



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2020/012

Judgment No.: UNDT/2020/068

Date: 5 May 2020

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

HEJAMADI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Dorota Banaszewska, OSLA

Counsel for Respondent:

Camila Nkwenti, UNEP

Isabel Martinez, UNEP

Introduction

1. The Applicant appeals a decision to exclude her from the selection process for the post of Finance and Budget Officer (P-3) with reference number JO 120163 (“the post”), within the United Nations Environment Programme (“UNEP”).
2. The Respondent replies that the application is not receivable because the recruitment process was not completed at the time of the filing of the application and, in any event, the application is without merit.
3. For the reasons below, the application is rejected.

Facts

4. The post was advertised on 14 August 2019 and the Applicant timely applied.
5. On Friday, 1 November 2019 at 1:44 a.m., the Applicant received an email inviting her to participate in a written test as part of the evaluation process for the post. The test was scheduled for 7 November 2019. Candidates were requested to confirm their availability by clicking on a link within 24 hours.
6. On Monday, 4 November 2019 at 9:56 a.m., the Applicant replied to the invitation email confirming her continued interest in the position and stating that the confirmation link was not functioning. As she received no response, the Applicant sent subsequent emails to different officials in UNEP asking to be allowed to participate in the written test. Not having confirmed her participation in the written test within the prescribed 24 hours, the Applicant was excluded from participating further in the recruitment process.

Consideration

7. The Applicant submits that by imposing a mere 24-hour deadline to respond to the invitation email, the Administration violated sec. 7.5 of ST/AI/2010/3 (Staff

selection system) which provides for appropriate evaluation mechanisms of the candidates. She states that by providing such a short deadline for the response without prior notification, the Administration acted unreasonably and unjustly.

8. The Applicant further argues that the Administration acted against its own practice as specified in the “Manual for the Recruiter on the Staff Selection System”, which establishes the process of shortlisting of candidates and recommends a usual five-day notice for shortlisted candidates to confirm their participation in the recruitment process. The Applicant argues that by departing from this practice, the Administration acted with flagrant unreasonableness.

9. The Applicant further states that the fact that all candidates were imposed the same deadline does not detract from the unfairness. She argues that by ignoring her numerous and immediate requests to be provided her access to a functioning confirmation link, the Administration was unfair to her.

10. The Applicant further submits that she was not negligent as she regularly checked her email account and opened the invitation email promptly on Monday, 4 November 2019.

11. The Respondent replies that the application is not receivable because there is no administrative decision as the recruitment process for the post was still ongoing when the application was filed. Therefore, there was no final administrative decision capable of being appealed.

12. The Respondent states that the Applicant was not shortlisted because she did not confirm her interest within the prescribed deadline. By providing the same confirmation deadline to all candidates, the Administration acted fairly and transparently.

13. The Respondent states that there is no legal obligation on the Organization to provide a minimum notification period for shortlisted candidates, nor is there a requirement for the Hiring Manager to make several attempts to contact candidates.

14. The Respondent submits that the Applicant was afforded full and fair consideration in the recruitment process as she was shortlisted and invited to sit a written test. The Administration in this case minimally showed that the procedure was followed appropriately.

Receivability

15. In light of the Respondent's arguments on the receivability of the application, the Tribunal will address this issue first.

16. In response to the Respondent's submissions, the Applicant recalls this Tribunal has previously found that an applicant being found ineligible for a post or being excluded from a recruitment process were reviewable decisions.

17. The Respondent responds that the contested decision is not an administrative decision that is challengeable because the Applicant's exclusion from the recruitment process does not have legal consequences as it was the Applicant's own making. The Applicant deprived herself of the possibility of being considered for selection for the position. The Applicant cannot therefore request the Organization to remedy the consequences of her own voluntary action.

18. As the Applicant rightly points out, in Order No. 117 (NY/2019) of 9 August 2019, the Tribunal acknowledges the jurisprudence of the Appeals Tribunal concerning the challenges brought against preliminary decisions in recruitment processes. The Tribunal referred to *Ishak* 2011-UNAT-152 in which the applicant sought administrative review and challenged the preliminary steps leading to the decision to promote him. In this context, the Appeals Tribunal held that "[t]hese steps may be challenged only in the context of an appeal against the outcome of the selection process, but cannot alone be the subject of an appeal to the [Dispute Tribunal]".

19. The Tribunal distinguished *Ishak* from the case in which the applicant was excluded from continuing further in the recruitment process after she was found to have failed a written test. In Order No. 117 (NY/2019), the Tribunal found that "The decision

to exclude the Applicant from further consideration has immediate effects in the Applicant's conditions of service. Therefore, the present application is distinguishable from *Ishak*. As the Dispute Tribunal held in *Korotina* UNDT/2012/178, "the decision that the Applicant was ineligible signified the end of the process as far as she was concerned ... thus this decision cannot be described as merely preparatory" and concluded that the application was receivable.

20. The present case falls in the same category as that reviewed in Order No. 117 (NY/2019). Being excluded from participating in the written test carried immediate effects for the Applicant's conditions of service. The application was therefore final as far as she was concerned. Whether or not the failure to be further considered was the result of the Applicant's actions is a matter of merit, not receivability and will be reviewed accordingly. The Tribunal therefore considers that the present application is receivable.

Merits

21. It is well established that the Secretary-General has broad discretion in matters of staff selection. When reviewing such decisions, the Tribunal shall examine "(1) whether the procedure as laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration" (*Abbassi* 2011-UNAT-110, para. 23). The Appeals Tribunal has further held that the role of the Tribunals is "to assess whether the applicable regulations and rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration" (*Ljungdell* 2012-UNAT-265, para. 30).

22. As the Appeals Tribunal reiterated in *Lemonnier* 2017-UNAT-762, citing *Rolland* 2011-UNAT-122, "the starting point for judicial review is a presumption that official acts have been regularly performed" (see para. 32). The Appeals Tribunal held in *Rolland* that if the management is able to minimally show that the applicant's candidature was given a full and fair consideration, the burden of proof shifts to the

applicant who then must show through clear and convincing evidence that he or she was denied a fair chance of selection (*Rolland*, para. 26).

23. The Applicant argues, in essence, that the Administration acted unreasonably in providing too short a deadline for shortlisted candidates to confirm their interest in participating further in the recruitment process. While she received the invitation email on Friday, 1 November 2019 at 1:44 a.m., the Applicant only read it on Monday, 4 November 2019 in the morning.

24. The Applicant argues that the short deadline allowed for candidates to confirm their participation in the written test violates the Administration's practice encapsulated in the Hiring Manager's Manual.

25. Section 7.5 of ST/AI/2010/3 provides that shortlisted candidates shall be assessed to determine whether they meet the technical requirements and competencies of the job opening through a competency-based interview and/or other appropriate evaluation mechanisms, such as written tests. Chapter 9 of the Manual for the Recruiter states as follows: "When inviting the applicants to participate in an assessment process, the Hiring Manager informs them in advance (at least 5 working days) of the anticipated date of the assessment exercises [...]".

26. The 1 November 2019 email invited all candidates, including the Applicant, to participate in a written assessment on 7 November 2019 and required them to confirm their participation within 24 hours. The Tribunal finds that this invitation respected the applicable provisions, including the guidance provided by the Manual of allowing a five-day advance notice for written tests. Indeed, the 1 November 2019 email informed the candidates that the written assessment would take place on 7 November 2019, that is, more than five days thereafter.

27. The Applicant deems it unreasonable for the Administration to impose a 24-hour deadline to confirm participation in the written test. The Tribunal finds this argument unconvincing. Quite to the contrary, the Tribunal finds that it can reasonably be expected from a candidate to a job opening to diligently monitor the email provided

in the job application for notification purposes to ensure a timely response to any such notification. The Tribunal further notes that the Applicant does not show, or even allege, any exceptional circumstances which may have precluded her from timely accessing the invitation email. Accordingly, the Applicant has not shown that the Administration denied her full and fair consideration.

Conclusion

28. In light of the foregoing, the application is rejected.

(Signed)

Judge Joelle Adda

Dated this 5th day of May 2020

Entered in the Register on this 5th day of May 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York