UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2025/030
Judgment No.: UNDT/2025/070
Date: 30 September 2025
Original: English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

JIN

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 and Procedural History

1. The Applicant serves as a Chinese Reviser within the Department for General Assembly and Conference Management (DGACM) at the United Nations Office at Nairobi (UNON). He holds a continuing appointment at the P-4 level.

2. On 25 March 2025, he filed an application with the United Nations Dispute Tribunal challenging the selection exercise for Job Opening 229157 (three posts), following which he was rostered but not selected.

3. The Respondent replied to the application submitting that this application should be dismissed on the merits. The Applicant was given full and fair consideration in the selection process and has not shown that the impugned decision was tainted by any extraneous factors that render it unlawful.

4. The parties have filed their closing submissions, so the case is ripe for ruling.

Facts and Submissions

5. The Applicant applied for a position in the impugned process on 2 April 2024. Eight candidates, including the Applicant, were shortlisted and invited to sit for the written assessment.

6. Part One of the written assessment contained 60 maximum possible points, while Part Two had 40 maximum possible points. During the test, three candidates informed the Executive Office of DGACM (EO) that they were experiencing technical difficulties in accessing the second part (Part Two) of the written assessment. The Applicant was not among those expressing problems accessing Part Two. One of the three candidates also expressed this problem to the Hiring Manager, who in turn brought the issue to the attention of EO.

7. Following discussions involving the Hiring Manager, the EO, and the Department of Operational Support, it was agreed that Part Two would be disregarded in grading the test and that all candidates would be awarded full marks for that part.

8. Candidates with scores above 80% on the written assessment would proceed to the second stage of the selection exercise, which was the competency-based interview (CBI).

9. The Applicant attained the highest score for the written assessment and was invited to the interview along with six other candidates.

10. The interview panel evaluated the candidates and placed all seven on the recommended list. In other words, all seven candidates were found to have met the selection criteria. Of the recommended candidates, the Hiring Manager proposed three for selection.

11. On 24 October 2024, the Applicant received notification of the decision placing him on a roster of pre-approved candidates for future openings with similar functions, at the same level, within the United Nations Secretariat.

12. The Applicant raises several arguments in attacking the contested decision. First, he says that he was denied full and fair consideration by the elimination of Part Two. He claims that this resulted in his capabilities as a reviser not being assessed.

13. Next, the Applicant argues that his "superior written performance" was not properly considered. The Applicant argues that CBIs "involve a high degree of subjectivity" and that the Respondent erred in giving the interview more weight than the written assessment.

14. The Applicant makes the point that disregarding Part Two gave an unfair advantage to some candidates, particularly those who are translators, and disadvantaged others such as him "who excel in revision work." The Applicant points out that the job opening listed revision as one of the primary functions of the post. Four of the candidates who progressed to the interview stage only met the threshold because of the "40 point gift"; and two of those four candidates were ultimately amongst the three selected candidates.

15. The Applicant also takes issue with the Respondent's argument that he was recommended and rostered for the position and thus suffered no harm in the process. He was already on the roster.

16. The Applicant submits that there is a pattern of exclusion of Nairobi based candidates for posts in New York; no staff member from the Nairobi duty station has been selected for a position in the Chinese Translation Service in New York since 2017.

Considerations

17. 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. *Abbassi* 2011-UNAT-110; *Frohler* 2011-UNAT-141; and *Charles* 2013-UNAT-286. 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.

18. The Tribunal's role is not to substitute its decision for that of the Administration. *Ponce-Gonzalez* 2023-UNAT-1345. Instead, in conducting a judicial review of a staff selection decision, the Dispute Tribunal will consider: (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. *See, Savadogo* 2016-UNAT-642, para. 40 *citing Ljungdell* 2012-UNAT-265, para. 30*,* quoting *Schook* 2012-UNAT-216. *See also, Toson* 2022-UNAT-1249, para. 28.

19. In other words, the Tribunal's role in reviewing staff selection decisions is to ensure that the applicable regulations and rules have been applied, and that candidates have received full and fair consideration. *Rolland* 2011-UNAT-122; *Aliko* 2015-UNAT-540; and *Verma* 2018-UNAT-829.

20. In *Rolland*, the Appeals Tribunal held:

> 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. *Id*. para. 26.

21. The Respondent, therefore, bears the initial burden to "minimally show" that the Applicant was given full and fair consideration.

22. In this case, the Respondent met that burden and thus satisfied the presumption of regularity. He established that the shortlisted candidates were given a written assessment and those achieving a passing grade went on to a competency-based interview process. When the written assessment met with technical difficulties, the Hiring Manager swiftly consulted the appropriate people and addressed the situation by disregarding that problematic part of the assessment. Awarding all candidates full marks for Part Two levelled the playing field.

23. The burden of proof therefore shifts to the Applicant to show by clear and convincing evidence that the selection process was tainted by bias, procedural irregularities or improper motive. *Lemonnier* 2017-UNAT-762, para. 35 *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.*

24. The Applicant primarily focuses on the alleged procedural irregularity of eliminating Part Two of the written assessment. According to him, this process violated the requirement for a fair and predetermined selection methodology. He claims that the process contradicted the vacancy announcement and, as a result, his "capabilities as a reviser" were not assessed. This argument fails for several reasons.

25. To be sure, the elimination of Part Two was a change from the original plan. However, the change was caused by the unforeseen technological problems that several candidates experienced in trying to log into Part Two. Under those circumstances, the Hiring Manager consulted with the appropriate officers and decided not to consider Part Two by giving everyone the maximum score. This was a reasonable and fair decision, and it was communicated to the Applicant and all other candidates.

26. The Applicant proposes several alternative remedies that he claims are better than the chosen decision. He says that the Organization could have retested all candidates or those who were unable to complete Part Two. Or, he posits, the Organization could have disregarded the Moodle testing platform and reinstituted the previous practice of emailing the test questions to the candidates with instructions to return them within the prescribed time frame. According to him, these "options were dismissed for no good reason."

27. In fact, the possibility of re-testing some or all candidates was considered by the Organization. It was noted that one of the affected candidates had already seen Part Two so it would be unfair to use that same test again for that candidate and the others who experienced technological problems. In addition, the option of using a new test was considered and rejected because it was impossible to ensure that the new test would be equally as complex as the original and retesting all candidates would be "unfair to those who completed the test and who may not perform as well in a re-test." The latter problem was a possibility which could have applied to the Applicant as the highest scorer in the original Part One. More importantly, it is not the role of the Applicant or the Tribunal to substitute our views of the various options for the one selected by the Administration.[1]

[1] The same is true with regard to the Applicant's argument that the written test was insufficiently selective since all but one candidate passed. It is not the Tribunal's role to re-write the test or even opine as to whether it was sufficiently selective. That is the Organization's role and apparently the Organizaton was satisfied that the test was vigorous enough.

28. The Applicant's reliance on *Chhikara* 2020-UNAT-1014 and *Negasa* 2023-UNAT-1405 is misplaced as those cases are factually distinguishable. In *Chhikara,* there were several significant irregularities, including: one part of the written test was not evaluated by all members of the assessment panel; the number of questions exceeded the maximum allowed; the questions had not been approved prior to posting the JO; and the Respondent did not provide the Tribunal with the questions, the correct answers or the scores. In *Negasa* the Administration "first administered the test, analyzed the results, and only then decided that certain questions should be eliminated from consideration." The situation here was distinctly different.

29. Indeed, both *Chhikara* and *Negasa* recognize that, when problems arise in the test administration, the Administration may make variations in the assessment methodology so long as they "do not prejudice any specific job candidates," *Chhikara supra.* para. 18, and *Negasa*, *supra*, para. 40. In this case, the variation of eliminating Part Two did not prejudice the Applicant, as will be discussed below.

30. Regarding the claim that dispensing with Part Two contradicted the Job Opening (JO), the JO merely said that "evaluation of qualified candidates may include an assessment exercise which may be followed by competency-based interview." There was no mention of a two-part written assessment, and the final process fully complied with the JO description.

31. Under the heading "Responsibilities", the JO stated that the selected candidates must both translate on a self-revising basis and revise translations. Although the Applicant focuses on the revision part, translators and revisers seem to be virtually interchangeable. The ICSC Job Classification Manual for Tier II Standard for Translators and Revisers speaks of both "Translators and Revisers" together as a "specific field of work in the Unites Nations common system." *Id*. para. 1. Both must be capable of translating material from one language into another, where they "engage in self-revision or in the revision or editing of other texts." *Id*., para. 1.O.06. The only difference appears to be that a translator creates the first draft of the text in the target language while a revisor reviews the translated text to provide a fresh, objective perspective on the translation. *Id.*

32. Given this virtual interchangeability, eliminating consideration of Part Two did not contradict the Job Opening. Nor did it prejudice the Applicant by allegedly not considering his capabilities as a reviser.

33. The Administration found that those capabilities were analysed in Part One, where the candidates were required to engage in self-revision. The Applicant's preeminent score on Part One sufficiently reflects his skill in revision.

34. Additionally, it is important to note that the "no difference" principle set out in *Michaud* 2017-UNAT-761 applies in this case. Under this principle

> A lack or a deficiency in due process will be no bar to a fair or reasonable administrative decision or disciplinary action should it appear at a later stage that fuller or better due process would have made no difference. The principle applies exceptionally where the ultimate outcome is an irrefutable foregone conclusion, for instance where a gross assault is widely witnessed, a theft is admitted or an employee spurns an opportunity to explain proven misconduct. *Id.* para. 60.

35. In this case, the purpose of the written assessment was to winnow down the list of qualified candidates to a manageable number that could be invited to the interview stage. As the top scorer on Part One of the written assessment, the Applicant became the leading candidate when Part Two was disregarded, and he was invited to the interview. In other words, the elimination of Part Two made no difference to the Applicant as he progressed on to the interview.

36. Even at the interview stage, the Applicant was deemed to have met the required competencies and thus was placed on a roster. Unfortunately for him, the interview panel assessed that the other six candidates exceeded the requirements in at least one competency, with three candidates scored as "exceeded" in all three competencies. Those three were selected while the Applicant was not.

37. The Applicant suggests that the interview process was "potentially biased." The only argument he makes is that "CBIs involve a high degree of subjectivity, and there was no rule indicating that the CBI would weigh more than the WA [written assessment]. My superior written performance, despite the rule change that disadvantaged me, was not properly considered."

38. Initially, whether or not CBIs involve a high degree of subjectivity, they are an approved means of selecting from amongst job candidates. ST/AI/2010/3/Rev.3, sec. 7.4. 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.'" *Mirella*, 2023-UNAT-1334, para. 68 (quoting *Dhanjee, supra*, paras. 33-34).

39. In addition, it is important to note that an allegation of "potential bias" is far short of the required clear and convincing evidence. The jurisprudence is clear that "[a]llegations of discrimination, improper motive and bias are very serious and ought to be substantiated with evidence." *Ros*s 2019-UNAT-944, para. 25.

40. Beyond his broad criticism of CBI's in general, the Applicant makes no specific allegations of bias by any of the panel members in this selection exercise. There is no allegation 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. Accordingly, the claim of bias in the interview stage is rejected.

41. The Applicant also claims "a potential pattern of exclusion" alleging that the Chinese Language Service in New York has not recruited a candidate from the Nairobi duty station since 2017. In support of this claim, he says that both his and a colleague's applications for a lateral move at the P3 level were turned down (in 2022 and 2019, respectively) and that he had been unsuccessful in prior applications.

42. Of course, every application must be viewed on its own merits, and the Applicant has presented no evidence that he or his colleagues were the best candidates in those previous recruitments. Thus, his allegations of historical bias and discrimination against candidates from the Nairobi duty station cannot, by itself, taint this selection exercise. Moreover, the Tribunal notes that one of the three candidates recommended for selection in the challenged process had been previously based in the Nairobi duty station. This fact negates the claim of historical bias against candidates from Nairobi.

43. The Applicant argues that there was "a breach of anonymity" in that one of the candidates reported the technical issues via email. However, this is not a breach which undercuts the validity of the selection process. The jurisprudence requires that "the assessment of the written tests must be conducted on a confidential and anonymous manner where no person with influence over the selection process has access to the names of the job candidates while the grading is pending." *Chhikara, supra,* para. 19.

44. In this case, the grading was not pending as several candidates were unable to access Part Two. Since one candidate was known only as being unable to access Part Two, this knowledge could not affect that candidate's grade. That candidate may have done well or may have done poorly; there is no way of knowing because that candidate was never able to take Part Two. However, we do know that the limited loss of anonymity did not affect the grading of the written assessment[2].

45. On the information available to it, including the interview records, therefore, the Tribunal has no basis to second guess the Hiring Manager's discretion in making the selection decision that he made. (*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."

46. Although the Applicant challenges the fact that he was not among the three selected candidates, 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).

[2] The Applicant refers to a "40-point gift" in connection with the elimination of Part Two. It is impossible to know how anyone would have scored on Part Two and thus who, if anyone, was "gifted" 40 points. The Applicant boasts that since he scored the highest in Part One, "it is highly likely that I also outperformed many candidates in [Part Two]". That claim may or may not be true, but it is also possible that he benefited from the "gift."

47. The Tribunal finds that the selection process for Job Opening 229157 was properly conducted. 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(s) best suited for the position.

48. There is no basis for the Tribunal to find that the impugned decision was arbitrary, improperly motivated, or otherwise based on extraneous factors.

49. 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).

50. 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

51. The application is DISMISSED

(Signed)
Judge Sean Wallace
Dated this 30th day of September 2025

Entered in the Register on this 30th day of September 2025

(Signed)
Wanda L. Carter, Registrar, Nairobi