



Before: Judge Francis Belle

Registry: New York

Registrar: Pallavi Sekhri, Officer-in-Charge

SUAREZ LISTE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, AAS/ALD/OHR, UN Secretariat

Clémentine Foizel, AAS/ALD/OHR, UN Secretariat

Lucienne Pierre, AAS/ALD/OHR, UN Secretariat

Introduction

1. By application filed on 13 August 2021, the Applicant, a Translator with the Department for General Assembly and Conference Management (“DGACM”), contests the decision not to place him at the P-3, step VIII level on initial appointment (“the contested decision”).

Facts and procedural history

2. On 24 December 2019, the Executive Officer (“EO”), DGACM, issued the Applicant an offer for a fixed-term appointment that stated as follows:

On behalf of the Secretary-General of the United Nations, I am pleased to offer you a Fixed-term Appointment for 2 year(s) at step II of the P3 level as Translator in the Spanish Translation Service, New York.

3. By email of 5 March 2020, the Applicant requested a correction of the step-in-grade offered, and the Deputy EO, DGACM, informed him that his request had been denied.

4. On 15 March 2021, the Applicant signed a letter of appointment (“LoA”) for the position of Translator (Spanish) in DGACM at the P-3, step II level.

5. By email dated 5 April 2021, the Applicant once again requested the EO/DGACM to modify his step-in-grade from P-3, step II to P-3, step III.

6. On 16 April 2021, the Applicant filed his first management evaluation request contesting the decision to grant him the grade of P-3, step II instead of P-3, step VIII.

7. On the same date, the Human Resources Partner in the EO/DGACM informed the Applicant that his initial step-in-grade had been amended to P-3, step III.

8. On 26 April 2021, the EO/DGACM informed the Applicant that the change of his step-in-grade would take effect upon completion of the management evaluation process.

9. On 21 May 2021, the EO/DGACM requested an extension of time to reconsider the determination of the Applicant's initial step-in-grade in light of the supporting documentation that he submitted in conjunction with his first request for management evaluation.

10. On 1 June 2021, the EO/DGACM provided the Management Evaluation Unit ("MEU") with the outcome of its reconsideration of the Applicant's years of relevant work experience, assessed to be six years, two months, and 17 days. The EO/DGACM concluded that the Applicant's initial step-in-grade should remain at step III upon recruitment.

11. On 4 June 2021, the MEU provided the Applicant with the outcome of the EO/DGACM's reconsideration of his step-in-grade for his comments.

12. On 11 June 2021, the Applicant provided his comments with supporting documents and indicated that he had 13 years, one month and six days of relevant work experience. Consequently, he argued that he should be granted step VIII.

13. On 15 June 2021, the Applicant filed his second request for a management evaluation contesting the non-implementation of the amended step-in-grade.

14. By letter dated 26 July 2021, the Under-Secretary-General for Management Strategy, Policy and Compliance informed the Applicant of her decision to endorse the MEU's findings and recommendations to rescind the decision to place him at the P-3, step II level and to grant him the P-3, step VI level upon initial appointment while noting that his second request for management evaluation was not receivable.

15. On 3 August 2021, the EO/DGACM issued the Applicant an updated LoA where his step was modified from P-3, step II to P-3, step VI.

16. On 13 August 2021, the Applicant filed the application mentioned in para. 1 above on an *ex parte* basis.

17. On the same date, the Tribunal's Registry informed the Applicant that under art. 8.4 of the Tribunal's Rules of Procedure, all applications should be notified to the Respondent for his reply and asked him to confirm whether he still wished to submit his application.

18. By email dated 17 August 2021, the Applicant confirmed that he would like to submit his application. On the same date, the application was served on the Respondent.

19. On 16 September 2021, the Respondent filed his reply.

20. On 1 July 2022, the present case was assigned to the undersigned Judge.

21. By Order No. 63 (NY/2022) of 18 July 2022, the Tribunal:

a. Instructed the Applicant to demonstrate whether and to what extent his Ph.D. experience would constitute relevant work experience for language staff, and to submit relevant documentary evidence by 28 July 2022; and

b. Invited the Respondent to file his comments by 8 August 2022.

22. On 28 July 2022, the Applicant filed his submission pursuant to Order No. 63 (NY/2022).

23. On 8 August 2022, the Respondent filed his comments on the Applicant's submission of 28 July 2022.

Consideration

Standard and scope of judicial review

24. In the present case, the Applicant contests the decision not to place him at the P-3, step VIII level upon recruitment by the Organization.

25. In this respect, the Tribunal notes that staff rule 3.4 (Salary policy) provides in its relevant part that:

(a) On appointment, a staff member shall normally be placed at the first step of the level of his or her post, unless otherwise decided by the Secretary-General.

26. In examining the validity of the Administration's exercise of discretion in step-in-grade determination, the Tribunal's scope of review is limited to determining whether the exercise of such discretion is legal, rational, reasonable and procedurally correct to avoid unfairness, unlawfulness or arbitrariness (see, e.g., *Abusondous* 2018-UNAT-812, para. 12). In this regard, the Tribunal recalls that it is not its role "to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General" (see *Sanwidi* 2010-UNAT-084, para. 40).

27. Nevertheless, the Tribunal may "consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse" (see *Sanwidi*, para. 40). If the Administration acts irrationally or unreasonably in reaching its decision, the Tribunal is obliged to strike it down (see *Belkhabbaz* 2018-UNAT-873, para. 80). "When it does that, it does not illegitimately substitute its decision for the decision of the Administration; it merely pronounces on the rationality of the contested decision" (see *Belkhabbaz*, para. 80).

28. In view of the foregoing, and having reviewed the parties' submissions and the evidence on record, the Tribunal defines the issues to be examined in the present case as follows:

- a. Whether the Administration properly determined the Applicant's step-in-grade; and
- b. Whether the Applicant is entitled to any remedies.

Whether the Administration properly determined the Applicant's step-in-grade

29. In the present case, following a review of the Applicant's request for management evaluation, the MEU "determined that upon recruitment, [the Applicant] had approximately 12 years and three months of relevant experience" and "considered that [he was] correctly not granted extra steps for [his] Ph.D. degree [in Economics]" because the "Recruitment policy for entry level language staff. Grading Guidelines" ("the Grading Guidelines for language staff"), unlike the 'Guidelines for determination of level and step on recruitment to the Professional category and above' ("the General Guidelines") do not provide for the granting of additional steps for a Ph.D. degree.

30. The Applicant submitted that he should be granted two additional steps for his Ph.D. degree in Economics. To support his claim, he specifically argues that sec. 10.2 of the General Guidelines allows the Organization to grant up to a maximum of two additional steps for a Ph.D., whereas the Grading Guidelines for language staff do not in any manner prevent the Administration from granting two additional steps for a Ph.D. In his view, the granting of two additional steps for non-language professional staff and the non-granting of two additional steps for language professional staff constitute a discrimination of the latter group. Moreover, he argues that his Ph.D. in Economics is relevant for his job as a Translator.

31. The Respondent contends that the Administration lawfully exercised its discretion in deciding not to grant the Applicant an exception to the maximum placement at P-3, step VI. He specifically argues that the Applicant's Ph.D. is not relevant because the highest degree considered by the Grading Guidelines for language staff is a Masters' degree; and that the Applicant's Ph.D. in Economics is not professional work experience in language or translation and is not an exceptional circumstance meriting the relief he seeks. He further argues that the principles of fairness and consistency do not warrant an exception to the placement at P-3, step VI because in the last two years no staff member has been placed above step VI upon appointment, including three staff members with advanced university degrees and more relevant work experience than the Applicant.

32. The Tribunal notes that the Grading Guidelines for language staff provide in their relevant part that:

1. Step-in-grade determination criteria aligned to the NCRE programme (number of requisite years of experience and academic credentials), namely:

...

P-3: w/Masters with 4 years or w/Bachelor from 4 to 6 years of relevant work experience. Examples:

BA + 4 to 6 years of relevant professional experience = P-3/I
 MA+ 6 years of relevant professional experience = P-3/III

2. Exceptions beyond step VI of the P-3 up to step VIII as well as above, will be determined by HRS/OHRM in accordance with the relevant delegated authority and based on the criteria laid out in these guidelines, specifically by

- i. determination of actual years of relevant professional experience; and
- ii. the count of relevant years of experience as per *the Table* below.

The principle is that for each additional year of ‘relevant’ work experience at the professional level, an additional step, up to step 6, would be granted. Beyond step VI, OHRM would only give consideration to very exceptional circumstances, for example:

BA + 15 years: P-3/VIII MA + 13 years: P-3/VIII

3. Grading Table for Language Staff as at December 2010

Grade/Step	I	II	III	IV	V	VI	VII	VIII
P-2/BA	0 to 2	3						
P-2/MA	0	1	2	3				
P-3/BA	4 to 6	7	8	9	10	11		15+
P-3/MA	4	5	6	7	8	9		13+

33. It follows that for initial recruitment cases, the maximum allowable step is VI for P-3 language staff unless there are exceptional circumstances such as “BA + 15 years” and “MA + 13 years”, which justify the granting of step VIII.

34. Turning to the present case, in asserting whether the Administration properly determined the Applicant's step-in-grade, the Tribunal considers that the core issue before it is whether and, if so, to what extent, the Applicant's Ph.D. experience in Economics would constitute relevant work experience for a language professional under the Grading Guidelines for language staff.

35. In this respect, the Tribunal notes that sec. 4 of the Grading Guidelines for language staff provides the criteria for determining relevant work experience as follows:

Definition of relevant work experience	Ratio to years of relevant work experience
a. Experience in any of the language professions or any other language-related profession.	100 per cent
b. Experience in any other profession that is relevant to the work of the United Nations	50 per cent
c. Experience as a trainer or teacher in any of the fields covered in subparagraphs (a) and (b) above.	As rated above
Any other professional experience for which there is an approved Generic Job Profile.	Not applicable

36. Also, sec. 9 of the Grading Guidelines for language staff shows that experience in Economics is relevant to the work of the United Nations. Accordingly, the Tribunal considers that the Applicant's Ph.D. experience in Economics constitutes "Experience in any other profession that is relevant to the work of the United Nations" under sec. 4(b) of the Grading Guidelines for language staff.

37. The documentary evidence on record shows that the Applicant did his Ph.D. in Economics from 1 October 2014 to 9 June 2019 on a full-time basis. Therefore, his Ph.D. experience in Economics would amount to around two years and four months of relevant experience pursuant to sec. 4(b) of the Grading Guidelines for language staff. Furthermore, the Administration had determined that upon recruitment, the Applicant had approximately 12 years and three months of relevant experience. Therefore, the Tribunal considers that at the time of recruitment, the Applicant had approximately 14 years and seven months of relevant experience.

38. Noting that the Applicant obtained a Masters' degree in 2002, and in light of the above, the Tribunal finds that the Applicant had a MA plus over 14 years of relevant experience, constituting "exceptional circumstances" justifying the granting of P-3, step VIII under sec. 2 of the Grading Guidelines for language staff.

39. Moreover, the Tribunal finds no merit in the Respondent's argument that the principles of fairness and consistency do not warrant an exception to the placement at P-3, step VI in the present case. Indeed, the fact that no staff member has been placed above P-3, step VI in the last two years does not mean that the Applicant is not entitled to P-3, step VIII. To hold otherwise would render the last sentence of sec. 2 of the Grading Guidelines for language staff null and void. It would also breach the principle of fairness because it would imply that a Masters' degree amounts to two years of relevant experience whereas a Ph.D. degree would amount to no relevant experience. In this respect, the Tribunal also notes that under sec. 10.2 of the General Guidelines, up to a maximum of two additional steps may be granted for a Ph.D. degree.

40. Accordingly, the Tribunal finds that the Administration failed to consider relevant exceptional circumstances in determining the Applicant's step-in-grade and, as such, the contested decision is unlawful.

Whether the Applicant is entitled to any remedies

41. In his application, the Applicant requests the modification of his step-in-grade upon recruitment from P-3, step VI to P-3, step VIII. He further requests the Tribunal to incorporate to the Grading Guidelines for language staff the provision that "[a]dditional steps may be granted for Ph.D. and M. Phil. degrees or equivalent, up to a maximum of two additional steps for a Ph.D. and one additional step for a M. Phil."

42. Having found that the contested decision is unlawful since the Administration failed to consider relevant exceptional circumstances that justify the granting of P-3, step VIII to the Applicant, the Tribunal finds it appropriate to rescind the contested decision.

43. The Tribunal further recalls that a finding of unreasonableness or unlawfulness, and consequent invalidity of a contested decision, will “give rise to the discretion to award specific performance—an order directing the Administration to act as it is contractually and lawfully obliged to act” (see *Belkhabbaz*, para. 80). It thus finds it appropriate to direct the Administration to modify the Applicant’s step-in-grade upon recruitment from P-3, step VI to P-3, step VIII.

44. Turning to the Applicant’s request to revise the Grading Guidelines for language staff, the Tribunal recalls that the scope of its authority in granting remedies is set out under art. 10.5 of its Statute, which provides specifically for: rescission of the contested administrative decision or specific performance or compensation for harm. Therefore, the Tribunal has no competence to grant the Applicant’s request in this respect.

Conclusion

45. In view of the foregoing, the Tribunal DECIDES that:

- a. The contested decision is rescinded;
- b. The Administration is ordered to retroactively place the Applicant at the P-3, step VIII level upon initial appointment;
- c. The Administration shall pay the Applicant the loss of salary that he suffered as a result of the unlawful decision. In this connection, each party will be responsible for his own share of contributions to pension or medical insurance schemes;
- d. The Administration shall bear the cost associated with the step adjustment (e.g., any actuarial cost that the United Nations Joint Staff Pension Fund may charge for this retroactive increase of step); and

- e. The Applicant's request to revise the Grading Guidelines for language staff is rejected.

(Signed)

Judge Francis Belle

Dated this 31st day of August 2022

Entered in the Register on this 31st day of August 2022

(Signed)

Pallavi Sekhri, Officer-in-Charge, New York