



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Isaac Endeley

ANAND

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Dorota Banaszewska, OSLA

Counsel for Respondent:

Lucienne Pierre, AS/ALD/OHR, UN Secretariat

Jenny Kim, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a former Administrative Officer, contests the decision not to select him for the position of Chief at the P-5 level, Business Transformation and Accountability Unit (“BTAU”), Pension Administration, the United Nations Joint Staff Pension Fund (“UNJSPF”), Job Opening 154920 (“the post”).

2. On 15 March 2023, the case was assigned to the undersigned Judge.

3. For the reasons below, the Tribunal rejects the application.

Facts

4. On 11 February 2021, the Applicant joined UNJSPF on a temporary appointment as Chief, BTAU, serving at the P-5, step 6 level.

5. From 5 May 2021 to 18 June 2021, the UNJSPF advertised the position of Chief, BTAU, P-5. The hiring manager reviewed the 74 pre-screened applicants and conducted a preliminary evaluation against the pre-established evaluation criteria, which resulted in 39 job applicants deemed not suitable, 9 job applicants longlisted, and 26 job applicants shortlisted.

6. The UNJSPF invited the 26 shortlisted job applicants to participate in a video assessment of their technical skills. The passing mark for the technical assessment was established at 42 out of 60 points. Out of the 26 job applicants who participated in the technical assessment, four job applicants, including the Applicant, passed the technical assessment. The selected candidate scored the highest (47 points), followed by the Applicant (46 points).

7. On 21 October 2021, the UNJSPF conducted a competency-based interview (“CBI”) for the four job applicants who passed the video assessment. The CBI assessed the job applicants on the competencies of professionalism, communication, teamwork, vision and judgement and decision-making. The selected candidate scored

as outstanding in three competencies out of five, and the Applicant scored as outstanding in two competencies out of five. The interview panel recommended both the selected candidate and the Applicant for the position.

8. On 9 December 2021, on the basis of the documented record, the hiring manager recommended the selected candidate as the best suited for the functions of the position.

9. On 10 December 2021, the Chief Executive of Pension Administration endorsed the selected candidate as the best suited candidate for the functions. On 17 January 2022, the Central Review Bodies approved the selection.

10. On 14 March 2022, the Applicant submitted a management evaluation request of the decision to not select him for the position.

11. On 29 March 2022, the Applicant received a response to his management evaluation request upholding the contested decision.

12. On 27 June 2022, the Applicant filed his application with the Dispute Tribunal.

Consideration

Whether the Applicant was given full and fair consideration

13. 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). 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 (*Savado* 2016-UNAT-642).

The Tribunals' role is not to substitute their decision for that of the Administration" (*Ljungdell* 2012-UNAT-265).

14. 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". The Appeals Tribunal held in *Rolland* that if the management is able to minimally show that the applicant's candidature was given 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*).

15. The Applicant contends that he did not receive full and fair consideration. The Applicant contends that the selected candidate was not qualified for the position because she did not hold the relevant technical certifications at the relevant time of the selection procedure.

16. The Respondent responds that the UNJSPF followed the procedure as laid down in the Staff Regulations and Rules by affording the Applicant fair and adequate consideration. The Respondent contends that the hiring manager comprehensively reviewed the Applicant's qualifications and assessed the Applicant against all relevant criteria. The Applicant was shortlisted and invited to the substantive video assessment. The Applicant was interviewed by him and was recommended as a one of two candidates for the position.

17. The Respondent states that based on the documentation pertaining to the selection process and the recommendation of the hiring manager, the Chief Executive of Pension Administration lawfully selected the candidate she deemed best suited for the functions of the contested position, in compliance with art. 101(3), staff regulation 4.2, sec. 9.3 of ST/AI/2010/3 (Staff Selection System) and ST/AI/2020/5 (Temporary measures for the achievement of gender parity). In arriving at this decision, the Chief Executive considered that the selected candidate scored higher than the Applicant at each stage of the selection process, and that she had 10 additional years of work experience compared to the Applicant, including

significantly more supervisory experience. In particular, as a management consultant and senior manager at a leading consulting firm, the selected candidate led business process re-engineering, process optimization and change management projects. The selected candidate also had more technical certifications than the Applicant and demonstrated exceptional technical skills and competencies throughout the selection process.

18. The Respondent adds that the selection of the selected candidate was consistent with the Organization's policies on achieving gender parity. In this regard, the Respondent submits that at the time of the selection decision, the gender parity at the P-5 level within the UNJSPF was 36% female representation compared to 64% male representation. The hiring manager in his recommendation to the Chief Executive of Pension Administration took note of the disparity in gender representation, and properly considered that the selection of the selected candidate, a female, would assist the UNJSPF in meeting the Organization's gender targets.

19. The Tribunal notes that the essence of the Applicant's contention is that the selected candidate was not qualified for the position as she did not satisfy the education or work experience criteria of the Job Opening which require as follows:

Education

Advanced university degree (Master's degree or equivalent) in business or public administration, finance, accounting, law or related area. A first-level university degree in combination with qualifying experience may be accepted in lieu of the advanced university degree. Lean Six Sigma (LSS) or equivalent certification from a recognized certifying body or organization is required.

Work Experience

A minimum of ten years of progressively responsible experience in administration, budget, finance, human resources management or related field is required.

Experience in Lean Six Sigma (or equivalent) projects to improve administrative and/or service delivery functions is required.

Experience working with the United Nations or its Agencies, Funds, and Programmes is desirable.

Experience in conducting process improvement training and presenting complex information is desirable.

20. The Applicant states that the selected candidate lacked the required qualification of “Lean Six Sigma or equivalent certification” and the required “Experience in Lean Six Sigma (or equivalent) projects” at the time of her application and interview.

21. The Respondent submits, on the other hand, that the selected candidate meets the technical qualifications of the job opening. In this regard, the Respondent states that the hiring manager properly exercised his discretion in considering that the three technical certifications (i.e., a certificate from Accenture University in Management and Change Management, a certification in PRINCE2 and a certification as a Project Management Professional (“PMP”) listed in the selected candidate’s Personal History Profile (“PHP”), as well as her overall experience in project management, satisfied the requirements of the job opening.

22. In determining that the selected candidate’s three technical certifications fulfilled the requirements of the job opening, the hiring manager considered the underlying skills demonstrated by Lean Six Sigma certification. The Respondent explains that Lean Six Sigma is a project management methodology, among many others, directed at efficiently managing projects. Lean Six Sigma specifically focuses on “Process Improvement” (through waste reduction) and “Change Management”. The hiring manager determined that the three certifications held by the selected candidate demonstrate that she possesses skills in efficiently managing projects. In particular, the hiring manager found that the selected candidate’s certification from Accenture University in Management and Change Management demonstrates that she possesses the specialized skills in “Process Improvement” and “Change Management”, and the certification in PRINCE2 demonstrates that she possesses the distinct skills on the reduction on waste to improve processes.

23. Having reviewed the record, the Tribunal finds that the Applicant was afforded full and fair consideration for the position and the hiring manager acted within his reasonable discretion in assessing the job candidates. The Applicant was one of the two recommended candidates for the position, having passed the written assessment and the interview. At the interview, the selected candidate scored as outstanding in three competencies out of five, and the Applicant scored as outstanding in two competencies out of five.

24. The Tribunal finds that the Chief Executive in arriving to her decision considered that the selected candidate scored higher than the Applicant at every stage of the recruitment process, and that she has 10 years of additional work experience when compared to the Applicant, including significantly more supervisory experience. The selected candidate also has more technical certifications than the Applicant. The Chief Executive also noted the hiring manager's observation that "[the Selected Candidate] clearly articulated relevant response and excelled in illustrating and demonstrating the required technical skills and competencies of the JO throughout the competitive selection process". The Tribunal notes that in addition to being the best suited candidate, the selection of the selected candidate was consistent with the Organization's policies on achieving gender parity.

25. It is clear that the Applicant disagrees with the hiring manager's assessment of the selected candidate's education and work experience. However, the Applicant's opinion does not rebut the findings of the hiring manager. The hiring manager, not the Applicant, has the responsibility and discretion to establish evaluation criteria, determine the relative importance of the criteria, and assess whether and to what extent a candidate meets those qualifications. The Respondent is correct to point out that the hiring manager, as the drafter of the job opening, is best placed to interpret its meaning.

26. Similarly, the Tribunal finds no merit in the Applicant's claim that the certificates the selected candidate listed in her PHP (including PRINCE 2.0, ITIL, COBIT IT Governance and PMO) are not related to the advertised position or have expired. In this regard, the Tribunal notes that the job opening explicitly stated "Lean

Six Sigma (LSS) or *equivalent certification*". The hiring manager found that the selected candidate fulfilled this requirement for the reasons noted above. In regard to the validity of certifications, the Tribunal finds that the job opening did not require the job applicants to have renewed their certifications.

27. Based on the above, the Tribunal finds that the Applicant failed to show by clear and convincing evidence that he was denied a fair chance of selection. Accordingly, the Tribunal finds that the contested selection decision is lawful as the Administration appropriately exercised its discretion in selecting the selected candidate.

Conclusion

28. In light of the foregoing, the Tribunal rejects the application.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 8th day of June 2023

Entered in the Register on this 8th day of June 2023

(Signed)

Isaac Endeley, Registrar, New York