



Before: Francesco Buffa
Registry: Geneva
Registrar: René M. Vargas M.

KRIOUTCHKOV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALD/OHRM, UN Secretariat

Introduction

1. The Applicant, a Russian translator in the Economic and Social Commission for Asia and the Pacific (“ESCAP”), contests the decision not to select him for a position of Russian translator in the Division of Conference Management (“DCM”) in the United Nations Office at Geneva (“UNOG”) (“the post”).

Facts and Parties’ submissions

2. The Applicant applied for the post on 17 April 2017 and was invited to sit a written test for which he sat on 26 May 2017. On 18 November 2017, the Applicant was notified of his non-selection for the post.

3. The Applicant claims, in essence, that the Administration committed several errors in the grading of the written tests and that the outcome of the selection process was pre-arranged to exclude all candidates from outside UNOG.

4. The Respondent responds that the Applicant was fully and fairly considered in accordance with ST/AI/2010/3 (Staff selection system).

Consideration

5. 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).

6. The main complaint by the Applicant concerns the assertion that the written test was not administered anonymously as the names of the candidates appeared in numerous places of the test papers. At the Tribunal’s request, the Respondent submitted the written responses of the other candidates. The Applicant claims that these responses were altered because they have a different appearance from the Applicant’s response document. The Respondent states that before submitting the candidates’ responses to the reviewing panel, the Human Resources Management

Service cleared any identifying metadata. The Respondent clarifies that the comparison between the Applicant's original test documents and his own anonymized documents shows that there are no changes in its content, with the exception of the inserted numerical header and the redacted initials from the reviewers' comments bubbles. The differences in format between the Applicant's own response and the other candidates' responses submitted by the Respondent are the result of the scaling required to the copyediting comments alongside the text when the text is printed. The Respondent further clarifies that different candidates used different fonts and sizes because no particular instruction in this respect was given to the candidates. The Applicant responds that the different fonts used by the candidates and the alterations made following the submission of the responses allowed for the identification of the responses. Moreover, he states that one of the reviewers, having revised their translations for many years, is familiar with the translation style of some of the candidates and was therefore able to identify their responses.

7. Having reviewed the documents submitted by the parties, the Tribunal is persuaded by the Respondent's clarifications and finds that the Applicant's allegations that the candidates' responses were not anonymized is not supported by the evidence. In particular, it results from the file that no specific signs of recognition were present on the candidates' exercises submitted to the examiners and the only differences from the originals were made to grant the anonymisation process. As to the claim concerning the lack of specific prescription about the font to be used in the exercise, the Tribunal finds that the fact that candidates used different fonts, which could in abstract be relevant—especially in a contest of an internal selection with few candidates—allowing the identification of the candidates' exercises, is not enough to vitiate the procedure, unless a specific evidence of collusion with the examiners is given, which is not the case.

8. The Applicant further argues that the assessment panel was not properly constituted in accordance with sec. 1(c) of ST/AI/2010/3 as only two individuals, none of whom are female, graded the test results. The Respondent states that the anonymized answers were sent to the Senior Reviser of the Russian Translation Section, UNOG, who was the Hiring Manager, and to another member of the

assessment panel, the Chief of the Russian Translation Section of the International Atomic Energy Agency (“IAEA”). The Respondent asserts that the assessment panel was properly constituted. He states that the Chief of the English Translation Section in UNOG, a female, was the third member of the panel.

9. The Tribunal acknowledges that the three-member composition of the assessment panel provided in ST/AI/2010/3 is not mandatory, as the administrative instruction uses the term “normally”, and moreover that no specific sanction is provided for the case the composition is not respected. Having so said, the Tribunal notes that the composition of the panel resulting from the records was formally in compliance with the mentioned provision. As to the fact that only two of the members of the panel graded the written exercises, given that the staff selection system does not require that all panel members grade a technical assessment, the Tribunal finds that it does not affect the lawfulness of the evaluation of the exercise, considering that the panel may decide to delegate some of its functions to part of its members and that it is not unreasonable that the ones who in the case graded the exercises (which consisted of a translation into Russian of an English test and a revision of a Russian text) were the most qualified experts of the panel in the subject matter of the written exercise and in the Russian language.

10. The Applicant further contends that one of the panel members who graded the candidates’ responses was involved in a previous litigation brought by the Applicant which, in his opinion, may create a conflict of interest.

11. Given that the candidates’ responses were graded anonymously, there is no evidence that either of these two assessors may have exercised any bias against the Applicant.

12. The Tribunal therefore finds that the review of the written test results was reasonable and appreciates no violation of ST/AI/2010/3.

13. Finally, the Applicant complains about the loss of concrete chances for career development, due to limited or no mobility within the UN translators’ professional group, and notwithstanding his long-lasting placement on a roster of eligible

candidates and the obligation for the Administration (set up in some General Assembly resolutions) to reward staff members' excellent performance.

14. The Tribunal finds that these claims are not relevant for the adjudication of the present case, where the Applicant challenges, and is entitled only to challenge, a specific administrative decision (which in the case was lawful) and not a general administrative practice (which is in any case consistent with the principle that the facts recalled by the Applicant do not create any expectancy or entitlement to promotion).

15. In light of the entirety of the evidence and considering the parties' arguments, the Tribunal is satisfied that the Applicant's candidacy was given fair and full consideration. Moreover, the Tribunal does not find that the Applicant has proved by clear and convincing evidence of there being any ulterior motive in his non-selection.

16. The claims are therefore ill-founded.

Conclusion

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

The application is rejected.

(Signed)

Judge Francesco Buffa

Dated this 16th day of March 2020

Entered in the Register on this 16th day of March 2020

(Signed)

René M. Vargas M., Registrar, Geneva