
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/017

Judgment No.: UNDT/2019/078

Date: 8 May 2019

Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

DUNCAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Mohamed Abdou, OSLA

Counsel for Respondent:
Elizabeth Gall, ALD/OHR, UN Secretariat

rules have been applied and whether a candidate has received full and fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration (*Rolland* 2011-UNAT-122; *Aliko* 2015-UNAT-540). The Tribunal's role is not to substitute its decision for that of the Administration.

7. The official acts of the Respondent enjoy a presumption of regularity (*Rolland* 2011-UNAT-122). If the management is able to even minimally show that the applicant's candidature was given a full and fair consideration, then the presumption of law stands satisfied (*Finniss* UNDT/2012/200 (affirmed by 2014-UNAT-397)).

8. Thereafter, the burden of proof shifts to the applicant who can rebut the presumption of regularity by showing through clear and convincing evidence that he or she was denied a fair chance of selection (*Rolland* 2011-UNAT-122; *Niedermayr* 2015-UNAT-603; *Ngokeng* 2017-UNAT-747).

9. Even if the Tribunal finds that the procedure was not properly followed, such irregularity will only result in the rescission of a non-selection decision if the candidate would have had a significant chance of selection (*Vangelova* 2011-UNAT-172; *Bofill* 2011-UNAT-174).

Was the selection process followed?

10. The Applicant submits that the Administration failed to follow the procedure set out in ST/AI/2010/3 (Staff T/AI/2010/3

undertake the assessment of applicants for a job opening. For D-2 level job openings, the panel should normally be comprised of at least three members, with two being from outside the department or office, and at least one female;

...

16. The Dispute Tribunal analyzed the language of sec. 1(c) of ST/AI/2010/3 in *Mianda* UNDT/2018/060, and concluded:

36. [...] The administrative instruction makes no reference whatsoever to a possible reconstitution of a panel or to reserve members of the panel, as there could be. There is thus no apparent right to substitute panel members, should they become unavailable.

...

The continuity of panel members making assessments is essential to ensure fairness and equality of treatment throughout the process, since assessments made by each member are subjective. Indeed, assessments are made by looking at how each candidate meets the competencies required for a job opening. To some extent, such assessments are also subjectively comparative between the candidates, as the panel seeks to identify the best candidate. Thus, the assessment necessarily contains a comparative element. As stated above, continuity of membership of an assessment panel is thus essential.

17. In the present case, it is undisputed that the composition of the panel varied throughout the process. This change is not permitted in ST/AI/2010/3 and constitutes a procedural flaw in the selection process.

18. The Applicant argues further that the Administration circumvented the procedural safeguards by omitting, in the transmittal memorandum to the Central Review Body, the name of one of the individuals participating in one of the assessment panels and indicating that the assessment panel consisted of the same members throughout.

19. The Tribunal notes that the transmittal memorandum to the Central Review Body states that the composition of the assessment panel varied throughout the

process. The Tribunal has found that these changes in the composition of the assessment panel constitute a procedural error. It is therefore irrelevant that the name of a panel member was omitted in the transmittal memorandum.

20. The Applicant further submits that the Administration failed to implement an appropriate evaluation method by not administering a written test and limiting the assessment method to a 30-minute interview. The Applicant states that the questions posed did not reflect the requirements of the job opening.

21. The Respondent responds that it is for the assessment panel, not the Applicant, to determine what questions are appropriate to ask during an interview. He avers that the candidates were evaluated on the three competencies listed in the job description.

22. The Tribunal notes that pursuant to ST/AI/2010/3, the administration of a written test is not mandatory. The choice is left to the hiring manager between “a competency-based interview and/or other appropriate evaluation mechanisms, such as, for example, written tests [...]”. Moreover, as the Applicant was shortlisted for the competency-based interview, she suffered no prejudice from the absence of a written test.

23. With respect to the type of questions asked during the interview, the Tribunal recalls that absent any improper motives, it is within the discretion of the Administration to decide what assessment method is best suited to evaluate candidates. The Appeals Tribunal has established that an applicant cannot substitute his or her own evaluation method for that of the Administration (*Wang* 2014-UNAT-454). In the instant case, the Applicant disagrees with the evaluation method elected by the Administration but fails to show that the Administration exceeded its discretion in this respect.

