



Before: Judge Coral Shaw

Registry: New York

Registrar: Hafida Lahiouel

CHARLES

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Marcus Joyce, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant is a staff member at the P-3 level in the Procurement Division, Office of Central Support Services ("OCSS"), Department of Management ("DM") of the United Nations Secretariat in New York. After consideration by an expert panel of his application for the generic post of Board Inquiry Officer at the Field Personnel Division ("FPD") in the Department of Field Support ("DFS"), he was not placed on the roster. He alleges that not all members of expert panel had been properly trained in competency-base interviewing skills.

Preliminary matter

5. On 13 September 2011, following receipt of the Respondent's reply dated 6 September 2011, the Applicant filed a motion to strike out the Respondent's reply and enter summary judgment.

6. Contrary to the Applicant's submission and for the reasons discussed in this judgment, the Tribunal holds that the matters raised by the Respondent in its reply are arguable. The other issues raised by the Applicant in the motion to strike out are by and large repetitive of what he had already set out in his application and may be dealt with in the substantive judgment. Parties are discouraged from making such motions except in the rarest cases. They consume valuable resources of time and energy of the Tribunal which are best reserved for determining the case on its merits.

recommended for the roster. The expert panel recommended 23 candidates for placement of their names on the roster.

15. On 2 February 2011, the Field Centre Review Body endorsed by email the recommendations of the interview panel.

16. On 10 February 2011, DFS informed the Applicant by email that his job application was unsuccessful. Upon enquiry, the Applicant was further informed that he had not been recommended as a suitable candidate because the expert panel had assessed his performance management competency as marginal.

17. On 7 April 2011, the Applicant requested a management evaluation of the decision not to select him for the Post.

18. On 11 May 2011, the management evaluation report was conveyed to the Applicant. He was informed that the decision he contested was “appropriate in the circumstances” and that the Administrator had advised that the Applicant had:

... received the rating of “marginal” with respect to managing performance and as a result was not recommended for rostering. With respect to this competency, the [interview panel] found that [the Applicant] failed to demonstrate a sufficient level of knowledge of most key indicators in this area and this response to the question lacked the clear and demonstrable level of competency in Managing Performance as expected of an officer at the P4 level.

Applicant's submissions

19. The Applicant's principal contentions may be summarised as follows:

a. As the Applicant applied for a generic job opening, the expert panel was only competent to conduct an assessment of his candidacy on behalf of the Director of FPD/DFS, and it did not have the authority to take the final recommendation decision. The expert panel only makes recommendations with regard to the suitability of candidates to be rostered. The recommendation of the

expert panel should therefore be ~~used~~ by those entrusted with the responsibility and delegated authority ~~to~~ make a final administrative decision;

b. According to a report of Secretary-General to the General Assembly (A/61/822, "Human resources management reform: recruitment", dated 27 March 2007), it was mandatory for all expert panel members to receive training in competency-based ~~interviewing~~ skills. In the absence of the mandatory training in competency-based interview techniques, the recommendation of the expert panel ~~is~~ invalid and should be considered null and void;

c. From the manner in which the ~~interview~~ was conducted, evaluated and recorded, the expert panel members were unqualified, untrained and incompetent to assess the Applicant's competencies.

Respondent's submissions

20. The Respondent's principal contentions may be summarised as follows:

a. The Applicant has not provided any ~~real~~ or convincing evidence that the alleged lack of training of the panel ~~members~~ or the interview process affected his right to a full and fair consideration;

b. The lack of training of one of the expert panel member does not constitute a procedural irregularity that invalidates the whole selection process.

Considerations

The burden of proof in selection cases

21. The general burden of proof in matters of selection was stated by the United Nations Appeals Tribunal in *Rolland* 2011-UNAT-122. The primary burden is on the Applicant provided that the Respondent ~~can~~ ~~primarily~~ show that the Applicant was

24. The term “hiring manager” is defined in sec. 1 of ST/AI/2010/3 as follows:

28. The primary responsibility of the Director of FPD/DFS is to ensure that “the process has been complied with and that recommendations are reasoned and organizational objectives and targets have been taken into account” (see sec. 7.8).

29. The Tribunal rejects the Applicant’s submission that the expert panel did not have the authority to compile a list of recommended candidates to the Director of FPD/DFS based on its assessment of all the candidates participating in the selection process.

Training requirements for expert panel members

30. There is no requirement in any of the regulations, rules or policies of the Organization for all expert panel members to undergo training in competency-based interviewing.

31. ST/AI/2010/3 sets out the procedures applicable to staff selection processes as from 21 April 2010. It is a comprehensive document that is presumed to include all that is necessary for the correct execution of the selection process. It states that all manuals are to be read subject to the administrative instruction, but is silent as to the requirement that all interview panelists are required to complete training. The definition of assessment and expert panel are set out above in paras. 22 and 23.

32. Paragraph 26 of A/61/822 states:

26. With a view to speeding up the process, the Office of Human Resources Management has been conducting training on the preparation of vacancy announcements, evaluation criteria and the evaluation of candidates tailored to meet the need of programme managers and the members of central review bodies. In addition, all expert panel members are now required to complete training in competency-based interviewing.

36. Neither has the Applicant substantiated his contention that the expert panel members were “unqualified, untrained and incompetent to assess [the Applicant’s] competencies” to the extent that this would render the entire selection process void.

37. There is no evidence at all before the Tribunal that the expert panel committed any procedural or other errors that had any impact on the selection process. On the contrary, as documented, the selection process in all respects followed the comprehensive system prescribed by ST/AI/2010/3.

38. The Tribunal notes that even if there had been a single procedural irregularity in a selection process this does not in itself entitle an applicant to compensation. It is necessary for an applicant to demonstrate that she or he has suffered harm as a consequence of the breach. In a 2010-UNAT-094, the Appeals Tribunal stated that, “This Court will not approve the award of compensation when absolutely no harm has been suffered” and found that the tested procedural irregularity was “inconsequential”.

39. The Tribunal finds that the evidence on the record establishes to a higher degree than that required by the test in *Holland* that the evaluation of the Applicant’s candidacy was done fully and fairly and that the selection process was not vitiated by any irregularity. The Applicant was assessed against objective standards which applied to each candidate who was interviewed. Both strengths and weaknesses were noted. In the face of such finding the Applicant has not shown through clear and convincing evidence that he was denied a fair chance of promotion.

40. The Applicant’s challenge to the selection decision that he was not suitable for the roster is without foundation. Contrary to his submission, there is no rule or policy of the Organization which renders an expert panel incompetent if its members or some of them are not trained in competency-based interviewing.

Observation

41. The limited resources of the Tribunal have been unnecessarily called on in this case to re-state the clear policy of the Organization in respect of staff selection processes. The Applicant has made claims of irregularity with no evidence at all to support such allegations. The Tribunal disposes such unnecessary litigation.

Conclusion

42. The Tribunal finds that the Applicant's candidature was given full and fair consideration. His challenge to the qualifications of the competency-based interviewing panel is without foundation. The Respondent has satisfied the Tribunal that the interview was conducted in an objective and fair manner.

43. The present application is dismissed in its entirety.

(Signed)

Judge Coral Shaw

Dated this 14th day of February 2012

Entered in the Register on this 14th day of February 2012

(Signed)

Hafida Lahiouel, Registrar, New York