
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/073
Order No.: 117 (NY/2019)
Date: 9 August 2019
Original: English

Introduction

1. On 2 August 2019, the Applicant, an Administrative Officer at the P-3 level with the Secretariat of the Convention on Biological Diversity (“SCBD”) in Montreal, Canada, filed an application requesting urgent relief under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure seeking to suspend, pending management evaluation, the decision excluding the Applicant from participating in the competency-based interview for the position of Administrative Officer at the P-4 level and not selecting the Applicant for this position.

2. On the same day, The Tribunal granted the Applicant’s motion for interim suspension pending its final determination under the principles in *Villamorán* 2011-UNAT-160 and ordered the Respondent not to undertake any further steps regarding the contested recruitment until the determination of the present suspension of action application.

3. On 6 August 2019, the Respondent filed a reply contending that the application is not receivable and has no merit.

Factual background

4. On 14 June 2018, the job opening for the Administrative Officer at the P-4 level with SCBD in Montreal, Canada was advertised, and the Applicant submitted her job application. The Applicant submits that this position resulted from the reclassification of her position and she temporarily occupies this P-4 post.

5. The Applicant was shortlisted for having been found to meet both the required and desired elements of the evaluation criteria, and in February 2019, she was invited to take a written test in the form of multiple-choice questions to be completed within one hour. The Applicant received the highest score in the first written test.

6. After being informed of the outcome of the first written test, SCBD decided to invite the top four candidates to the interview. Subsequently, the Talent Management Center of the United Nations Office at Nairobi – Human Resources Management Services (“UNON-TMC”), who provided support for this recruitment exercise, recommended to SCBD that a second written test be administered on the grounds that two candidates, which included the Applicant, had finished the assessment in just over half an hour and

Receivability

10. To challenge the receivability of the present suspension of action application, the Respondent relies on *Ishak*

merely an indication as to what appears to be the case at the suspension of action stage. Whether or not this initial impression is well-founded or not is a matter for determination after a full examination of the evidence in the event that a substantive claim is filed.

14. With regard to the present case, it is well established that the Secretary-General has broad discretion in matters of staff selection. When reviewing such decisions, the Tribunal shall examine “(1) whether the procedure as laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration” (*Abbassi* 2011-UNAT-110, para. 23). The Appeals Tribunal further stated that “the role of the Tribunals to assess whether the applicable regulations and rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner” (*Ljungdell* 2012-UNAT-265, para. 30).

15. The selection procedure is governed by ST/AI/2010/3, as amended (Staff selection system). In particular, sec. 7.5 provides that “[s]hortlisted candidates shall be assessed to determine whether they meet the technical requirements and competencies of the job opening. The assessment may include a competency-based interview and/or other appropriate evaluation mechanisms, such as, for example, written tests, work sample tests or assessment centres”. While the Administration has broad discretion in choosing the assessment method under sec. 7.5 of ST/AI/2010/3, the regulations and rules should be applied “in a fair, transparent and non-discriminatory manner”.

16. In this case, after the Applicant was shortlisted and took the first written test,

UNON-TMC informed 792 338.544 Tm0 g0 G[(P)-3(a)4(g)10(e)4()] TJETQ0.00000912 0 30 612 792 o

so that the test score could be entered into Inspira. The Applicant was among the top four candidates for having received the highest score in the first written test.

17. Subsequently, UNON-TMC wrote back to SCBD and recommended that a second written test in the form of an open text essay be administered on the grounds that two candidates who scored above 90 percent finished the test in just over half an hour while the remainder of the candidates took closer to an hour. In response, SCBD reversed its previous decision to invite the top four candidates to the interview0BMC Erecommend S

20. The Administration's conduct in administering the written tests is also inconsistent with its own Manual. Specifically, sec. 9.4.5 of the Manual for the Hiring Manager provides that "[w]ith the *pre-determined* passing grade, the assessors rate each individual applicant on the range of set indicators, using the prescribed performance scale and response guide" (emphasis added). While the Manual for the Hiring Manager does not have the legal force and does not vest a staff member with additional legal entitlement, it provides guidance on the responsibilities of the Hiring Manager (*Asariotis* 2015-UNAT-496, paras. 21-22). Therefore, the Tribunal can consider the Manual to decide whether the applicable rules were applied in a fair, transparent and non-discriminatory manner. It appears, based on the material before the Tribunal, that the Administration not only decided the passing grade after the outcome of the test was known, but also changed the te

terms of loss of career opportunities. This is particularly the case in