



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2016/045-
R1
Order No.: 110 (NY/2019)
Date: 22 July 2019
Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

CHHIKARA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Steven Dietrich, ALD/OHR, UN Secretariat

Introduction

1. On 25 July 2016, the Applicant filed the application. The case was assigned to Judge Alessandra Greceanu.

2. After various case management steps, by Judgment No. UNDT/NY/2017/012 issued on 6 March 2017, Judge Greceanu granted the application in part.

3. After both the Applicant and the Respondent had filed separate appeals against Judgment No. UNDT/NY/2017/012, the Appeals Tribunal held in *Chhikara* 2017-UNAT-792 of 27 October 2017 that, “The appeals are partially granted. The consolidated case is remanded to the UNDT, for additional findings of fact and to be judged anew by the same Judge, after affording the parties an opportunity to comment on the new evidence. Judgment No. UNDT/NY/2017/012 is hereby vacated by operation of remand”. As reasons, the Appeals Tribunal, *inter alia*, found that,

41. The new evidence—i.e., the 25 situational questions, including their “key” answers—specifically related to part 1 of the written test, precisely where [the Applicant] failed. This evidence was considered relevant by the Dispute Tribunal, such that it compelled its production, and as potentially relevant by the Appeals Tribunal when it also ordered its production. It is relevant evidence and should have been presented to [the Dispute Tribunal], in accordance with the two-tier system of administration of justice. [The Dispute Tribunal] erred when it considered that it did not need this missing evidence to decide the case; indeed, [the Dispute Tribunal] might have decided the case differently had it had access to this evidence which was at the core of the dispute as it related to the specific part of the test which [the Applicant] failed [reference to footnote omitted]. By rejecting, pursuant to Order No. 259 (NY/2016), [the Applicant’s] request that this missing evidence be submitted and judging the case without it, [the Dispute Tribunal] failed to exercise the jurisdiction vested in it and also committed an error in procedure, such as to affect the decision of the case [reference to footnote omitted].

4. After undertaking various steps to manage the remanded case, including by ordering the Respondent to provide the new evidence mentioned in *Chhikara* 2017-UNAT-792 and the Applicant requesting further evidence to be produced, Judge Greceanu ordered the parties in Order No. 205 (NY/2018) dated 24 October 2018 as follows (emphasis in original omitted):

20. The Applicant's request for additional evidence is granted;

21. The Respondent is to provide the following additional information, together with any available documentation which appears to be relevant in the present case on 4:00 p.m. on Wednesday, 14 November 2018:

a. If identical or similar questions based on the Vroom - Yetton decision model developed in 1973 were used as part of the written test in previous selection(s) for the post Chief Air Transport Section, D1, Department for Field Support, UNHQ;

b. The initial score/number of points/credits established to be allocated to each of the predefined 6 key responses to each of the 25 situational judgment questions;

c. The initial score/number of points/credits established to be allocated to the essay;

d. The total score/number of points/credits allocated to each applicant, to each of the predefined 6 key responses to each of the 25 situational judgment questions before the elimination of the questions 6,7, 10, 11 and 20;

e. The criteria and/or reasons based on which the questions 6, 7, 10, 11 and 20 were eliminated;

f. Whether questions 6, 7, 10, 11 and 20 were eliminated before or after all the written tests were graded blindly, including the Applicant's;

g. Whether questions 6, 7, 10, 11 and 20 were eliminated before or after all the written tests were opened;

h. The new score/number of points/credits established to be allocated to each of the predefined 6 key responses to each of the remaining 20 situational judgment questions;

i. The total score/number of points/credits allocated to each applicant for each of the predefined 6 key responses to each of the remaining 20 situational judgment questions.

22. The parties are informed that the case is to be decided on the papers before the Tribunal and the parties are to file their closing submissions on Friday, 30 November 2018 at [4:00] p.m.

5. In accordance with Order No. 205 (NY/2018), on 14 November 2018, the Respondent filed responses to paras. 21(a) and (c). However, the Respondent did not file responses to paras. 21(b), (d), (e), (f), (g), (h) and (i), noting that he had not received any instructions thereon and requested an extension until 28 November 2018.

6. On 28 November 2018, the Respondent filed some responses to paras. 21(b), (d), (e), (f), (g), (h) and (i).

7. On 30 November 2018, the Respondent filed his closing statement as per Order No. 205 (NY/2018). The Applicant filed no closing statement.

8. On 6 December 2018, the Applicant filed a submission pursuant to the Respondent's responses to Order No. 205 (NY/2018) in which he, *inter alia*, stated that,

2. Respondent provided an answer on 14 Nov 2018 but did not provide almost all the evidence ordered and sought extension of time till 28 Nov 2018 to provide the evidence. Honorable Tribunal granted the Respondent time till 29 Nov 2018 to provide the evidence. Respondent provided most of the evidence ordered by Honorable Tribunal on 28 Nov 2018 but did not provide some of the most critical evidence ordered by the Tribunal even on 28 Nov 2018.

3. The evidence provided by the Respondent in the submission dated 28 Nov 2018 has now opened a Pandora's box regarding the arbitrary, absurd and possibly "mala fide" process adopted during assessment; be it the elimination of 3 or 5 specific Situational Judgment ["SJ"] questions after the exam had been conducted, the so called 'miscommunication' between Examination and Testing Section

["ETS"] and Hiring Manager ["HM"], and most importantly, the complete disregard of marks awarded to SJ questions by ETS and grading of the same questions on a bizarre methodology by HM.

9. The Applicant further stated that,

17. Analysis of evidence not produced by the Respondent on 28 Nov 2018 following the Honorable Tribunal's order of 26 Oct 2018, even after seeking additional two weeks' time, reveals the following:

I. Paragraphs 21(A) and 21(C) were answered in the response dated 14 Nov 2018.

II. Paragraph 21(B) and 21(H) were answered adequately in the response dated 28 Nov 2018. However, Paragraphs 21(D), 21(E), 21(F), 21(G) and 21(I) were only answered partly.

III. For 21(D), Respondent has not shared the marks allotted to each applicant for each of the 25 questions scored using ETS's methodology.

IV. For 21(E), evidence to support "miscommunication" which lead to removal of two additional questions (#7 and #11) was not provided.

V. For the most important question i.e. 21(F), Respondent has obfuscated the facts and given half-truths in order to mislead the Honorable Tribunal. Respondent has not clarified whether scoring under HM's absurd methodology was also done blindly (without matching names to scores). This was probably done deliberately in order to not let entire facts emerge before the Honorable Tribunal. Additionally, Appellant also believes that the two additional questions (#7 and #11) were also removed only after names had been matched with scores, in order to disqualify the Appellant. Respondent needs to be ordered to provide all evidence in relation to this most important question.

18. ETS probably conducts scores of exams every year using Online scoring platform. Respondent may please be ordered to provide the number of exams conducted by ETS through online testing platform in last five years as also the number of instances where HMs have resorted to a change in scoring methodology after ETS had evaluated the exams, as was done in this case.

10. On 31 December 2018, Judge Greceanu's tenure with the Dispute Tribunal ended.

11. On 1 July 2019, the present case was assigned to the undersigned Judge.

Consideration

12. Albeit not complying with the deadline set out in Order No. 205 (NY/2018), the Applicant's submission of 6 December 2018 is allowed, taking into account that he only had two days to file such submission following the Respondent's 28 November 2018 filing. Furthermore, with reference to *Chhikara* 2017-UNAT-792 as cited above, the Respondent is to provide his observations and, as relevant, additional responses and documentation as per paras. 17 and 18 of the Applicant's submission of 6 December 2018. The parties will thereafter file their written closing statements after which the Tribunal will decide the case on the papers before it.

IT IS ORDERED THAT:

13. The Applicant's submission of 6 December 2018 is allowed;

14. By **4:00 p.m. on Wednesday, 14 August 2019**, the Respondent is to file his observations and, as relevant, additional responses and documentation as per paras. 17 and 18 of the Applicant's 6 December 2018 submission;

15. By **4:00 p.m. on Wednesday, 4 September 2019**, the Applicant is to file his closing statement, which is to be five pages maximum, using Times New Roman, font 12 and 1.5 line spacing;

16. By **4:00 p.m. on Wednesday, 18 September 2019**, the Respondent is to file his closing statement responding to the Applicant's closing statement and maximum be five pages, using Times New Roman, font 12 and 1.5 line spacing;

17. By **4:00 p.m. on Wednesday, 25 September 2019**, the Applicant is to file his final observations responding to the Respondent's closing statement, which is to be two pages maximum, using Times New Roman, font 12 and 1.5 line spacing.

(Signed)

Judge Joelle Adda

Dated this 22nd day of July 2019