



## **Introduction**

1. The Applicant, a staff member at the P-3 level in the Procurement Division (“PD”), Office of Central Support Service (“OCSS”), Department of Management (“DM”) of the United Nations in New York, contests the decision conveyed to him on

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competencies, education, work experience, languages and other desirable skills. The work experience requirement was described as “[a] minimum of seven years of progressively responsible experience in high volume procurement operations, contract administration or related field”. The Applicant did not apply for these positions. In an email dated 21 January 2009 to the programme manager, who was also his supervisor, he stated that he may not be qualified for the positions and that “for personal/family reasons, [he is] unable to focus on the functions of Team Leader at present”.

7. On 17 February 2009, the Posts were advertised in Galaxy with a deadline of 18 April 2009 as 09-PRO-DM-OCSS-420350-R-New York and 09-PRO-DM-OCSS-420351-R-New York (G). The vacancy announcements were almost identical to the temporary vacancy issued on 14 January 2009 referred to above in para. 6. It was clear from the vacancies that the Posts were situated in the work unit of the Applicant and that the programme manager was the Applicant’s supervisor. The vacancy announcements for the Posts stated that the work experience requirement was “[a] minimum of seven years of progressively responsible experience in high volume procurement operations, of which at least three years at the international level”.

8. The Applicant applied for the Posts in Galaxy (the former United Nations online jobsite). No 15-day candidates were identified for either vacancy announcements. Following a screening of all applicants for the two Posts, from which it was determined that almost all candidates had applied for both Posts, the selection processes for the Posts were combined.

9. The Applicant undertook the written “Examination for P4 Post - Team Leader (Procurement Officer, [Logistics & Transportation Section, “LTS”]/PD) on August 5 2009” scoring 30 out of 40 points. Six other candidates obtained the same score, and nine candidates obtained a higher score.

10. On 20 October 2009, after enquiring about the date of the interview, the Applicant received an email entitled “LTS Team Leader Post” which advised him to provide his contact details while on leave so he could be informed of the date of the

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interview. By email dated 21 October 2009, the Applicant enquired about the

[The Applicant] was not recommended for selection as other candidates' performance at written test and interviews obtained better scores. In addition, although he was interviewed and scored, PD has noted, *a posteriori*, that he does not meet the experience requirements for the post.

### **Applicant's submissions**

15. The Applicant's voluminous submissions to the Tribunal, both in the application and in other submissions, criticise the procedure undertaken by the Respondent. Much of this criticism is of a general nature and does not address the prejudicial effect on him. The following is a summary of the Applicant's specific contentions:

- a. There are no provisions under the relevant rules for the combined evaluation of candidates for two posts;
- b. Internal candidates must be considered before external or 60-day candidates. As a 30-day mark candidate, the Applicant should have received priority consideration;
- c. The vacancy announcements for the Posts were misleading both in contents and title. They contained no managerial competencies;
- d. The members of the interview panel, who had not updated their training in competency-based interviewing techniques as mandated by the Secretary-General, failed to conduct the said interview in accordance with established policy and procedures. The nature of the questions asked was inappropriate as they were of a technical nature, specific to procurement operations and not competency-based;
- e. His qualifications were assessed *a posteriori*. Not only did the interview panel improperly consider his vast and broad career experience, but the panel acted *ultra vires* by assessing his number of years of experience, which was not the responsibility of a competency-based interview panel;



manager, the Central Review Board and, ultimately, the head of department, to assess his candidacy, including his qualifications and suitability for the post;

e. There are no mandatory interviewing trainings for interviewers. The interview was conducted properly;

f. The Applicant was informed of the outcome of the selection process.

### **Production of documents**

17. The Applicant made a request for an order for the *ex parte* production of the written test and the response of the selected candidates so that the Tribunal could make its own observations with regard to the response of the Applicant to the test. The Applicant asserts that this can be done without the Tribunal substituting its judgment for that of the Respondent.

18. In response to this request, the Respondent argued that it had already produced the redacted scores of the candidates and that, in any event, the issue to be determined is whether the Applicant can demonstrate that the evaluation of his candidacy was affected by illegality. According to the Respondent, the Applicant made no allegation that the assessments of the other candidates were improper. As such, there is no live issue as to whether or not the interview panel properly assessed the other candidates; accordingly, the substantive evaluations of the other candidates are irrelevant.

19. The Tribunal accepts the submission of the Respondent on this point, finds that the documents requested by the Applicant are not relevant to the agreed issues, and therefore dismisses the Applicant's request.

### **Law**

20. The policy governing staff selection exercises at the time of the contested selection process was set out in the administrative instruction ST/AI/2006/3 (Staff

selection system). This Administrative Instruction included a provision for the priority consideration of candidates at the 30-day mark in section 7.1:

In considering candidates, programme managers must give first priority to lateral moves of candidates eligible to be considered at the 15-day mark under section 5.4. If no suitable candidate can be identified at this first stage, candidates eligible at the 30-day mark under section 5.5 shall be considered. Other candidates shall be considered at the 60-day mark, where applicable.

21. The test for whether a candidate was treated in a “fair and reasonable manner” as contended by the Applicant has been set out by the United Nations Appeals Tribunal in *Rolland* as follows:

4. We hold that the selection process conducted by an interview panel can be rescinded under rare circumstances. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the selection shall be upheld.

5. We also hold that there is always a presumption that official acts have been regularly performed. This is called the presumption of regularity, but it is a rebuttable presumption. If the management is able to even minimally show that the appellant’s candidature was given a full and fair consideration, then the presumption of law is satisfied. Thereafter the burden of proof shifts to the appellant who must be able to show through







*Did the Respondent properly advise the Applicant of the outcome of the selection process?*

35. The Applicant alleges that he was not advised about the outcome of the selection processes for the Posts. However, he attached to his application to the Tribunal a copy of the 23 February 2010 email from the PD Director, addressed to all staff in PD which advised him of the selection decision. The Applicant also attached to his application a copy of his email dated 24 February 2010, addressed to the PD Director, in which he acknowledges the non-selection decision and seeks an answer to two questions regarding whether he should assume he is not eligible for the Posts and whether he should desist from applying for other P-4 level posts of Procurement Officer until such time he meets the requirements for such posts.

36. The Tribunal finds that by 23 February 2010 the Applicant had been advised of and was aware of the outcome of the selection process as on that date he learned of the identity of the selected candidates and he was not the one selected.

*If there were a breach of the selection process, is the Applicant entitled to compensation as a result?*

37. This is a case in which the Respondent agrees that a breach of procedure occurred: the failure to consider the Applicant as a 30-day mark candidate before consideration of the 60-day mark candidates. However, the Applicant was not eligible to be considered as a 30-day mark candidate because he did not meet the work experience requirement.

38. In accordance with the legal principles referred to above, a procedural irregularity in a selection process does not in and of itself entitle an applicant to compensation. He or she must demonstrate the harm suffered as a consequence of the breach.

39. In the present case, the Tribunal finds that the breach did not result in denial of a loss of chance of promotion because the Applicant was not eligible nor was he qualified

for the Posts. This is not a case where, but for the breach, the Applicant would have had a fair chance of promotion.

40. In any event, the Applicant does not specify or provide any evidence of harm which has been caused to him as a result of alleged breach. He has no entitlement to any compensation in this case.

**Conclusion**

41. There was a breach of procedure in the failure of the Respondent to separately consider the Applicant as a 30-day candidate; however, as he was not eligible to be considered for the posts, he was not denied a fair chance of promotion as a result of this breach.

42. All other claims and allegations by the Applicant are rejected. The application is dismissed.

*(Signed)*

Judge Coral Shaw

Dated this 10<sup>th</sup> day of February 2012

Entered in the Register on this 10<sup>th</sup> day of February 2012

*(Signed)*

Hafida Lahiouel, Registrar, New York