



JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (UNAT or Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2021/115¹ of 5 October 2021 (the impugned Judgment) submitted by Mr. Seyed Muhammad Hilmy Moulana.
2. Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Mr. Moulana contested the decision not to select him for the position of Requestions Officer, advertised through Job Opening (JO) No. 136259. In the impugned Judgment, the UNDT dismissed Mr. Moulana's application on the basis that his candidature had received full and fair consideration

... On 12 June 2020, the Human Resources Management Section (“HRMS”), UNMISS, released 16 applications to the hiring manager for review and further assessment. Out of the 16 candidates, the hiring manager recommended three, including the Applicant, to the Head of Mission (“HM”) for selection for the post. The hiring manager proposed HH as the most suitable candidate for the post on account of her excellent experience in acquisition planning and requisitioning and having led a

8. The UNDT held that Mr. Moulana produced no evidence of bias or any procedural breach in the selection process.⁶

9. The UNDT recognized the experience that qualified HH for selection over Mr. Moulana, and her eligibility under ST/AI/2010/3 (Staff selection system).⁷ Noting that HH was a rostered candidate, the UNDT held that Mr. Moulana's assertion that HH lacked Central Review Board (CRB) endorsement was without merit.⁸

10. The UNDT was satisfied that due regard was given to geographic representation and to candidates from troop and police-contributing countries in the selection decision.⁹

11. On application of Section 1.8(a) of ST/AI/1999/9 (Special Measures for the Achievement of Gender Equality), the UNDT found no reason to question the decision to select a female candidate to fill the contested vacancy.¹⁰

12. The UNDT dismissed the application.¹¹

UNAT Appeal

13. On 3 December 2021, Mr. Moulana submitted an appeal of the i0..3

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Recalling Section 4.7 of ST/SGB/2011/7 (Central review bodies),

17. In terms of remedy, Mr. Moulana requests the UNAT to order the production of the following documents relating to JO No. 136259:

- (a) The full text of the JO, including the deadline for applications;
- (b) Names of the applicants and dates of the submissions of the applicants;
- (c) HH's application;
- (d) Names of the shortlisted candidates who were invited for interview, and the dates of the interviews;
- (e) Names of the applicants who were shortlisted; and
- (f) Approval by the CRB of the rostered candidates.

In addition, the Appellant requests UNAT to rescind the contested decision, award compensation equal to the amount of money Mr. Moulana would have earned had he been selected for the position, and award compensation for the harm suffered as a consequence of his non-selection.

The Secretary-General's Answer

19. The Respondent submits that the UNDT correctly held that Mr. Moulana's candidacy for the position was given full and fair consideration, with reference to: HH's experience heading a team of requisitioners; HH's experience working with the UMOJA applications systems and the United Nations Headquarters UMOJA team; HH's successful implementation of

Considerations

The error in procedure by the UNDT

25. According to Article 2(1)0 Tc .www 1.306 04c -01cs13753

29. If the Administration is able to even minimally show that the applicant's candidature was given full and fair consideration, then the presumption of regularity applies and the burden of proof shifts to the applicant who must show through clear and convincing evidence that he or she was denied a fair chance of promotion or selection.²²

30. This jurisprudence emanates from *Rolland v. Secretary-General of the United Nations*, 2011-UNAT-122, at paragraph 5 of that Judgment as follows:

We also hold that there is always a presumption that official acts have been regularly performed. This is called the presumption of regularity, but it is a rebuttable presumption. 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 is satisfied. Thereafter the burden of proof shifts to the appellant who must be able to

that Mr. Moulana had produced no evidence of bias or procedural breach in the selection process.²³ However, Mr. Moulana's requests for the production of documents were ignored and neglected, which is why he alleges that the UNDT committed an error of procedure that affected the decision in this case.

35. In order for the Appeals Tribunal to assess whether or not the documents involving the endorsement by the CRB of HH's placement on the roster were required, as claimed by Mr. Moulana, it is necessary to examine the applicable law. According to Section 2.3 of ST/AI/2010/3:

Selection decisions for positions up to and including the D-1 level are made by the head of department/office/mission, under delegated authority, *when the central review body is satisfied that the evaluation criteria have been properly applied and that the applicable procedures were followed*. If a list of qualified candidates has been endorsed by the central review body, the head of department/office/mission may select any one of those candidates for the advertised job opening... The other candidates shall be placed on a roster of pre-approved candidates from which they may be considered for future job openings at the same level within an occupational group and/or with similar functions.²⁴

36. Likewise, Section 9.4 of ST/AI/2010/3 provides that:

Candidates for position-specific job openings up to and including at the D-1 level which have been

When the central review body has found that the evaluation criteria were properly applied and that the applicable procedures were followed, it shall so inform the head of department/office concerned or the Director of the Field Personnel Division in the case of the field central review bodies, through the review bodies' secretariat, and recommend that the head of department/office approve the proposed candidate(s) for selection or *placement on a roster*.²⁶

38. Concerning the role of the CRB, the Appeals Tribunal has previously held that the requirement of the central review body clearance is part of the selection process.²⁷ It has also established that:

When the central review body has found that the evaluation criteria were properly applied and that the applicable procedures were followed, it shall so inform the head of department/office and recommend that the head of department/office approve the proposed candidate(s) for selection. If the central review body has questions or doubts regarding the proper application of the evaluation criteria and/or the applicable procedures, it shall request the necessary information from the relevant responsible person. Once the questions are answered to the satisfaction of the central review body, it shall proceed as provided in Section 4.6 of ST/SGB/2011/7. If, after obtaining additional information, the central review body finds that the evaluation criteria were improperly applied and/or that the applicable procedures were not followed, it shall transmit its findings and recommendation to the official having authority to make the decision on behalf of the Secretary-General. In terms of Section 8.2 of ST/AI/2010/3, authority to make a selection decision with respect to a particular job opening shall be withdrawn when a central review body finds that the evaluation criteria have not been properly applied and/or the applicable procedures have not been followed.²⁸

39. In the present case, the UNDT based its finding that HH had been endorsed for roster membership by the CRB on a mere assumption, because both HH and Mr. Moulana had been placed on the roster in a previous competition.²⁹ This UNDT finding is contrary to the Appeals Tribunal jurisprudence, since t minimal proof of HH's actual endorsement by the CRB. Assuming Antd DTend amrrt ne2t.3 (a)0..5 (ne-4 (nd)53.9 (s)5.2 (9 d7 (n a)0.7 ()]TJ30.017 T25-0.03 T

40. The Secretary-General's reliance on the UNDT's discretion to order, or not to order, as the case may be, the production of certain documents is misplaced. It is true that the UNDT has broad discretion with respect to case management.³⁰ However, it is also incumbent upon a party to discharge his or her burden of proof. As previously held by the Appeals Tribunal, "it is our consistent jurisprudence that case management issues, including the question of whether to call a certain person to testify or to order the production of documents, remain within the discretion of the UNDT and *do not merit a reversal except in clear cases of denial of due process of law affecting the right to produce evidence by a party.*"³¹

41. Whereas in *Onifade* the Appeals Tribunal found that the party did not establish how the evidence he sought to be produced would have affected the outcome of the case, in this case, Mr. Moulana has done so. Here, the UNDT indeed dismissed Mr. Moulana's application on grounds of insufficient evidence of his allegations, whereas he had not been afforded the opportunity to provide the evidence he sought, nor had his motions to this effect acted upon by the Dispute Tribunal. By failing to address his requests, the UNDT violated Mr. Moulana's due process rights and deprived him of the opportunity to have his Motion assessed and possibly granted, following which he could have submitted the pieces of evidence which the UNDT found he failed to provide.

42. Furthermor , (h)58t8m1/d66 (h) Ss cl w

unduly privileged in a competitive process could in theory be an element to prove bias against Mr. Moulana.

43. As the Appeals Tribunal has continuously held, if the Administration is able to even minimally show that the Appellant's candidature was given full and fair consideration, then this presumption stands satisfied. Thereafter, the burden of proof shifts to the staff member who must show through the onerous standard of clear and convincing evidence that they were denied a fair chance of selection.³² In the present case, Mr. Moulana did not have the opportunity to rebut the presumption of regularity with regard to HH's placement on the roster.

44. Therefore, regardless of whether or not Mr. Moulana's Motion should or should not have been granted, and while it might be true, as the Secretary-General argues, that most of the documents and information Mr. Moulana requested in his Motion related to two other job openings and are thus irrelevant to this case, it is also true that Mr. Moulana was entitled to a well-considered decision on his Motion. What matters most here is that the UNDT did not give proper consideration to his request for production of additional evidence. This is a substantial error in procedure, since it concerned Mr. Moulana's rights to due process, including receipt of a reasoned decision on his Motion.

45. Even if the Dispute Tribunal decided to deny Mr. Moulana's Motion, in total or in part, this decision would necessarily explain why the additional evidence which he requested would not have impacted the outcome of the case. As it stands now, there is no such explanation in the record, nor is there any judicial decision on the party's motion. This Tribunal is left only with the Secretary-General's submissions, which cannot be accepted unilaterally. The UNDT ignored Mr. Moulana's Motion and decided the merits of the casyn.5 (t)0.6 hi(a)4.1 (s)]TJO Tc19 Tww 8.852 0 Td()Tj-0.0

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47. The appeal must accordingly succeed on this basis alone, and the Judgment of the UNDT falls to be reversed. Pursuant to Article 2(3) of the Appeals Tribunal Statute, the case is remanded to the UNDT for proper consideration of Mr. Moulana's motion for production of documents and further proceedings by another Judge. This decision renders moot Mr. Moulana's other claims regarding compensation.

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2022-