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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/056

Judgment No.: UNDT/2023/135

Date: 8 December 2023

Original: English

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**Before:** Judge Rachel Sophie Sikwese

**Registry:** New York

**Registrar:** Isaac Endeley

KIRBY

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS



8. On 25 April 2022, the Applicant participated in a CBI, which was chaired by the Chief, Editing Section, English Translation and Editorial Service. The two other panel members were the Chief of Section, French Translation (from outside the New York duty station) and a Senior Reviser/Project Manager, Spanish. The CBI assessed the Applicant and the Selected Candidate against the competencies set out in the job opening: professionalism, teamwork, planning and organizing, vision, and building trust.

9. On 28 April 2022, after both CBIs were conducted, the hiring manager submitted a documented record of its evaluation of the Selected Candidate to the Central Review Board ( CRB ).

10. On 25 May 2022, the CRB endorsed the selection of the Selected Candidate for the Post.

11. On 1 June 2022, the Applicant was informed of her non-selection for the Post.

12. On 29 July 2022, the Applicant filed a request for a management evaluation contesting the decision of DGACM not to select her for the Post.

13. On 25 August 2022, the Applicant received a response to her management evaluation request upholding the contested decision.

14. On 23 November 2022, the Applicant filed a request for a management evaluation contesting the decision of DGACM not to select her for the Post.





answers based on her competencies for the Post in question but were biased because of their knowledge of work as a staff representative.

25. Thirdly, the Applicant complains that she was not rostered for future such positions. The Applicant contends that if a candidate does not perform as well as another candidate in the interview process, it does not follow that they are unsuited for similar positions in the future. She argues that by not rostering her for future such positions, the panel indicated that the Applicant was not qualified for future such positions. The Applicant states that this is further proof that the panel members were biased in their selection decision.

26. In response, the Respondent states that the contested decision was lawful as the Applicant received full and fair consideration for the Post. The Respondent submits that the Applicant and one other candidate were shortlisted for the Position after a preliminary assessment, out of a total of six candidates. The Applicant passed a technical assessment but was not successful in the CBI. The Respondent states that DGACM therefore lawfully selected the recommended candidate who had successfully passed the CBI and whom it considered to be most suitable for the Post.

27. The Respondent further submits that the Applicant has not met her burden of proving that the contested decision was tainted by extraneous considerations. The Respondent states that the Applicant has not established that she was discriminated against based on her status as staff union representative. The Respondent submits that application, to a P-5 position within DGACM undermines her claim of bias on ground of her staff representation.

28. is that her candidacy for the Post was not given full and fair consideration as the selection representation.

29. Having reviewed the record, the Tribunal finds that the Applicant was afforded full and fair consideration for the position.

30. In arriving at this decision, the Tribunal notes that t

context of the questions.

a project manager and not to the Applicant's Staff Union representation. The Applicant successfully had not allowed her staff representative work to infringe on her project management work, including in her discussion of her project management work in the interview process. Therefore, there is no basis to Staff Union representation.

32. On the other hand, the CBI panel rated the Selected Candidate as either

The Tribunal therefore finds that the CBI panel was justified in not recommending the Applicant for the Post as she did not meet all competencies. It was a requirement to meet all competencies, since competence is one of the objective criteria in staff selection under art.101 of the United Nations Charter.

33. Based on the documented record and the recommendation of the hiring endorsement, DGACM lawfully selected the candidate it considered as the best suited for the functions of the Post. In reaching the contested decision, DGACM considered that the Selected Candidate received higher ratings than the Applicant in connection with the competencies required for the Post while the Applicant was rated as not meeting all competencies.

34. The Applicant does not seriously dispute that she did not meet full requirements for the competencies of teamwork, building trust, and vision. She has not made any clear and convincing argument to challenge the CBI in these areas. The apprehension of bias is misplaced, Staff Union consultations with management ought not to be taken personally and indeed the Applicant has not adduced evidence to show that all the personnel involved along the different stages of the selection process colluded to target her merely for representing her constituents in contentious negotiations.



*The Applicant's further claims of bias - Roster*

35. The Appl

2022, in the context of ongoing staff-management consultations on the implementation of General Assembly Resolution 75/252 on workload standards for translation services, the Applicant and other staff representatives wrote to the USG-DGACM informing him that unless he would cancel a related decision, they would proceed to a vote of no confidence in DGACM senior management. On 28 September 2022, upon the recommendation of the Director of the Meetings and Publishing Division, the USG/DGACM approved the Applicant for selection and promotion to a P-5 level position within DGACM.

40. Based on the above, the Tribunal finds that the Applicant failed to show by clear and convincing evidence that she was denied a fair chance of promotion. The contested decision is lawful as the Administration appropriately exercised its discretion in matters of staff selection.

**Conclusion**

41. In light of the foregoing, the Tribunal rejects the application.

*(Signed)*

Judge Rachel Sophie Sikwese

Dated this 8<sup>th</sup> day of December 2023

Entered in the Register on this 8<sup>th</sup> day of December 2023

*(Signed)*

Isaac Endeley, Registrar, New York