



Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

SW Aidan

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Sandra Landro, UNHCR

Jan Schrankel, UNHCR

Introduction

1. By application filed on 10 September 2023, the Applicant, a staff member of the United Nations High Commissioner for Refugees (“UNHCR”) in Beirut, Lebanon, contests her non-selection for Senior Human Resources Officer, (“SHRO”) position No. 31000922 in the UNHCR Regional Bureau for the Middle East and Northern Africa in Amman, Jordan.

Facts

2. The Applicant joined UNHCR in 1996. In 2011, she worked in various position at the P-3 level in Human Resources/Administration in four different countries. In 2016, she was appointed to the position of Senior Regional Human Resources Officer in Pretoria, South Africa.

3. Position No. 31000922 was advertised on 21 December 2022 via the first addendum to the Biannual Compendium. The Applicant submitted an application for the position and was shortlisted with two other internal candidates

4. As part of the selection process, the three shortlisted candidates were interviewed for the position on 6 March 2023. (Application, page 3, para.6).

5. The interview panel drew up an “interview questions and competency” sheet to rank the candidates who had been interviewed on 6 March 2023. The competencies were: 1. Motivation, 2. Change capability and adaptability, 3 Managerial competency, 4. Strategic vision; and 5. Teamwork. The interview panel asked these questions around these competencies and also commented on the responses of each candidate.

6. The interview panel did not recommend the Applicant for the Position because of her low scores. Those scores reflected the Applicant’s failure to address specifically to the interview questions and to demonstrate appropriate skills and competencies.

7. The Joint Review Board (“JRB”) endorsed the interview panel’s recommendations at its meeting between 29 to 31 March 2023, and the decision to assign the selected candidate was announced on 6 April 2023.

8. On 7 May 2023, the Applicant requested management evaluation of the selection decision on the grounds that the selected candidate did not meet the post eligibility requirements listed in the post vacancy announcement, and that the selection process had therefore not respected the applicable selection rules and procedures, resulting in a breach of her rights.

9. By letter dated 16 June 2013, the Deputy High Commissioner replied to the Applicant’s request for management evaluation, upholding the contested decision

10. The Applicant filed a timely application for judicial review on 10 September 2023.

Parties’ submissions

11. The Applicant’s principal contentions are:

a. She is a competent candidate who fulfilled the requirements for the position based on her experience and exceptional performance records while working within a regional context with similar responsibilities as Senior Regional Human Resources Officer at the South African Regional Office from 2016, and as SHRO in Lebanon in 2020. Nevertheless, the offer was made to another candidate.

b. On the selection procedure, the Applicant seems to argue, *inter alia*, that the panel lacked impartiality and objectivity.

c. The Joint Review Board’s role as to who can endorse a second and third recommended candidate was circumvented by only sending one candidate.

d. Her familiarity with the UNICEF system was disregarded. She is an experienced internal candidate with human resources experience at

Headquarters and in the field. The selected candidate had less experience in the applicable field.

12. The Respondent's principal contentions are:

a. The Respondent claims that many of the issues raised by the Applicant are not receivable.

b. The Applicant's experience in the field of Human Resources was duly taken into account in the assessment of her suitability.

c. During the interview process, the Applicant's poor performance resulted in the interview panel determination that the Applicant was not suitable for the position. Her responses failed to properly address the questions and to demonstrate the relevant skills and competencies.

d. Each of the panel members rated the Applicant's responses with a significantly lower score when compared to the selected candidate (14.17 out of 25 points for the Applicant, and 23.17 out of 25 points for the selected candidate).

e. The Hiring Manager's recommendation to select the only suitable candidate for the position was reviewed by the Director of Human Resources and Management (DHRM) and endorsed by the JRB. There is no evidence that the role of the JRB was "bypassed" or that the applicable rules and procedures were not followed.

Consideration

Receivability

13. The Respondent argues that some of the Applicant's claims are not receivable. Specifically, he argues that (i) the request to release the Applicant for the emergency roster in July 2015; (ii) the calibration exercise in 2014/2-15; and (iii) the evacuation allowance after the Beirut blast in August 2020 were not contested via management evaluation, and thus are not receivable *ratione materiae*. He also argues that judicial review of the 2019 decision not to select the Applicant

for the position of Senior HR Partner in Pretoria is not receivable *ratione temporis* because it was not filed within 90 days of the management evaluation on 20 December 2019.

14. The Respondent is correct that these claims are not receivable in and of themselves. However, the Applicant argues that the Tribunal should view these various decisions comprehensively as a whole due to their cumulative effect on the applicant, citing *Dalgamouni* UNDT/2016/094; *Stepanovic* UNDT/2022/075; and *Hassanin* 2017-UNAT-759.

15. The Tribunal finds those cases to be inapposite. *Dalgamouni* did not address receivability at all. Instead, it involved a claim for abuse of authority by a supervisor, which the Respondent (ultimately) conceded and agreed that compensation could be awarded. In the context of quantifying damages, Judge Boolel noted that “[a]buse of authority can include a one-time incident or a series of incidents. Here, the abuse took the form of a systematic series of actions by Ms. Boly who, to the detriment of the Applicant, did not pay the slightest heed to the Orders of the Tribunal.” *Id.*, para. 131. This is far different from the case at hand.

16. Similarly, in *Stepanovic*, the claim was that a supervisor stripped the Applicant of almost all his functions via a series of decisions over the course of two years, in other words, a series of incidents. The language of *Stepanovic* must be viewed in that context and is completely inapplicable to the facts of this case. Here the Applicant complains about her non-selection for a post in 2023 but seeks to encompass in the case numerous other discrete decisions over the course of nearly a decade (including a 2019 non-selection decision). Each of those decisions is separate and cannot be viewed parts of a whole, unlike the decisions in *Stepanovic*.

17. Finally, although *Hassanin* addressed receivability, it did so only in determining that a notice of termination letter constitutes a challengeable decision and rejecting Respondent’s argument that the Applicant would not have been terminated if he had been able to find another position. That is certainly not an issue here.

18. The Appeals Tribunal in *Hassanin* went on to address Respondent's claim that it was error to consider evidence beyond the scope of the Applicant's management evaluation request and the response thereto. On that issue, the Appeals Tribunal pointed out that some of this evidence was presented by the Respondent and that such evidence may have affected the amount of damages. Again, those are not issues in this case.

19. In sum, the Tribunal agrees that claims relating to (i) the request to release the Applicant for the emergency roster in July 2015; (ii) the calibration exercise in 2014/2015 (iii) the evacuation allowance after the Beirut blast in August 2020, and (iv) the 2019 decision not to select the Applicant for the position of Senior HR Partner in Pretoria are all not receivable in this case for the reasons cited by the Respondent.

20. The Tribunal also notes that, in her closing submission, the Applicant requests judicial review of her later non-selection for different vacancy on 7 June 2024. She acknowledges that management evaluation of that decision was still pending at the time she requested judicial review as part of this case. Again, the Tribunal finds that the challenge to this most recent non-selection is not receivable in this case because it is premature and a separate decision from the one at issue here.

Merits of the Non-Selection Decision

21. The Applicant properly acknowledges the scope of judicial review applicable to this case. "In judicially reviewing such administrative decisions, the Tribunal's role is not to substitute its decision for that of the Administration but to determine whether procedures were followed and that candidates were given fair and adequate consideration. Given these parameters of review, ... when candidates receive fair consideration, discrimination and bias are absent, proper procedures have been followed and relevant material taking into consideration, the Dispute Tribunal shall uphold the selection/promotion."

22. Unfortunately, the Applicant's argument on the merits of this non-selection decision fails to clearly or directly address the scope of this review.

23. First, she states that she “was surprised to see that she was viewed as unsuitable and hence not recommended despite being at the level of the position since 2016.” She then recounts various career achievements which she maintains demonstrate her suitability.

24. The record shows that the interview panel recognized that the Applicant, like all of the shortlisted candidates had “extensive experience and knowledge of HR administration.” However, the panel consistently scored the recommended candidate far above both the Applicant and the other candidate.

25. Panelist 1 awarded the selected candidate 23 out of 25 possible points. It awarded the second candidate 15 points and the Applicant 14.5 points. Similarly, Panelist 2 awarded the selected candidate 24 points, the second candidate 14.5 points and the Applicant 15 points. Panelist 3 awarded the selected candidate 22.5 points, the second candidate 13.5 points and the Applicant 13 points. When averaged, the selected candidate received 23.17 out of 25 possible points, the second candidate 14.33, and the Applicant 14.17. Clearly, the selected candidate's scores were almost twice those of the other candidates.

26. In addition, the interview panel described their observations and assessment of the Applicant. They found her replies to be “somewhat unfocused”, “rather long and distracted from the subject of the question”, and that she “failed to address the specific points of the question.”

27. As this Tribunal has noted in other cases, it is “the purview of the panel to determine and depend greatly on ... its interview and its capacity to make a fair assessment of the candidate without further enquiry”,. *Abbassi* UNDT/2010/086, para. 22 (affirmed in *Abbassi* 2011-UNAT-110). Additionally, “[a]lthough the Applicant disagrees with the assessment made during the interview as to whether she satisfied particular competency requirements and regarding her overall suitability for the post, the interview panel was entitled to come to its own conclusions regarding the Applicant’s suitability”. *Lex* UNDT/2013/056, para. 41. See, also, *Abdelaal* UNDT/2024/031, para. 62. It is not the role of the Tribunal to

substitute its own views for those of the interview panel on the adequacy of the interview answers.

28. The Applicant challenges the unsuitability assessment by claiming bias in her non-selection. She says that, in 2015, the then Head of Human Resources Staff Service (HRSS) made “every possible attempt...to pull her out of the duty station” in South Africa. She also points out that this individual was involved in improperly placing a “flag” in another former staff member’s file in 2016.

29. However, any claim of bias by this individual is easily disposed of because that person retired from the Organization in June 2022. Thus, they could not have been involved in the disputed recruitment which began six months later, and the Applicant presents no evidence to the contrary.

30. The Applicant also seems to claim bias by referring to an incident following “the Beirut Blast” in 2020. As she recounts the incident, the Applicant noticed that security evacuation allowances had been improperly calculated and she had brought this to the attention of her manager. The manager acknowledged the error and coordinated necessary recovery efforts. Apparently, the manager involved in 2020 was subsequently the hiring manager in the challenged recruitment, and the Applicant implies that this showed bias in the recruitment.

31. The jurisprudence is clear that “[a]llegations of discrimination, improper motive and bias are very serious and ought to be substantiated with evidence.” *Ross* 2019-UNAT-944, para. 25.

32. There is no evidence that the Applicant’s pointing out the error in calculating security evacuation allowances in 2020 somehow biased the hiring manager towards the Applicant in 2023. The entire exchange is set forth in an email chain, which appears quite cordial. The Applicant says, “I also want to draw your kind attention to one typo error in relation to the dependant’s [sic] SE allowances.” To which the manager replies “Indeed, unfortunately, there is a typo in my email ([and] thanks for pointing it out!)” No reasonable person could infer any ill will from that incident.

33. Perhaps recognizing this, the Applicant mentions unconscious bias or unconscious prejudice as discussed in *Sobier* 22-UNAT-1208. However, an objective analysis of the circumstances surrounding the contested selection decision also does not lead one to conclude that bias was established. Unlike in *Sobier*, the record here is devoid of any procedural irregularities. There is no evidence that the panel deviated from its planned questions or asked the Applicant different questions from those asked of the other candidates. There is also no evidence that the Applicant's answers were inaccurately recorded. Therefore, there is no basis on which to find unconscious bias in the interview process in this case.

34. Thus, the Applicant has failed to bear her burden to present evidence showing that bias played any role in the challenged non-selection decision.

35. In her rejoinder, the Applicant also points out that the Professional Summary annexed to the Respondent's reply "shows only summary of four years of performance evaluation from 2021 up to 2018 (i.e., missing 2017)" and that her 2017 record would show her "exceptional performance".

36. It is true that the Applicant's performance evaluation for 1 January to 31 December 2017 was "exceeds performance expectations." But the Fact Sheet also notes that she "did not complete the final evaluation, as Supervisor, within the set deadline in [a subordinate's] ePAS for the period as 01 January 2017 – 31 December 2017." In addition, the annexed Professional Summary is not dated, and it is not clear that it was used in the recruitment process at all. (The Respondent only cites it to support its statement that the Applicant holds an indefinite appointment.)

37. More importantly, the records indicate that the Applicant's past performance ratings were not the cause of her non-selection; it was her poor performance in the interview. Therefore, assuming that the annexed professional summary printout was used in the recruitment, any irregularity in printout only showing four rather than five years was immaterial.

38. The Applicant also claims that there was a "leakage of information in confirmation of pre-arranged outcome for the Senior Regional HR Office, P4 vacancy." The claim is that, almost two months before the interviews for the

challenged selection, the Senior HR Partner at the Amman Regional Bureau (RB) “explicitly advised the HR Officer at Syria will be taken to RB.” That claim is not supported by any evidence in the record. To the contrary, the record includes a sworn declaration from the hiring manager stating, *inter alia*, that “[b]efore the interviews were conducted, I did not know who would be found suitable and recommended for the position [and] [p]rior to the completion of the selection process, I never told anyone that [the selected candidate] would be transferred from the Syria operation to the RB MENA.” The Applicant does not refute this sworn declaration, and thus the Applicant’s claim is factually unfounded.

39. Finally, the Applicant claims that, by recommending a single candidate, the hiring manager deprived the Joint Review Board of an opportunity to select a second or third ranked candidate. She cites to no authority that submitting more than one name is required, and the Tribunal is unaware of such authority. Moreover, the JRB’s ability to make an alternative recommendation is limited to rare “instances where the rectification of [an] identified procedural shortcoming would evidently result in the recommendation of another candidate who was assessed by the manager and DHRM or the SAC as fully suitable...” UNHCR/AI/2017/7/Rev.1, para. 98.c. In the absence of any identified procedural shortcoming in this recruitment process, an alternative recommendation would not be possible.

40. Furthermore, as described above, the selected candidate (and the only one recommended) scored dramatically better than the other shortlisted candidates. This fact alone would justify not sending two other names that scored so poorly in their interviews. And it is mere speculation that, had three names been sent to the JRB, the Board would have passed over both the selected candidate and the next highest scoring candidate to choose the Applicant.

41. In sum, the Tribunal finds that the Applicant was given fair and adequate consideration during the selection process. Nor was there any discrimination or bias or any material procedural irregularities in the recruitment process leading to the Applicant’s non-selection.

Conclusion

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

To deny the application in its entirety.

(Signed)

Judge Sean Wallace

Dated this 11th day of September 2024

Entered in the Register on this 11th day of September 2024

(Signed)

Wanda L. Carter, Registrar, Nairobi