
Case No.: UNDT/NY/2011/057

Judgment No.: UNDT/2012/023

Date: 14 February 2012



Introduction

1. The Applicant is a staff member at the P-3 level in the Procurement Division (“PD”), Office of Central Support Service (“OCSS”), Department of Management (“DM”) of the United Nations Secretariat in New York. He contests the decision to select a candidate other than him against the P-4 post of Procurement Officer in OCSS, on the principal grounds that: (1) the Administration should not have selected a candidate from the roster for the post because the roster was not valid at the time of the selection process; and (2) the Applicant was not notified of the selection decision within the required time frame.

2. In response to a case management Order No. 258 (NY/2011), the parties agreed that an oral hearing of the case was not necessary. The Tribunal has sufficient evidence from the papers and submissions of the parties to make a decision and finds that this case is suitable for a hearing on the papers.

Facts

3. On 25 January 2011, the Applicant applied for the post of Procurement Officer at the P-4 level advertised in Inspira (the online United Nations jobsite) under the vacancy announcement number 10-PRO-OFC-OCSS-16926-R-NEW YORK on 8 December 2010 with a 6 February 2011 deadline (“the Post” or “the job opening”).

4. An *ad hoc* panel chaired by the hiring manager was established to review and evaluate the candidates on the roster for their suitability for this Post.

5. Once the job opening was closed, the list of the 105 screened applicants for the post was forwarded to the hiring manager for further screening, together with the list of roster candidates. As he was a roster candidate, the Applicant’s name was on both lists.

12. On 21 June 2011, following a query from the Applicant, PD confirmed to him that a roster candidate had been selected. However, on 24 June 2011, the Management Evaluation Unit conveyed to the Applicant that it had no jurisdiction over the matter because no selection decision had been made.

13. The selected candidate accepted the job offer on 11 July 2011.

Considerations

14. The Tribunal sets out the parties' contentions issue by issue.

Selection of a roster candidate

15. According to the Applicant, the selection process was vitiated because the successful candidate was not on the roster at the time of the selection decision.

16. The applicable administrative instruction at the time the job opening was advertised in Inspira was ST/AI/2010/3 (Staff selection system). There is much confusion in the application regarding what is a roster and what is a selection decision. Both are defined in ST/AI/2010/3 as follows:

(w) *Roster*: a pool of assessed candidates reviewed and endorsed by a central review body and approved by the Head of Department/Office/Mission who are available for selection against a vacant position. Roster candidates may be selected without referral to a central review body;

(x) *Selection decision*: decision by a head of department/office to select a

made by the Secretary-General following review by the Senior Review Group.

17. The following two provisions in ST/AI/2010/3, sec. 9 (selection decision), in relevant parts, govern the selection process of a roster candidate:

9.2 The selection decision for positions up to and including at the D-1 level shall be made by the head of department/office on the basis of proposals made by the responsible hiring managers (for position-specific job openings) and occupational group managers (for generic job openings) when the central review body finds that the candidates have been evaluated on the basis of approved evaluation criteria and the applicable procedures have been followed. ...

...

9.4 ... Candidates included in the roster may be selected by the head of department/office for a subsequent job opening, without reference to a central review body.

18. The policy applicable at the time the successful candidate was placed on the roster was the former administrative instruction ST/AI/2006/3/Rev.1 on the staff

20. The Tribunal is satisfied that since the Post was advertised well before the expiry of the roster on which the successful candidate's name was included (i.e., 1 March 2011), the successful candidate was eligible to be selected from the roster and the decision to select him from the roster was, hence, proper.

Notification of the non-selection decision

21. The applicant submits that there was a delay in the notification to him of the decision which was in breach of the Rules and which caused him prejudice.

22. Section 10 (notification and implementation of the decision) of ST/AI/2010/3 governs the notification of applicants for posts. It provides, in relevant parts, as follows:

10.1 The executive office at Headquarters, the local human resources offices or the Division of Field Personnel of the Department of Field Support shall inform the selected candidate of the selection decision within 14 days after the decision is made. Candidates endorsed by the central review body and placed on a roster shall be informed of such placement within 14 days after the decision is made by the hiring manager or occupational group manager and be advised that they may be selected from the roster for similar positions that may become available within the stipulated time frame as described in sections 9.3 and 9.4. Other candidates convoked for assessments but not selected or placed on a roster shall be so informed by the hiring manager or the occupational group manager within 14 days after the selection decision is made in writing. Applicants eliminated prior to the assessment exercises shall be informed.

10.2 The decision to select a candidate shall be implemented upon its official communication to the individual concerned. When the selection entails promotion to a higher level, the earliest possible date on which such promotion may become effective shall be the first day of the month following the decision, subject to the availability of the position and the assumption of higher-level functions. ...

23. ST/AI/2010/3 provides a general obligation on the part of the Administration to inform candidates for posts of the outcome of selection processes. These persons include: (1) the successful candidate; (2) those endorsed by the central review body who are being placed on the roster of candidates; (3) other candidates convoked for

writing”. This finding is consistent with th

33. The Tribunal finds that because sec. 10.1 specifically places the burden of notification on the hiring manager for applicants who are in the third category (the candidates eligible for consideration during the selection process), it is fair to conclude that the notification should have been made to the Applicant directly and personally by the hiring manager. Both ST/AI/2006/3 and ST/AI/2006/3/Rev.1 required the programme manager (the equivalent to “hiring manager” in ST/AI/2010/3) to inform all candidates who had been interviewed, but not selected, about the decision. In *Krioutchkov* UNDT/2010/065, the Tribunal found that “[t]o leave these candidates to discover their lack of success by checking a later Galaxy [the former United Nations online jobsite] announcement showing the position as filled does not satisfy this requirement” (see para. 36).

34. The Applicant was not notified of the non-selection decision by the hiring manager until 21 June 2011, some 42 days after the selection decision was made, and only following enquiries on his part.

35. In any event, the separate reference to the fourth group of candidates may not necessarily be interpreted as meaning that there is no timeframe at all for informing that group of the selection decision.

36. The United Nations Appeals Tribunal in *Wu* 2010-UNAT-042, para. 34, ruled that in the absence of a specific timeframe for notification

UNDT in awarding compensation for the delay in notifying Wu of the selection decision.

37.

42. The Tribunal finds that the Applicant has failed to substantiate his claim of harm