



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2024/074

Judgment No.: UNDT/2025/014

Date: 27 March 2025

Original: English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

SHABAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nisha Patel, AS/ALD/OHR, UN Secretariat

Charlene Ndirangu, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant serves on a fixed-term appointment at the United Nations Truce Supervision Organization (“UNTSO”) as an Information Systems Assistant.
2. He filed an application on 6 December 2024, challenging the Respondent’s selection decision for a G-6 Information Technology Assistant position (Job Opening 226204). The Applicant was rostered but not selected for the post.
3. The Respondent filed his reply to the application on 13 January 2025.

Facts and Submissions

4. The Applicant applied for the job opening on 11 February 2024 and was shortlisted for a Competency-Based Interview (“CBI”). He then participated in the interview and was one of five candidates recommended by the CBI panel
5. On 24 May 2024, the Hiring Manager submitted a ranked list of the recommended candidates to the Chief Human Resources Officer (“CHRO”), who then forwarded it to the Head of Mission (“HoM”) for approval. The HoM approved the selection of the top-ranked candidate.
6. The Applicant was notified on 26 May 2024 that he had not been selected for the position. The selected candidate accepted the offer on 28 May 2024.
7. The Applicant requested a management evaluation of the contested decision on 26 July 2024, which was upheld by the Under-Secretary-General for Management Strategy, Policy and Compliance on 11 September 2024. Thereafter, the Applicant filed this timely application.
8. The Applicant argues that the selection decision was unlawful because: his “extensive qualifications” were not adequately considered; the determination that the selected candidate was “better suited” was subjective and unsupported by evidence; and the selection process was biased, not transparent, and suffered from procedural flaws. He also argues that applying for the position while physically located in the West Bank was adversely considered.

9. The Respondent argues that UNTSO followed the Staff Selection System procedures, afforded the Applicant full and fair consideration, and applied staff regulation 4.2 in a fair, transparent, and non-discriminatory manner.

10. The Head of Mission selected the top-ranked candidate based on his suitability for the position as a whole, as required by staff regulation 4.2. The selected candidate had more relevant experience in IT service desk and systems administration.

11. The Respondent contends that the Applicant has not shown any impropriety in the decision-making process; his allegations of bias and discrimination are unfounded and based on unsubstantiated rumours.

Consideration

12. On matters concerning staff selection, the jurisprudence is well-established that under article 101.1 of the Charter of the United Nations and staff regulations 1.2(c) and 4.1, the Secretary-General has broad discretion to appoint staff (see *Abbassi* 2011-UNAT-110, *Frohler* 2011-UNAT-141, and *Charles* 2013-UNAT-286).

13. This discretion is to be exercised within the framework of the applicable regulations and rules, ensuring that the highest standards of efficiency, competence, and integrity are maintained.

14. The Tribunals' role is not to substitute their decision for that of the Administration (*See, inter alia, Ponce-Gonzalez* 2023-UNAT-1345). Instead, in judicially reviewing administrative decisions regarding staff selections, the Dispute Tribunal is to consider the following factors:

- (1) whether the procedure as laid down in the Staff Regulations and Rules was followed;
- (2) whether the staff member was given full and fair consideration;
and
- (3) whether the applicable Regulations and Rules were applied in a fair, transparent and non-discriminatory manner.

Toson 2022-UNAT-1249_ at para 28, citing *Savadogo v. Registrar of the International Tribunal for the Law of the Sea*, Judgment No. 2016-UNAT-642, para. 40.

15. In other words, the Tribunal's role in reviewing staff selection processes is to ensure that the applicable regulations and rules have been applied, and that candidates have received full and fair consideration (see *Rolland* 2011-UNAT-122, *Aliko* 2015-UNAT-540, and *Verma* 2018-UNAT-829). With regard to procedural irregularities, the Applicant asserts only that the selection process accepted qualifications obtained by the selected candidate after the application deadline. Specifically, he points out the JO indicates that a "Certificate in ITIL [Information Technology Infrastructure Library] is desirable" and that he "later learned that the selected candidate...was asked to complete training, including the ITIL certification, after the application deadline."

16. The record lacks any evidence as to whether the Applicant's "understanding" of the selected candidates' training is accurate or not. The Applicant submitted no evidence as to the source of his "understanding." Nor did the Respondent address the truth of this claim. Indeed, the only thing on this factual allegation in the record is a passing reference in the management evaluation letter that says "[t]he Administration also submitted that there were no grounds to support [the Applicant's] claims ...that the selected candidate completed the [ITIL] certificate after the application deadline."

17. Of course, the absence of any evidence makes it impossible for the Tribunal to assess whether the Applicant's claim is based on fact. However, ultimately, it is the Applicant's burden to support his claim with evidence, and in the absence of any supporting evidence, the Applicant's assertion must be rejected.

18. In *Rolland* 2011-UNAT-122, the Appeals Tribunal held:

26. There is always a presumption that official acts have been regularly performed. This is called a presumption of regularity. But this presumption is a rebuttable one. If the management is able to even minimally show that the Appellant's candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter the burden of proof shifts to the Appellant who

must show through clear and convincing evidence that she was denied a fair chance of promotion.

19. Similarly, the Appeals Tribunal held in *Lemonnier* 2017-UNAT-762, para. 35 that “[at] all times, it was the staff member’s burden to prove by clear and convincing evidence that the Administration did not give his candidacy full and fair consideration”. See also *Ibekwe* 2011-UNAT-179, para. 30; *Luvai* 2014-UNAT-417, para. 40; *Simmons* 2014-UNAT-425, para. 23; *Landgraf* 2014-UNAT-471, para. 28; *Dhanjee* 2015-UNAT-527, para. 30; *Zhao, Zhuang, & Xie* 2015-UNAT--536, para. 48; *Staedtler* 2015-UNAT-547, para. 27; *Survo* 2015-UNAT-595, para. 68 and *Niedermayr* 2015-UNAT-603, para. 23.

20. On the factor of whether the Applicant was given full and fair consideration, he says that he has “a master’s degree in Information Technology and over 22 years of experience in the field, including over 10 years of dedicated service within the UN system.” However, he alleges that these qualifications were not adequately considered.

21. However, the record shows that these qualifications were taken into consideration. The evaluation matrix for the shortlisted candidates outlined these qualifications, and the interview panel rated the Applicant “outstanding” and included him as the second recommended candidate for selection. As such, it is clear that his qualifications were considered.

22. The Applicant also claims the recommendation that the selected candidate was “better suited” is subjective and unsupported by documented evidence. However, the record indicates that the recommendation was supported by documented evidence, as summarized in the recommendation memorandum dated 24 May 2024.

23. More importantly, the final recommendation stage of a selection process is subjective to some extent. When ranking candidates from amongst the shortlist deemed to be qualified, a degree of subjectivity does come into play. In fact, the competencies of professionalism, teamwork, and commitment to continuous learning carry a degree of subjectivity. As the Appeals Tribunal has noted

“identifying the ‘most qualified or promising’ candidates necessarily requires the exercise of judgment, with which this Tribunal ‘will not easily interfere’” (see *Mirella*, 2023-UNAT-1334, para. 68 (quoting *Dhanjee*, *supra*, paras. 33-34),

24. The record indicates that the selected candidate was recommended “as the candidate who best aligns with the needs of this position.” That assessment is within the Hiring Manager’s broad discretionary power and is not to be second-guessed by this Tribunal (see *Mirella*, *supra*, para. 68). See, also, *Lemonnier*, *supra*, para. 40 in which the Appeals Tribunal held that “the Dispute Tribunal improperly replaced the Administration in the selection process.”

25. Although the Applicant challenges this assessment, this essentially comes down to his personal view of his qualifications and performance. However, neither the Applicant’s perspective nor the Tribunal’s view are important. 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”.(see *Abbassi* UNDT/2010/086, para. 22 affirmed in *Abbassi* 2011-UNAT-110).

26. And, as this Tribunal has previously observed “[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.

27. The Tribunal further noted that

[A]ssessment of the Applicant’s suitability is a matter upon which reasonable minds could reasonably differ and such a difference does not lead to the conclusion that one or the other was in error. Although the Applicant’s view is that she was suitable for appointment, the interview panel had a different opinion. The Tribunal finds that the evidence before it in this case does not allow it to conclude that the panel’s assessment of the Applicant’s interview was vitiated by significant errors of fact or by any improper considerations.

Lex, para. 42.

28. Finally, the Applicant claims that his “candidacy **may have been undermined due to biases** related to [his] location in the West Bank and ...[his] inability to physically be in the office, a circumstance beyond [his] control.” (emphasis added)

29. However, the jurisprudence is clear that “[a]llegations of discrimination, improper motive and bias are very serious and ought to be substantiated with evidence” (see *Ross* 2019-UNAT-944, para. 25). The Applicant presents no evidence of such bias, and the record is devoid of any mention of his location as a determinative consideration in the selection.

30. The Tribunal finds that the selection process was fair, transparent, and non-discriminatory. The Respondent properly applied staff regulation 4.2 and section 9.4 of ST/AI/2010/3/Rev.2 “Staff Selection System” in selecting the candidate best suited for the position.

31. The Applicant's allegations of bias and discrimination have not been borne out by the evidence. There is, therefore, no basis for the Tribunal to find that the impugned decision was arbitrary, improperly motivated, or otherwise based on extraneous factors.

32. The Tribunals have consistently held that it is not its role to substitute its judgment for that of the hiring manager or the decision-maker. The Tribunal's review is limited to ensuring that the decision was made in accordance with the applicable rules and procedures, and that there was no improper motivation or bias (see *Lemonnier, supra.* and *Anand Kumar Anand* 2024-UNAT-1473).

33. The Tribunal concludes, therefore, that the contested decision was lawful, and the selection process was fair, transparent, and non-discriminatory. The Applicant has not shown any impropriety in the decision-making process.

Conclusion

34. In view of the foregoing, the Tribunal DECIDES to dismiss the application in its entirety.

(Signed)

Judge Sean Wallace

Dated this 27th day of March 2025

Entered in the Register on this 27th day of March 2025

(Signed)

Liliana López-Bello, for Wanda L. Carter, Registrar, Nairobi