



UNITED NATIONS DISPUTE TRIBUNAL

Introduction

1. The Applicant, a Movement Control (“Movcon”) Officer with the United Nations Stabilization Mission in Haiti (“MINUSTAH”) at the Field Service (“FS”) level 6, is contesting the 6 February 2013 decision of Field Personnel Division (“FPD”), Department of Field Support (“DFS”), that he did not meet the educational requirements for the post as Chief of Movcon at the P-4 level at United Nations Mission in Liberia (“UNMIL”), for which he had been selected from the roster of pre-approved candidates on 7 May 2012. FPD/DFS found that the Applicant’s “Graduate Certificate” in business studies did not meet the educational requirements for the post, and following the decision, the Applicant was also removed from the roster.

2. In his initial application of 21 June 2013, the Applicant sought compensation for the loss of opportunity to take up the post at UNMIL and requested that the impugned decision be rescinded and that he be returned to the roster of Movcon Officers at the P-4 level. However, in February 2015, he was reinstated to the roster as a result of his obtaining a Master of Business Administration (“MBA”) degree in December 2014.

3. Accordingly, the substantive issues for the Dispute Tribunal to determine are whether it was proper for FPD/DFS to (a) reject the Applicant’s candidature for the UNMIL post and (b) then to remove him from the roster.

Facts

Relevant background

4. The following outline of facts is primarily based on the joint statement of agreed facts dated 17 September 2013 submitted by the parties in response to Order

degree or equivalent qualification he held was the Graduate Certificate in business studies from Charles Darwin University.

11. On 19 August 2010, the Applicant sent an email to FPD/DFS stating that (emphasis in original) “[his Graduate Certificate from Charles Darwin University] is in fact a postgraduate degree [and] **not** an undergraduate degree and the university acknowledged that [his] prior educational background was the equivalent of having attained a first level uni degree”.

12. The Applicant was interviewed and subsequently recommended to be placed on the roster for Chief Movcon Officer by the Field Central Review Body (“FCRB”). He was placed on the roster in January 2011.

13. On 5 May 2012, the Applicant received an email from UNMIL Human Resources, Civilian Personnel Section, advising him that the mission had selected him from the roster for the post of Chief Movcon Officer at the P-4 level. In response to Order No. 181 (NY/2015) dated 7 August 2015, the Applicant submitted that he was “not able to provide the position-specific job opening or his actual job application as to the best of his knowledge there was no position-specific job opening, nor did he directly apply for the post in question”. The Respondent contends that, “There was no position-specific job opening advertised for the position of [Movcon] Officer, P-4, with UNMIL. It was not an option for candidates, such as the Applicant, to apply for a position-specific job opening for the [Movcon] Officer position with UNMIL”.

14. The Applicant confirmed his availability and acceptance of the offer on 7 May 2012.

15. By facsimile of 8 May 2012, the UNMIL Director of Mission Support informed the Director of FPD/DFS that the Applicant had “been selected for the position [Movcon] Officer P-4 level, against VA # 424542”.

As mentioned in [the] previous email the Australian Qualification Framework [(“AQF”)] states that a Graduate Certificate is a level 8 qualification - as is a Bachelors with Honours and Graduate Diploma.

...

Generally a Graduate Certificate requires a bachelor qualification as an entry criteria, which goes some way to explaining its AQF level. In cases where a student has gained access to a Grad Cert on the basis of substantial relevant work experience, it is because a student has been judged to have achieved the learning outcomes of a Bachelor degree through their career. *In this way it can be seen that a Graduate Certificate does not replace, or is equivalent to a Bachelor degree, it simply has similar entry requirements in terms of previous education or experience.* Every employer should judge the suitability of a qualification to the job applied for.

21. On 22 October 2012, the Australian Government, through its Department of Industry, Innovation, Science, Research and Tertiary Education, informed that:

Graduate Certificates issued by Australian universities are postgraduate qualifications and are located at level 8 of the Australian Qualifications Framework. Level 8 also includes the Bachelor Honours Degree and the Graduate Diploma. For a point of reference, the Bachelor Degree qualification is located at level 7 and the Master Degree qualification is located at level 9. It is expected that those who

assignments”, including verification of academic qualifications. She further stated that:

On academic qualifications, OHRM has provided that only a bachelor’s, master’s, or doctorate degree obtained from a nationally accredited institution shall be accepted as valid. The accreditation status of an institution is determined by the competent national authority of the Member-States, which shall be confirmed in the World Higher Education Database compiled by the International Association of Universities and the United Nations Educational, Scientific and Cultural Organization or directly with the Member-States themselves.

...

In light of the above, DFS has therefore the delegated authority to make a determination of the facts and to proceed as follows when a candidate has provided an unaccredited academic qualification or incorrect information regarding academic qualification or work experience in the personal history profile:

...

- c. DFS determines that a current staff member has not made a misrepresentation but does not possess the academic qualification and work experience required for the position to which he or she has applied and for his or her current position. DFS may exceptionally allow the staff member to remain in his or her current position taking into account factors such as the length of service and performance. Such a staff member shall not move or be assigned to another position or duty station in the Organization. The case shall be treated as an exception and will therefore need to be recorded and documented as such.

24. On 4 January 2013, the Acting Chief of Recruitment, FPD/DFS, informed the Applicant that OHRM/DM had confirmed that FPD has the delegated authority to make determinations on negative reference, such as whether the Applicant possesses the required educational requirements for the post as Movcon Officer at the P-4 level, and stated that FPD was further reviewing the matter.

25. On 24 January 2013, OHRM/DM reiterated to the Acting Chief of Recruitment, FPD/DFS, that:

The United Nations does not have the authority to equate academic qualifications with standardized degrees, such as Bachelor's, Master's or higher. The United Nations only recognizes what is recognized by the national government from which the academic qualification is obtained.

26. On 6 February 2013, the Acting Chief of Recruitment, FPD/DFS, emailed the Applicant stating (emphasis in original):

The Charles Darwin University, a fully accredited institute, has accepted your life experience as an entry requirement for its Graduate Certificate Programme which offered 40 credit points. You do not

36. In his response dated 13 May 2015, paras. 18 and 19, the Respondent detailed the procedures, prior to and post 31 March 2014, by which a roster member who did not meet the academic qualifications of a job opening could be removed from the roster, and which were applied in the case of the Applicant. However, the Respondent failed to indicate the precise legal basis, such as any administrative issuance or the like, with the relevant paragraph number(s), from which the followed procedures derived or were promulgated.

37. By Order No. 136 (NY/2015) dated 8 July 2015, the Tribunal directed the Respondent to provide:

... the precise reference and legal basis, (citing specific references to any administrative issuances and the like), if any, for the correlated procedures, outlined in his 13 May 2015 response, at paras. 18 and 19.

38. The Tribunal further instructed the parties that, “Thereafter, pleadings shall be deemed to be closed, and insofar as the Tribunal will not deem further submissions necessary, it shall proceed to rendering its decision on the papers before it”. On 15 July 2015, the Respondent filed his response.

39. By Order No. 181 (NY/2015) dated 7 A

applying for the post, when he was placed on the roster, and when he was selected for a P-4 post;

h. It was only nine months later that FPD informed that his qualifications would not be accepted. As a result, the Applicant was not able to take up the post for which he had been selected and he has now been removed from the roster of P-4 candidates. Given the information made available to the Applicant by the Administration, it was reasonable for him to conclude that his qualifications were sufficient to secure a P-4 post. The Applicant relied on this information in making his application and accepting the post offered to him. In the circumstances, the Administration should be estopped from subsequently arguing that his qualifications were not sufficient for the post;

i. The United Nations cannot grant an equivalence not recognised by the national government, it cannot deny an equivalence recognised by the national government, and under the Australian Qualification Framework (“AQF”), the Australian Government grants an equivalence between a Graduate Certificate and a Bachelor’s with honours as a level 8 qualification. However, FPD based their rejection of this equivalence on an email from a non-government source, namely the Charles Darwin University;

j. When considering the equivalence of one qualification to another the relevant consideration should be the outcome from the course completed—the level 8 Graduate Certificate in terms of knowledge and skills is more advanced than those for a level 7 Bachelor’s degree and the Administration is essentially preferring a less rigorous qualification with less advanced learning outcomes;

k. The case of the Federal Court of Australia, *Bhatt v. Minister for Immigration and Citizenship*

Case No. UNDT/NY/2013/095

Judgment No. UNDT/2015/079

the responsibility of the Administration, any detriment to the staff member should be mitigated to the extent possible. The instant case can be contrasted since here there was no fault in the recruitment exercise conducted. All the appropriate bodies considered the information in the Applicant's PHP and concluded that he met the minimum education requirements. The information provided in that PHP has been found to have been accurate;

p. Verification of qualification implies an assessment as to whether the information provided in the PHP is true and correct. In the present case, RVU/FPD/DFS has essentially reassessed the question as to whether the Applicant met the minimum education requirements forming a different conclusion to that of previous review bodies based on the same information.

either a Master's degree or a first level university degree, which was required according to the job opening for the post;

d. The OHRM's "Guidelines for determination of level and step on recruitment to the Professional category and above" indicate that for the P-4 level, the minimum requirement is a Master's degree and seven years of relevant experience, or a Bachelor's degree and nine years of experience;

e. Under sec. 5.4.3.4 of the Manual for the Hiring Manager and sec. 3.3.4.4(a) of the Manual for the Applicant on the Staff Selection System of 8 October 2012, "A first level university degree may not be substituted by relevant experience";

f. The Charles Darwin University accepted the Applicant's life experience in lieu of a prior university degree in accepting him into the Graduate Certificate program and has confirmed that it waived its usual entry requirement of a Bachelor's degree. This does not mean that the Graduate Certificate itself, which only required 40 academic credits, can be considered equivalent to a Bachelor's degree, which requires 240 total credit points;

g. The reason the Graduate Certificate is listed at level 8 in the AQF table is

respect to evaluation criteria which will be decisive in the assessment of the candidates' suitability for the post". There is no ambiguity in the educational

certificate is an attainment higher than a bachelor's degree". The Federal Court of Australia concluded that "graduate diplomas" and "graduate certificates" are not "interchangeable or that their qualifications are of equal attainment";

l. The Applicant's reliance on the IAU/UNESCO list is misplaced. The IAU/UNESCO list within Inspira does not state or otherwise lead to the conclusion that the Applicant has obtained the academic qualification required by the job opening;

m. The Organization is also obliged to set aside from the recruitment process job applicants who do not meet those requirements (*Smoljan* UNDT/2014/104). Proceeding otherwise would be unfair as it would harm not only other job applicants who were not selected on the grounds that they did not meet the requirements of a job opening, but it would also be unfair and harm other potential job applicants who refrained from applying, conscious that they did not fulfil the same;

n. The staff selection system is silent on the procedures to be used in removing unqualified candidates from the roster, and the Applicant was removed from the roster following the procedures of DFS for doing so;

o. The discretion of the Secretary-General in this regard was recently upheld in *Scheepers et al.* 2015-UNAT-556. In that case, the Appeals Tribunal overturned the Dispute Tribunal's holding that the Secretary-General erred in adopting a requirement that was not formally promulgated in an administrative issuance. The Appeals Tribunal in announcing its judgment stated that the discretion of the Secretary-General under art. 101.3 of the United Nations Charter must be respected, absent any procedural infringements, bias or discriminatory practices;

t. The implemented DFS procedures ensure a fair and consistent application of its obligation to remove unqualified candidates from the rosters it administers. Those procedures provide job applicants with notice of any issue impacting their roster membership, and provide them with an opportunity to comment and provide evidence to support their roster membership. If the job applicant is unable to establish that they have the necessary qualifications, the Organization is required to take measures to correct the roster. Prior to 31 March 2014, this was accomplished by removal of the candidate from the roster. After 31 March 2014, this was accomplished by requiring the job applicant to remove the incorrect information from the PHP, which automatically resulted in their removal from the roster.

Consideration

Scope of judicial review

42. It follows from the Appeals Tribunal in *Luvai* 2014-UNAT-417, para. 31, that the Dispute Tribunal may examine all steps of a recruitment exercise, which would therefore also include whether the Appli

by the FCRB, rostered in 2011, thereafter selected in May 2012, and only given a final decision some eight months later in February 2013 that his qualifications were not accepted and the offer of appointment withdrawn.

44. Under *Abbassi* 2011-UNAT-110, para. 24, the Dispute Tribunal's review is, however, limited in that:

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 [Dispute Tribunal] or the Appeals Tribunal to substitute its own decision for that of the Secretary-General regarding the outcome of the selection process.

Did FPD/DFS fully and fairly consider the Applicant's candidature for the UNMIL post?

45. The Respondent contends that the Applicant was fully and fairly considered but did not meet the education requirements for the post as he held neither a Master's degree or equivalent, or alternatively, a first-level University degree with a relevant combination of academic qualifications and experience. Instead, he held a Graduate Certificate in business studies. The crux of this case is whether the Applicant's graduate certificate constituted a first level University degree with the relevant combination of academic qualifications and experience, and whether the Respondent's reasons for rejecting the Applicant's qualifications are reasonable.

46. It is trite law that the Secretary-General has a broad discretion in the appointment selection and promotion of staff. The Applicant does not deny the Respondent's averment in the reply that he had previously applied for P-4 level posts in 2007 and 2010 and was informed that his graduate certificate did not meet the educational requirements of a post at that level.

47. It is clear that in order to register for a Graduate Certificate, a Bachelor's degree is required as an entry criterion at an Australian university, alternatively

“substantial relevant work experience” will suffice. The Applicant did not have a Bachelor’s degree but had relevant work experience to enroll for the Graduate Certificate course. The correspondence from the Charles Darwin University confirms that “a graduate certificate does not replace, or is equivalent to a bachelor degree, it simply has similar entry requirements in terms of previous education or experience. Every employer should judge the suitability of a qualification to the job applied for”.

48. The Applicant therefore did not have a Master’s degree or equivalent, or a first-level University degree at the material time. The Tribunal also finds that the Applicant’s reliance on the IAU/UNESCO list, as indicated by the screenshot from Inspira, is misguided. The Graduate Certificate is a precursor to the Master’s degree, and in his case, the list serves to simply verify that the academic credential was obtained from a recognised and accredited educational institution. In all the circumstances, the Tribunal finds that the decision that the Applicant did not meet the educational requirements for the post, was not manifestly unreasonable nor unlawful, and was correct. He therefore could not have been considered as a candidate qualified for the post.

49. It was unclear from the papers what the job opening and the applicable educational requirements for the UNMIL post for which the Applicant was selected from the roster were. By Order No. 181 (NY/2015) the Tribunal requested that the Applicant file the position specific job opening and his actual job application for the contested post with UNMIL. The Applicant responded that to the best of his knowledge there was no position-specific job opening advertised for the position of Movcon Officer at the P-4 level with UNMIL, “nor did he directly apply for the post in question”. In response thereto, the Respondent clarified that there was no such position-specific job opening for the UNMIL post, that it was not an option for the Applicant to apply for it, and that the Applicant had applied for and was selected from the roster for the generic position as Movcon Officer at the P-4 level (10-LOG-

transmission dated 8 May 2012, confirms the Applicant's selection as Movcon Officer against "VA # 424542", which appears to be the same job opening number as that of the generic job opening of 2010, for which he had already been rostered in 2011.

50. The Tribunal notes that, pursuant to sec. 9.5 of ST/AI/2010/3 (Staff selection system), as amendment by ST/AI/2010/3/Amend.1, roster candidates may "be selected for *job openings* in entities with approval for roster-based recruitment" (emphasis added) and that sec. 4.2 of ST/AI/2010/3 requires that position-specific job openings shall be issued when:

- (a) A new position is established or an existing position is reclassified;
- (b) The incumbent separates from service;
- (c) The incumbent is selected

practices to handle such situations. As legal basis for these procedures, the Respondent submits that they derive from “the discretion vested in the Organization to implement the staff selection system”, “the policies underlying the staff selection system” and “the jurisprudence of the Dispute and Appeal Tribunal interpreting the same”.

54. The Respondent contends that the relevant DFS procedures at the time of the removal of the Applicant from the roster, namely prior to 31 March 2014, were as follows:

Step 1: Job applicant submits a PHP indicating educational qualifications and work experience.

Step 2: An initial review of an applicant’s PHP was conducted by an [Occupational Group Manager]. At this stage, the job applicant’s educational qualifications and work experience were not verified. Clearance at this stage was based solely on the information provided by the job applicant. Following a [FCRB], job applicants could be fostered at this stage. This would occur prior to a verification of the educational requirements and work experience listed in the job applicant’s PHP because there was a backlog of job applicant profiles that required verification.

Step 3: The RVU would verify the roster candidate’s listed educational qualifications and work experience, either because they were going through the backlog and/or because a request was made to verify a certain job applicant due to the job applicant’s selection for a job opening. As part of this process, the RVU would, inter alia:

1- Contact the job applicant and request that he or she place the RVU in touch with the relevant references such as educational institutions, and former employers;

2- Conduct a review of the documents provided by the references. Diplomas and degrees would be verified with the UNESCO database;

3- If a “negative reference” arose, i.e., if there was a problem with one of the listed qualifications or with the work experience, the RVU would research the issue and liaise as necessary with the job applicant, educational institutions, accreditation institutes, and former employers.

Step 4: If, after the RVU had completed its research, the negative reference had not been explained satisfactorily or otherwise remedied,

the matter would be referred to th

Otherwise, the Administration would risk arbitrary, or even worse, ill motivated decisions, or at least possibly give the perception thereof.

61. In the present case, in order to get on the roster, the Applicant's application
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Conclusion

64. For all the reasons set out above, the application is dismissed.

(Signed)

Judge Ebrahim-Carstens

Dated this 4th day of September 2015

Entered in the Register on this 4th day of September 2015

(Signed)

Hafida Lahiouel, Registrar, New York