





5. On 5 August 2016, the Applicant requested management evaluation, receiving a response upholding the contested decision on 30 September 2016. He filed the present application on 13 December 2016, and the Respondent filed his response on 13 January 2017.

6. After

## **Consideration**

9. The main issue for determination in this matter is whether JO 39481 was a “recruitment from roster” position, thus barring the Applicant from competing for it. If it was not, a resulting issue to examine would be what remedies, if any, the Applicant is entitled to.

*Was the Applicant’s*

13. In his reply to the application and in support of the argument that JO 39481 was a “Recruit from Roster”, the Respondent filed an internal document with the following indication: “Job type: Recruit from Roster”.

14. During recruitment exercises, there is an obligation of transparency and fairness that behoves the hiring manager and the Organization as a whole to ensure that the vacancy announcement fully reflects the eligibility criteria to allow ~~ph~~ ~~ow~~ ~~ti~~



22. Nothing in the job opening referred to it being

24. The ruling in *Allen* UNDT/2010/009 relevantly states:

35. The Tribunal has already emphasized the Respondent's general obligation to abide by all pertinent legal instruments (see judgment UNDT/2009/084, *Wu*; UNDT/2009/095, *Sehraoui*). In the same vein, the former UNAT held that "formal procedures are safeguards which must be strictly complied with. The failure of the Respondent to adhere to its own rules, the adherence of which is strictly and solely within the power of the Respondent, represents an irregularity which amounts to a violation of the Applicant's right to due process" (judgement No. 1122, *Lopes Braga* (2003), quoting judgement No. 1047, *Helke* (2002)). UNAT also stated "that the Organization has to respect and follow its procedures in keeping with what the world expects of the United Nations" (judgement No. 1371 (2008) quoting judgement No. 1058, *Ch'ng* (2002)).

25. The Applicant's eligibility was never assessed in a transparent manner but rather through unpublished requirements unknown to the candidates for JO 39481. Moreover, even entertaining that the Organization was not required to post a job opening in the case at hand, if it elects to do so, it is bound to respect and follow the applicable recruitment rules. The Respondent cannot claim, on the one hand, not to be required to advertise a vacancy and, on the other hand, that if he chooses to advertise, he should not be held to the same standards and rules of recruitment.

#### Language requirements

26. Although the job opening was for a Translator, Russian, at the P-3 level, it provided as follows regarding Languages (emphasis added):

#### **Languages**

English and French are the working languages of the United Nations Secretariat. **For the post advertised perfect command of Spanish, which must be the candidate's primary language, is required**, as well as an excellent knowledge of English and at least one other official language of the United Nations, as tested by the appropriate United Nations Competitive examination.



27. Since the contested post is one of Translator, Russian, the requirement for a command of Spanish, rather than Russian, as the candidate's primary language is perplexing, to say the least. The Tribunal notes that in the response to the Applicant's request for management evaluation, he was informed as follows (emphasis

31. The Tribunal is concerned that the necessary care and attention to actually reflect the intended eligibility and language requirements for the job opening was



41. The Applicant claimed damages in respect of his career development and mobility opportunities. He also requested damages for mental anguish and moral suffering.