



Before: Judge Francis Belle
Registry: New York
Registrar: Nerea Suero Fontecha

ROSS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alexandre Tavadian, UNHCR

Procedural history / Introduction

1. On 22 December 2016, the Applicant, a former staff member in the United Nations High Commissioner for Refugees (“UNHCR”) at the P-4 level, filed an application in which he contests “[t]he decision to appoint another candidate to the position of Senior Legal Officer, [P-4 level], Brussels [“the Post”]”. The case was registered with the Dispute Tribunal’s Registry in Nairobi under Case No. UNDT/NBI/2016/091 and assigned to Judge Izuako.
2. On 19 January 2017, the Respondent filed his reply, contending that the application is without merit.
3. By Order No. 25 (NBI/2017) dated 3 February 2017, Judge Izuako instructed the parties to attend a Case Management Discussion (“CMD”) on 21 March 2017. The CMD was held as scheduled.
4. By Order No. 69 (NY/2017) dated 22 March 2017, Judge Izuako ordered: (a) the Applicant to file his observations on the reply and an amended pleading, if necessary, by 4 April 2017; (b) the Respondent to file his comments on the Applicant’s submissions by 10 April 2017; and (c) the case to be heard on 18 and 19 July 2017 in the Dispute Tribunal’s courtroom in Nairobi.
5. After the parties had filed various further written submissions, the hearing was held on 18 July 2017.
6. On 8 August 2017, the Applicant filed some further submission in response to the instructions provided by Judge Izuako at the hearing on 18 July 2017.
7. On 11 September 2017, the Respondent filed his closing statement and, on 19 September 2017, the Applicant filed his closing statement.
8. On 10 July 2019, Judge Izuako’s term with the Dispute Tribunal ended. By email of 19 July 2019, the Nairobi Registry informed the parties that, “to balance the

Tribunal's case load, the ... Registry in Nairobi has been directed to transfer this case, which was on Judge Izuako's docket, to the ... Registry in New York with immediate effect".

9. On 1 October 2019, the Applicant filed a motion for production of evidence and information.

10. On 17 October 2019, the case was assigned to the undersigned Judge.

Consideration

Limitation to the judicial review and the principle of regularity

11. It is trite law that the Dispute Tribunal's judicial review is limited. In this regard, reference is often made by the Appeals Tribunal to *Sanwidi* 2010-UNAT-084 (para. 42) in which it defined the scope of review as that "the role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate". The Appeals Tribunal further held that "the Dispute Tribunal is not conducting a "merit-based review, but a judicial review" explaining that a "[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decisionmaker's decision".

12. Regarding selection and promotion decisions, in light of the Administration's broad discretion in such matters, the Appeals Tribunal has held that these types of decisions are governed by the so-called "principle of regularity". This means that if the Respondent is able "to even minimally show that [an applicant's] candidature was given a full and fair consideration, then the presumption of law stands satisfied" where after the applicant "must show through clear and convincing evidence that [s/he] was denied a fair chance of promotion" in order to win the case (*Lemonnier* 2017-UNAT-762, para. 32).

Issues of the present case

13. The Appeals Tribunal has held that “the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review”. When defining the issues of a case, the Appeals Tribunal further held that “the Dispute Tribunal may consider the application as a whole”. See *Fasanella* 2017-UNAT-765, para. 20, as affirmed in *Cardwell* 2018-UNAT-876, para. 23.

14. Based on the parties’ submissions and the evidence on record, the substantive issues of the present case may be defined as follows:

- a. To assess the job candidates’ suitability for the position, was UNHCR’s administration of the interviews and a written test proper?
- b. With reference to the Appeal Tribunal in para. 48 of *Ross* 2019-UNAT-926, were any of the alleged irregularities in the assessment process of “such a nature that, had [they] not occurred, [the Applicant] would have had a foreseeable and significant chance for [selection]”?
- c. In case the contested decision is found unlawful, what remedies are the Applicant entitled to?

The Applicant’s motion for production of evidence and information of 1 October 2019

15. In the motion, the Applicant requests the production of various documentation and information regarding the successful candidate. In light of the limited scope of the Dispute Tribunal’s judicial review and delineation of the issues, no such evidence or information, however, would appear relevant.

Hearing transcripts

16. No hearing transcripts are available from the hearing held on 18 July 2017 in the case record. Such transcripts have therefore been ordered.

17. In light of the above,

IT IS ORDERED THAT:

18. The Applicant's motion of 1 October 2019 is rejected;

19. By **4:00 p.m. on Monday, 4 November 2019**, the Respondent is to submit the job opening for the Post. The Tribunal will thereafter issue further orders on updated closing statements when the hearing transcripts have been made available.

(Signed)

Judge Francis Belle

Dated this 28th day of October 2019