



Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

PEDREYRA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Dorota Banaszewska, OSLA

Counsel for Respondent:

Nusrat Chagtai, ALD/OHR, UN Secretariat

Introduction

1. The Applicant contests his non-selection for a post of Senior Reviser/Project Manager with the Department for General Assembly and Conference Management (“DGACM/the post”).

2. For the reasons below, the Tribunal finds that the Applicant’s candidacy for the post received full and fair consideration and rejects the application.

Relevant facts

3. The Applicant applied for the post on 29 January 2019 and participated in technical assessment and oral interview on 13 March 2019.

4. On 14 June 2019, the Applicant was formally notified of his non-selection.

Consideration

Applicable law

5. 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).

6. 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).

Did the Applicant's candidature receive fair and full consideration?

7. The Applicant contends that his application was not given fair and full consideration because the Administration changed the requirements for the generic position of senior reviser in order to favour the preferred candidate. In particular, the Applicant highlights that the requirement of reviser experience was removed, and the translation experience was "dumbed down".

8. The Respondent replies, in essence, that the job description for the post was agreed among the Chiefs of the Translation Services and therefore, not designed to favour any particular candidate. He further states that the written assessments and the method of grading were equally agreed among the Chiefs. Therefore, there was no design to favour or disadvantage any particular candidate.

9. The Tribunal reviewed all the documentation concerning the contested selection process. It notes that the job descriptions for the positions of Senior Reviser/Project Manager for Spanish, Chinese, Russian and Arabic feature the same requirements. The Tribunal is therefore satisfied that these job descriptions were

agreed among the services before publication. The Tribunal appreciates no ulterior motive in the design of these job descriptions.

10. The Applicant further claims that it is trite law that requirements differing from those in a generic job profile must be seen as necessary or desirable for the particular post and are only permitted if the drafters of the vacancy announcement are not influenced by ulterior factors.

11. While the absence of ulterior motives is a requirement for any administrative decision to be legal, the Tribunal finds that the limitations identified by the Applicant with respect to the job-specific job openings are not reflected in the legal framework. Indeed, sec. 4.2 of ST/AI/2010/3 (Staff selection system) provides as follows:

Position-specific job openings shall be included in the compendium when: (a) A new position is established or an existing position is reclassified; (b) The incumbent separates from service; (c) The incumbent is selected for another position under the provisions of this instruction or as a result of a lateral reassignment by the head of department/office within that department or office.

12. The Respondent has properly explained how the positions of Senior Reviser/Project Manager were new positions created at the wake of the reorganization of the Translation Services in the Documentation Division in order to rebalance capacity across all official languages and align the workforce to the new realities and challenges in the documentation field reflected in the 2018-2019 budget. While the Applicant may disagree with the manner in which the restructuring was organized and reflected in the contested job opening, he has not presented evidence that the Administration exceeded its discretion.

13. With respect to the written assessment, the Respondent states that the Applicant failed the test and his performance in the oral interview was therefore not taken into consideration.

14. The Tribunal has reviewed the email communications among different translation sections of February 2019 which show that the written assessment methodology was the result of a discussion among the services and that the same assessment was used for the vacancies in the different services. The Tribunal does not find any evidence that the assessment method was designed to favor or disadvantage any of the candidates.

15. With respect to the Applicant's performance on the written assessment, the Tribunal reviewed the final report of the assessment panel showing that the Applicant was graded as partially satisfactory. The individual notes from the members of the recruitment panel show that all three panel members graded the Applicant's performance in the assessment as "partially satisfactory". The Tribunal is therefore satisfied that the Applicant was graded fairly and failed the written assessment.

16. The Applicant further argues that he meets and exceeds all the educational and work experience requirements for the position while the selected candidate had substantially lower qualifications.

17. As discussed above, the Applicant was not invited to participate further in the selection exercise because he failed the written assessment. This reason has been found to be supported by the evidence. Accordingly, the qualifications of the selected candidate, for the purposes of this appeal, are irrelevant given that the Applicant was afforded fair and full consideration.

18. In light of the above, the Tribunal is satisfied that the Respondent has shown that the procedural requirements in the selection process were fulfilled. The evidence on file supports the Respondent's assertion that the job description and written assessment were agreed among the translation services based on the exigencies of the service and that the Applicant was fairly graded in the written assessment, which he failed. Accordingly, the Tribunal finds the contested decision lawful.

Conclusion

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

(Signed)

Judge Joelle Adda

Dated this 1st day of October 2020

Entered in the Register on this 1st day of October 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York