, the United Nations Appeals Tribunal set aside the UNDT Judgment and remanded it to the UNDT for a full consideration of its merits by another Judge.
4. The remanded case was registered under Case No. UNDT/GVA/2016/100/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 21 May 2015, he applied for JO 39481. By email of 6 May 2016 to the Head, Russian Translations Unit, UNON, he inquired about the status of his application. By return email of 1 July 2016, the Human Resources Management Service (“HRMS”), UNON, informed the Applicant that the job opening in question “was only open to candidates available for placement from the *existing* Russian Language Exam Roster” (emphasis in the original). The Applicant was further advised that applications from candidates not on said roster, such as his, were screened out by the Organization’s recruitment system (Inspira).

7. In its 21 September 2018 Judgment, this Tribunal found that the Applicant's eligibility had not been assessed in a transparent manner but rather through unpublished requirements unknown to the candidates, as the job opening did not indicate that the consideration for the vacancy was limited to rostered candidates.

8. In his appeal to UNAT, the Secretary-General argued, among other things, that the Administration properly conducted the selection exercise in accordance with the applicable legal framework given by administrative instruction ST/AI/2000/1 (Special conditions for recruitment or placement of candidates successful in a competitive examination for posts requiring special language skills, as amended by ST/AI/2003/1), which, with reference to posts requiring special language skills, bound the Administration to fill the advertised position only with candidates who were on the roster of successful candidates for the Russian language examination.

9. The Applicant answered that he had been on a roster of eligible candidates for quite a long time, and that he should have remained on the roster because no rule allows the Administration to remove successful candidates from the roster of eligible candidates following their assignment to a post, and given, on the contrary, the enduring possibility for language rostered candidates to be assigned to language posts at other duty stations.

10. In its Judgment *Krioutchkov* 2019-UNAT-920, the United Nations Appeals Tribunal vacated the Dispute Tribunal Judgment and stated that the Administration lawfully followed the recruitment procedure under ST/AI/2000/1, which is limited to candidates placed on a roster as it was the Applicant's case, and that, as such, his application was not considered because he was no longer on the respective roster. UNAT found necessary to verify whether successful candidates, once assigned to a post, are removed from the roster or if they remain therein with the related possibility of lateral moves and reassignment to language post at other duty stations. Finding this issue "critical" in determining whether the process followed by the Administration was unlawful, UNAT remanded the case to the UNDT for the need

for the factual determination of all the evidence related to the roster, placement, and removal of candidates.

11. By Order No. 78 (GVA/2019) of 11 October 2019, this Tribunal, guided by UNAT's above Judgment, invited the parties to submit all documentary evidence, including witness statements, about all the rules applicable to the creation and management of rosters, with specific reference to the removal from rosters of the successful candidates following their selection to a given post, as well as the practice followed by the Organization using such staff selection mechanism.

12. The Respondent responded to the above-mentioned Order and the Applicant submitted comments on the Respondent's submission. Subsequently, in response to this Tribunal's Order No. 98 (GVA/2019), the parties agreed to the case being adjudicated on the papers and filed closing submissions.

### **Consideration**

13. The seminal issue for determination in this case relates to the management of the roster for positions requiring special language skills ("language roster"). More specifically, the question to be answered is whether staff members in the language roster maintain their status indefinitely.

14. In its Judgment remanding the matter, the Appeals Tribunal clearly determined that the legal framework for the examination of the Applicant's case was set only by ST/AI/2000/1 (Special conditions for recruitment or placement of candidates successful in a competitive examination for posts requiring special language skills). The language roster is governed by sec. 2.1 of ST/AI/2000/1, which was amended by ST/AI/2003/1. The amended provision reads as follows:

Candidates successful in a competitive language examination shall be placed on a roster. They shall be selected from the roster as vacancies occur, taking into account the needs of service and the combination of languages and skills offered by individual candidates.

15. The above provision is silent on whether language roster membership is indefinite or ends upon placement against a Professional language post.

16. The Respondent argues that the language roster is different from the roster system established by ST/AI/2010/3 (Staff Selection System) in that, *inter alia*, candidates rostered for posts requiring special language skills are removed from the language roster upon recruitment for or placement in a language position.

17. In support of his assertion, the Respondent entered into evidence 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, confirming that ST/AI/2000/1 does not provide for continuous retention of rostered candidates on the language roster.

18. The Applicant argues, in essence, that he has been on the language roster for quite a long time and that in the absence of a specific provision stipulating the removal of successful candidates from the language roster upon placement on a language post, he should have remained in said roster.

19. For the reasons stated below, the Tribunal is of the view that unless otherwise expressly provided, language roster membership ends upon placement against a language post.

20. A roster is a temporary pool of candidates who were not selected for an advertised position but recommended for it immediately after a competitive recruitment exercise. They are therefore considered pre-approved candidates available for further selections. The provision of rosters is an exception to the general principle that only successful candidates of a competitive recruitment process can be recruited for advertised positions. The institution of rosters is in general allowed in the interest of the Organization, which can so cover staffing needs without a new competitive process being undertaken. This explains why, generally, the roster has a validity limited in time, as after a certain period set by the rules the need for a fresh selection with new candidates may arise.

21. From the point of view of the candidates, the roster system can only indirectly satisfy the interest of the suitable candidates to be recruited within a certain period without being submitted to new selection exercises.

22. In any case, once the candidate is recruited, the roster membership generally ends its function, and only specific rules may provide for its enduring validity to allow easily lateral movement of personnel.

23. This is not the case of the language competitive examination rosters, where no rule provides for the ultra-activity of the roster, namely activity after selection of a rostered candidate upon which the function of a roster is realized. In fact, the language competitive examinations are explicitly excluded from the application of ST/AI/2010/3 (which allows to maintain a pool of roster candidates for selection for a certain time also after appointment) and are instead governed by sec. 2.2 of ST/AI/2000/1, which provides that during the initial 5-year service period that language post successful candidates are expected to serve, it is possible to reassign them to “language posts at other duty stations according to the needs of the Organization”.

24. Therefore, once candidates are selected from a language competitive examination roster, they do not maintain their roster status and they are granted a permanent appointment upon satisfactory completion of the probationary period set in the rules. It is worth also noting that during the probationary period, selected rostered candidates may also be reassigned to language posts at other duty stations according to the needs of the Organization.

25. Finally, it has to be highlighted that according to the collected evidence, and in particular the statement on 29 October 2019 by the above-mentioned UN Human Resources Officer, it is fully confirmed that the Administration has always been following a practice of removing successful candidates from the language roster of eligible candidates once assigned to a post, in compliance with the above mentioned rules.

26. In view of the foregoing, the Tribunal finds that the Applicant being screened-out from the selection process under JO 39481 was lawful.

27. In closing, this Tribunal deems it necessary to address two matters related to a staff member's career development. One is the need for transparency when advertising vacancies and, the other, is the Applicant's claim about the negative impact that limited or no mobility within the UN translators' professional group has on his career development opportunities.

28. On the first issue, it is uncontested that JO 39481 did not indicate that consideration was limited to candidates in the language roster at the relevant time. In its Judgment, UNAT emphasized "that it is important in instances where there is a vacancy notice which targets a specific pool of candidates from a roster that the vacancy notice make specific mention to the effect that consideration will only be given to rostered candidates to fill the position".

29. Although the absence of a notice in the job opening along the above lines does not rise to a procedural irregularity vitiating the selection process, it does mislead staff members into exploring, in good faith, career development opportunities for which at the outset they are not eligible. This runs counter to the interests of the Organization and of its staff members and could result in the award of compensation in favour of the latter in consideration of the time spent in registering and following an application that couldn't be accepted.

30. On the second issue, the Tribunal underlines that the Applicant challenges, and is entitled only to challenge, a specific administrative decision and not a general administrative practice. While his claim could, in abstract, be relevant for the examination of damages, it is not so in the present case in view of the finding that the contested administrative decision was lawful.

Case No. UNDT/GVA/2016/100/R1

Judgment No. UNDT/2019/186

## **Conclusion**

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

*(Signed)*

Judge Francesco Buffa

Dated this 20<sup>th</sup> day of December 2019

Entered in the Register on this 20<sup>th</sup> day of December 2019

*(Signed)*

René M. Vargas M., Registrar, Geneva