UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/060/R1
UNDT/NY/2019/070/R1
Order No.: 17 (NY/2021)
Date: 3 March 2021
Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

BELSITO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Mr. George G. Irving

Counsel for Respondent:
Mr. Marcus Joyce, UN Women
Ms. Prue Smith, UN Women

Introduction

1. The Applicant contests the selection process for the D-l level post of the UN Women Regional Director for Europe and Central Asia ("D-1 Post").

2. On 19 December 2019, the Dispute Tribunal issued its judgment *Belsito* UNDT/2019/183 in respect of the two cases (Case Nos. UNDT/NY/2019/060 and UNDT/NY/2019/070) filed by the Applicant in relation to the selection process for the D-l Post.

3. On 26 June 2020, the United Nations Appeals Tribunal published *Belsito* 2020-UNAT-1013, remanding Case Nos. UNDT/NY/2019/060 and UNDT/NY/2019/070 to the Dispute Tribunal "for the production of further evidence, additional findings of fact, and the issuance of a new judgment".

4. On 9 October 2020, the parties filed a jointly signed statement, in which the parties each proposed witnesses they would call at a hearing on the merits. The Applicant requested an order for further documentation from the Respondent.

Consideration

5. Article 18.5 of the Rules of Procedure provides that the Tribunal "may exclude evidence which it considers irrelevant, frivolous or lacking in probative value. The Dispute Tribunal may also limit oral testimony as it deems appropriate".

6. The present case concerns the legality of two selection exercises for the D-1 Post. The first selection exercise relates to the decision to cancel the first selection exercise which formed the basis for Case No. UNDT/NY/2019/060 ("First Selection Exercise"). The second selection exercise relates to the decision not to select the Applicant following the second selection exercise which formed the basis for Case No. UNDT/NY/2019/070 ("Second Selection Exercise").

Witnesses

7. The Applicant states that he proposes to call the UN Women Regional Director for Latin America, the Executive Director UN Women and the Regional Director for Asia/Pacific as witnesses. The Applicant states that he himself may be called as a witness in rebuttal to the foregoing testimonies.

8. In respect of the testimony of the UN Women Regional Director for Latin America, who was also the hiring manager for the D-1 Post, the Applicant states that she will be called to testify "as to the information she conveyed to the Applicant concerning the selection process and in particular her exchanges with the Executive Director as to the reasons the process was being delayed and eventually cancelled as well as concerning any other information she provided to the Applicant on his candidacy and the reasons therefore; and as to any subsequent action taken regarding the First Selection Exercise".

9. In respect of the testimony of the Executive Director of UN Women, the Applicant states that she will be called to testify "as to the reasons as to the reasons for her delay and refusal to accept the original recommendation on filling the Regional Director post and the reasons for the cancellation of the First Selection Exercise and as to any discussions she had in this regard with the hiring manager; and any actions she took with regard to breach of confidentiality; information with respect to the Applicant's candidacy for the Tanzania and Palestine Representative posts".

10. In respect of the testimony of the UN Women Regional Director for Asia/Pacific (the former Regional Director for Arab States), the Applicant states that he will be called to testify of "being aware of the decision made by the Executive Director not to select the Applicant for the post of Regional Director for Europe and her subsequent instructions to him to approach the Palestinian authorities to have the Applicant endorsed by them as UN Women Special Representative for Palestine. Furthermore, he will need to explain why the post of UN Women Representative for

Palestine was first offered to the Applicant and then withdrawn at the time his candidacy for the Regional Director's post was pending".

11. The Applicant states that he may be called as a witness in rebuttal to the foregoing testimony.

12. The Tribunal notes that the current case concerns the selection process for the D-1 Post. As the UN Women Regional Director for Latin America and the Executive Director of UN Women were involved as hiring manager and decision maker respectively in the selection exercises, their testimonies will be relevant. The Respondent states that he does not consider that oral evidence is required from the Executive Director and proposes that a written statement would suffice. The Respondent does not provide reasons for his request. In the circumstances, the Tribunal considers that an oral testimony from the Executive Director of UN Women is necessary.

13. In regard to the testimony of the UN Women Regional Director for Asia/Pacific, the Tribunal considers that his testimony is relevant to the issue of the contested selection exercise for the D-1 Post. His knowledge of the Applicant's candidacy for UN Women Special Representative for Palestine is irrelevant as it is not an issue in this case. The testimony of the UN Women Regional Director for Asia/Pacific is granted on the limited issue of the selection exercise for the D-1 Post

14. The Respondent proposes to call the Acting Director of Human Resources, UN Women as witness. The Respondent states that the Director will be able to confirm the details surrounding the recruitment process for the D-1 Post and confirm that the recruitment met all relevant standards. The Applicant submits that the testimony from the Acting Director of Human Resources is not relevant as a witness as he was absent from the panels of both the recruitment exercises.

15. The Tribunal decides to hear the Acting Director of Human Resources, UN Women, based in New York as his testimony directly relates to the legality of the recruitment process for the D-1 Post.

Documents

16. The Applicant requests production of the following documentation: (1) minutes or other records of the first interview panel, which have not been shared so far, as well as a summary of the recommendations as to any candidates other than the Applicant and whether those candidates were recommended with or without reservation, which the Respondent has so far not provided; (2) minutes or records of the SRG review of the first selection process. (3) minutes or records of the central review body review of the second selection process; (4) the scores of the written tests of the Applicant for the First Selection Exercise and the Second Selection Exercise and his rank compared to all candidates in both exercises.

17. The Tribunal grants the Applicant's disclosure request as the documentation is relevant to the recruitment process for the D-1 Post.

18. Both parties indicated that they will submit additional documentation relating to the case. The Tribunal grants the additional disclosure to be added to the record.

19. Pursuant to art. 19 of the Dispute Tribunal's Rules of Procedure, for the fair and expeditious disposal of the cases and to do justice to the parties,

IT IS ORDERED THAT:

20. The Tribunal will hear from the following witnesses:

a. Regional Director for Latin America, UN Women;

b. Executive Director, UN Women;

c. Regional Director for Asia/Pacific, UN Women;

d. The Applicant;

e. Acting Director of Human Resources, UN Women.

21. The Applicant's request for the disclosure of additional documentary evidence is granted, and the Respondent shall submit the requested evidence by **4:00 p.m., Wednesday, 24 March 2021**.

22. By **4:00 p.m., Friday, 2 April 2021**, the parties may file submissions on the additional documentary evidence which is to be five pages maximum, using Times New Roman, font 12 and 1.5 line spacing.

23. By **4:00 p.m., Friday, 9 April 2021,** the parties are to file a joint statement providing proposed hearing dates for a one or two day hearing among the following dates: 3 to 14 May 2021 and confirm the availability of the above-referenced witnesses.

24. The Tribunal will set the exact dates of the hearing once the availability of the witnesses and the parties is confirmed.

25. In the event that either party intends to refer to any document during the hearing, that party shall submit a paginated bundle of these documents by 7 days prior to the hearing date.

26. All practical arrangements for the organization of the hearing will be coordinated through the New York Registry of the Dispute Tribunal.

(Signed)
Judge Joelle Adda
Dated this 3rd day of March 2021