



Before: Judge Joelle Adda
Registry: New York
Registrar: Nerea Suero Fontecha

PASSARELLI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Marcos Zunino, OSLA

Counsel for Respondent:
Miriana Belhadj, UNOG
Jérôme Blanchard, UNOG

Introduction

1. On 15 July 2020, the Applicant filed an application in which she contests that she was not selected for the post at the P-5 level as Senior Human Rights Officer with the Office of the High Commissioner for Human Rights (“OHCHR”) in New York, which was advertised as Job Opening no. 110837.
2. On 14 August 2020, the Respondent filed his reply, contending that the application is without merit.
3. On 20 August 2020, the Applicant filed a motion “seeking leave to make submissions on new information”.

Consideration

The issues of the present case

4. The Appeals Tribunal has consistently held that the Dispute Tribunal’s judicial review is limited and often refers 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 decision-maker’s decision”.
5. Specifically regarding promotion (and selection) cases, the Appeals Tribunal has adopted the principle of regularity by which 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” after which 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).

6. Regarding how to define the issues at stake, 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.

7. Accordingly, the basic issues of the present case can be defined, on a preliminary basis, as follows:

- a. Was the selection decision lawful?
- b. If not, what remedies is the Applicant entitled to? This also includes an assessment of whether any of the alleged irregularities are of “such a nature that, had [they] not occurred, [the Applicant] would have had a foreseeable and significant chance for promotion” (see para. 48 of *Ross* 2019-UNAT-926)?

Case management

8. In the Applicant’s 20 August 2020 motion, she essentially requests: (a) to be granted the opportunity to comment on some information in the reply, as well as certain documents appended thereto, because she was not aware of any of these before the filing of the reply; and (b) that the Respondent be ordered to file “all correspondence between the Office of the High Commissioner for Human Rights and the Executive Office of the Secretary-General related to this selection process”.

9. The Tribunal notes that a key question regarding the challenged selection process concerns the communication between OHCHR and the Executive Office of the Secretary-General, and that the Applicant has not had a possibility to comment on

the relevant information in the reply and documentation appended thereto. The Tribunal will therefore grant the motion.

10. The Tribunal further notes that none of the parties have requested any further evidence to be produced and that the case file is otherwise fully briefed. Subsequent to the Respondent filing the requested documentation, the Tribunal will therefore order the parties to file their closing statements in a sequenced order.

11. In light of the above,

IT IS ORDERED THAT:

12. The Applicant's 20 August 2020 motion is granted;

13. By **4:00 p.m. on Wednesday, 17 March 2021**, the Respondent is to file to all correspondence, which is not already on file, between the OHCHR and the Executive Office of the Secretary-General related to the contested selection process;

14. By **4:00 p.m. on Wednesday, 31 March 2021**, the Applicant is to file her closing statement, which is solely to be based on the submissions and evidence already on record, aside from her arguments concerning (a) the information in the reply that she was not aware of before its filing, (b) the documents appended to the reply that she has not have had access to until now, and (c) the additional documentation filed by the Respondent on 17 March 2021. No new evidence is to be submitted at this stage of the proceedings. The statement is to be five pages maximum, using Times New Roman, font 12 and 1.5 line spacing;

15. By **4:00 p.m. on Wednesday, 7 April 2021**, the Respondent is to file his closing statement as a response to the Applicant's closing statement. No new evidence is to be submitted at this stage of the proceedings. The statement is to be five pages maximum, using Times New Roman, font 12 and 1.5 line spacing;

16. By **4:00 p.m. on Monday, 12 April 2021**, the Applicant is to file her final observations responding to the Respondent's closing statement. No new evidence is

to be submitted at this stage of the proceedings. The statement is to be two pages maximum, using Times New Roman, font 12 and 1.5 line spacing.

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(Signed)

Judge Joelle Adda

Dated this 3rd day of March 2021