



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2018-UNAT-878

Pinto
(Respondent/Applicant)

v.

Secretary-General of the United Nations

Counsel for Ms. Pinto: George G. Irving

Counsel for Secretary-General: Amy Wood

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/020, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 20 February 2018, in the case of

Resource Planning (“ERP”)] systems in the area of purchasing and/or supply chain is also highly desirable.

Languages

Fluency in oral and written English is required. Knowledge of French is desirable. Knowledge of another [United Nations] official language is an advantage.

... On 26 October 2016, the Applicant was notified by UNOG that her candidature was eliminated before the assessment exercises took place.

... On 23 December 2016, the Applicant filed a request for management evaluation of the contested decision with the Management Evaluation Unit (“MEU”).

... As requested on 3 January 2017, the Administration provided its comments to MEU on 12 January 2017, stating the following relevant facts:

... On 6 April 2016, [the JO] was advertised in [Inspira], with a closing date on 5 May 2016.

... 705 candidates applied for this position and 470 candidacies, including [the Applicant’s], were released by the Human Resources Management Service (HRMS/UNOG) to the Hiring Manager for further evaluation. As per the established practice at CSS, a draft evaluation matrix of these 470 candidacies was done by [two] staff of the CSS/Operations Support Unit (OSU), independently from the Hiring Manager. The draft matrix was further verified by the Head of the [CSS/OSU] before being transmitted to the Hiring Manager.

... Upon review of the candidacies, 178 candidates were found not suitable, 255 were placed on the long list, including [the Applicant] [...].

... [The Applicant’s] candidacy was placed on the long list, as it was determined that, based on [the Applicant’s Personal History Profile (“PHP”)] attached to her application, she met the mandatory criteria, but did not meet all of the [five] desirable criteria to be shortlisted. The evaluation entered in [I]nspira indicated the following:

- Three years of experience in the [United Nations] common system - (meets criteria)
- Experience with large scale and complex procurement operations - (meets criteria)
- Proven experience in at least [three] procurement areas - (meets criteria)
- Procurement experience for both field missions and headquarters offices - (does not meet [criteria])
- Experience working with ERP systems in the area of purchasing and/or supply chain (does not meet [criteria])

... Only candidates in the matrix that met the mandatory and desirable

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... The Administration further notes that the statement “completed all

all have equal value] while formally endorsing the decision of the CSS/OSU not to shortlist [Ms. Pinto)].² The UNDT held that “according to the mandatory provisions of sec. 7.4 of ST/AI/2010/3, only the Hiring Manager (...) has the exclusive competence (“shall”) to evaluate all applicants included in the long list” and such authority may not be delegated to the Recruiter.³ Because in this case the evaluation of the longlisted applicants against the desirable and highly desirable criteria contained in the JO was done by the CSS/OSU rather than the Hiring Manager, the Administration failed to follow the steps set out in ST/AI/2010/3 as well as in “The

she “suffered moral harm as a result of the unlawful decision which breached her due process right” and of the “Administration’s failure to fully and fairly consider her application”.⁹

Submissions

The Secretary-General’s Appeal

6. The Secretary-General submits that the Administration gave Ms. Pinto’s application full and fair consideration in accordance with the procedures set out in ST/AI/2010/3. The CSS/OSU properly conducted the pre-screening process in accordance with Section 7.2 of

the proper scope of judi

13. In particular, the UNDT correctly held that Ms. Pinto's candidacy had not been given full and fair consideration. The Secretary-General was unable to explain before the UNDT how Ms. Pinto's candidacy could have received full and fair consideration when it was excluded from consideration at the pre-screening stage for unjustified reasons in disregard of the steps to be followed by the Administration in the selection process. Full and fair consideration required more than simply allowing her to apply, considering that she had all the necessary qualifications for the position, that this was a lateral move within the same occupational group and that she had been found suitable for similar posts before. Ms. Pinto argues that the Secretary-General now concedes that the provisions set out in ST/AI/2010/3 were not followed and fails to cite an authority for the delegation of the task of reviewing the pre-qualified candidates and selecting candidates for the shortlist from the Hiring Manager to two Administrative Assistants.

14. Ms. Pinto asserts that the UNDT correctly concluded that the Hiring Manager's reliance on the shortlist prepared by the CSS/OSU and thus the usurpation of the Hiring Manager's role by clerical staff with no substantive knowledge of the position warranted the rescission of the decision not to shortlist her. The Secretary-General is unable to sustain the implicit suggestion that Ms. Pinto stood no chance of being selected as she had been shortlisted for similar positions and her full employment record clearly reflected a knowledge of and training and experience in ERP systems, principally the Umoja system now used for all procurement activities. The element of ERP experience was not clearly defined and she had affirmatively answered the detailed screening question]TJ22Twhii

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... The Secretary-General has a broad discretion in making decisions regarding promotions and appointments. In reviewing such decisions, it is not the role of the UNDT

this case, of a decision not to shortlist a candidate, if the candidate would have had a significant chance of selection.¹⁴

Judgment

27. The appeal is granted and Judgment No. UNDT/2018/020 is hereby vacated.

Original and Authoritative Version: English

Dated this 26th day of October 2018 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Raikos

(Signed)

Judge Knierim

Entered in the Register on this 20th day of December 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar