



**JUDGE SABINE KNIERIM, PRESIDING.**

1. Mr. Mirella, a staff member in the IINi t1/TT01c[(H)-7.7 (E)]TJO Tc 0 Tw 12 -0 0w 9.48 -0 0 9./TT2 130

9. On 15 February 2019, the Hiring Manager made a recommendation to HRMS of two candidates for the position, both of whom were pre-approved roster candidates. HRMS, in turn, submitted this recommendation to the ED, UNODC, on 18 February 2019.

10. With regard to the candidacy of Mr. Mirella, the Hiring Manager stated that:<sup>1</sup>

While he has over 15 years experience with UNODC, it is not 'progressively responsible experience with an excellent performance record' as he has been at same level (P5) since 2003 and the amount and complexity of responsibility has not progressively increased.

11. On 4 March 2019, the Office of the Executive Director (OED) provided some feedback on the recommendation. OED stated that they were "somehow confused" about the assessment, observing, among other things, that it "appear[ed] that the same type and length of qualifying experience make some applicants suitable for the written test and some not suitable".<sup>2</sup> In addition, OED noted that no external applicants made it to the written test. OED shared some specific comments and requested clarifications of possible inconsistent treatment of candidates. With regard to Mr. Mirella, OED noted that he "meets the requirements and the desirables indicated in the job opening".

12. That same day, HRMS conveyed OED's observations to the Hiring Manager, and asked for her review and feedback.

13. On 6 March 2019, the Hiring Manager provided an explanation as to her assessment process and application of the work experience criteria. In pertinent part, she noted:<sup>3</sup>

OED states that "

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." This is wrongly observed, and the conclusion is not supported by a careful analysis of the facts, which I am sure you can see in the paragraphs to follow. On the con



responsible professional experience” “with an excellent performance record”. It is my prerogative and duty to apply my assessment for these requirements and I have no second thoughts about this leading to non-shortlisting of Mr. Mirella.

14. On 20 March 2019, the ED, UNODC, and the Director, Division of Management, UNODC, met with the Hiring Manager to discuss the rationale behind her recommendation. A Note to File was prepared of this meeting.

15. On 21 March 2019, the ED, UNODC approved the selection of the candidate recommended by the Hiring Manager.

16. On 26 March 2019, Mr. Mirella

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29. Mr. Mirella contends that the Dispute Tribunal erred in fact and in law by finding that the Hiring Manager reasonably excluded him under Section 7.4, even though the Hiring Manager

34. Mr. Mirella submits that the Dispute Tribunal erred in law in finding that his rostering for a D-1 position after the events in this case was irrelevant. To the contrary, Mr. Mirella argues that his rostering shows that other hiring managers confirm that he meets the global minimum work experience requirement for a D-1 position.

35. Mr. Mirella also claims that the Dispute Tribunal failed to exercise jurisdiction when it did not consider the Personal History Profile (PHP) of another candidate that was submitted by Mr. Mirella, wherein that candidate had spent similar time at the P-5 level as Mr. Mirella, but with initially greater managerial responsibility and later less, yet this other candidate was found to have met the work experience requirement.

36. Mr. Mirella submits that the Dispute Tribunal erred in fact and in law in finding that the Hiring Manager had provided a reasoned justification for Mr. Mirella's exclusion. Mr. Mirella states that the Dispute Tribunal erred in finding that when the Hiring Manager evaluated the "claimed vs. known experience" of candidates, that the "known experience" was "directly and objectively from the records". Mr. Mirella claims that the Hiring Manager was "quite open" that she was applying her subjective experience with the candidates to draw her conclusions. Mr. Mirella further argues that the Dispute Tribunal erred in failing to address how such subjective evaluation inevitably leads to unequal treatment of candidates. Mr. Mirella also alleges that the Dispute Tribunal should have addressed the fact that the Hiring Manager had little to no knowledge of Mr. Mirella's functions or performance, having interacted with him only five times in his career.

37. Mr. Mirella submits that the Dispute Tribunal erred in law and failed to exercise jurisdiction in not addressing the inherent contradiction in the Hiring Manager acknowledging that he met the "basic evaluation criteria" while concurrently finding that he did not meet the minimum



**The Secretary-General's Answer**

39. The Secretary-General submits that the Dsubmbmt956 0lm( )TjETq79.350471.945 0 Td[3.7 (7m)



49. The Secretary-General submits that Section 7.4 gives hiring managers extensive discretion and flexibility to conduct the assessment of the applicants released to them, and that the Appeals Tribunal has recognized the broad discretion of hiring managers to establish shortlists.<sup>15</sup> In Respondent's view, Mr. Mirella has failed to demonstrate any error of law in the Dispute Tribunal's conclusion that Mr. Mirella's exclusion from the shortlist complied with Section 7.4.

50. The Secretary-General considers that Mr. Mirella's main argument is that the Hiring Manager's interpretation of the phrase "progressively responsible experience" was not allowed under the Staff Rules, and that the Dispute Tribunal erred in permitting the Hiring Manager to subjectively interpret a standard phrase.

51. The Secretary-General submits that Mr. Mirella's arguments are misplaced, and that there is not one way of interpreting "progressively responsible experience" and there is no set definition of this term in the Organization's legal framework.

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have put him on the longlist) she did not think that Mr. Mirella fulfilled the criterion of “15 years of progressively responsible professional experience” in terms of the substance of his work during this period. Thus, while the Hiring Manager, like OHRM, was of the view that Mr. Mirella fulfilled the minimum eligibility requirements for the position, she found that he did not fulfill the (minimum) requirements for being placed on the shortlist upon closer inspection of his work history.

71. It is somewhat ironic that Mr. Mirella complains that the Hiring Manager did not undertake a comparative review of the candidates when she did effectively conduct such a review among the several candidates on the longlist in order to place the “most qualified” on the shortlist. If there was any error, it was that the Hiring Manager’s explanation of her decision was inartful. In order to enable unsuccessful candidates to better understand an unfavorable selection decision, it might be advisable for the Hiring Manager, in future selection processes, instead of stating that a candidate “does not meet the minimum of 15 years of progressively responsible professional experience”, to use a different expression which better explains that a candidate fulfills the minimum of 15 years of progressively responsible professional experience in a formal and quantitative respect but not in a qualitative dimension (e.g. “fully versus only partially meets criterion” or “shortlisted candidates better fulfill criterion than longlisted candidates”).

72. While we understand Mr. Mirella’s frustration that it might be easier for staff members who worked their way up from a P-3 or P-4 to a P-5 position during the last 15 years to fulfill the “progressively responsible” criterion, the JO undoubtedly requires the “minimum of 15 years of progressively responsible professional experience” from all candidates including those who have been at the P-5 level for the last 15 years.

73. Mr. Mirella’s allegation that he should have been put on the shortlist like his colleague Mr. M. who had also been at the P-5 level for 15 years,<sup>29</sup> is without merit. As stated above, it was lawful and reasonable for the Hiring Manager to closely review the quality of the candidates’ professional experience. Mr. Mirella has not shown that his own professional experience equaled or exceeded that of Mr. M. His submissions in this respect remain vague and unsubstantiated.

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<sup>29</sup> Mr. Mirella’s proffer of the PHP of Mr. M., who was placed on the shortlist for the contested JO, also undermines his argument that the “progressively responsible” criterion unfairly favored staff members who progressed through several grades in 15 years, since Mr. M., like Mr. Mirella, had also not been promoted in 15 years.

Looking at the PHPs of both

**Judgment**

77. The appeal is dismissed, and Judgment No. UNDT/2021/143 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 24<sup>th</sup> day of March 2023 in New York, United States.

Judge Knierim, Presiding

Judge Sandhu

Judge Murphy

Judgment published and entered into the Register on this 2<sup>nd</sup> day of May 2023 in New York, United States.

Juliet Johnson, Registrar