



Case Nos.: UNDT/NBI/2020/084

Judgment No.: UNDT/2021/159

Date: 23 December 2021

Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

YOUNIS

v.

JUDGMENT

Counsel for the Applicants:

Self-represented

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Maureen Munyolo, AAS/ALD/OHR, UN Secretariat

c. The UNSOS hiring manager disregarded the CTO P-5 roster and the USG '26 guidelines to select a candidate who is not on the roster, does not

f. 7 R D Z D U a Q k a l e R 3 Compensation ' to relieve stress and financial losses, that is, two years ¶ V D O D U [U [P ' a " e ñ ñ H V " X • à Í ë

5HVSRQGHQW¶V VXSSOHPHQW DU\ FORVLQJ VXEPLVVLRQV

15. The Respondent submits that on

for PSJO No. 122057.

19. In determining these issues, the Tribunal will be guided by the following principles; there is a presumption that official acts have been regularly performed.⁸ Following a minimal showing by the Administration that the candidacy of a staff member was given full and fair consideration, the burden of proof shifts to the applicant, who must show through clear and convincing evidence that he or she was denied a fair chance of appointment.⁹ 7 KH 7 ULEX QDO ¶ V UROH LV QRW WR V for that of the administration.¹⁰

Whether the procedure laid down in the staff Regulations and Rules was full

20. The Applicant asserts that:

- a. The requirements of staff rule 9.6(e) were not complied with. Since he was in a downsizing mission and the only one from such mission who applied for the job, and he had a continuous appointment and is on the roster of CTO, P-5, the position should not have been advertised but should have been just offered to him.
- b. He meets and exceeds the requisite skills and qualifications for the position as announced in the vacancy announcement.
- c. The candidate who was offered the position did not have the requisite qualifications.

The alleged failure to comply with the requirements of staff rule 9.6(e).

21. Staff rule 9.6(e) provides in the relevant part as follows:

Termination for abolition of posts and reduction of staff

- (e) Except as otherwise expressly provided in paragraph (f) below

³DEROLWLRQ RI D SRVW¹³RU WKH UHGXFWRQ RI VWDII ‘

25. 7KHUH LV QR HYLGHQFH RI D GHFLVLRQ WR WHUPLQ

that his appointment has been affected by staff reduction. This removes the Applicant ¶ V claim from the ambit of staff rule 9.6(e). The assertion that the Mission was later downsized does not overcome the fact that it had not been downsized at the time material to this application. The complaint that the PSJO should not have been

Whether the applicable Regulations and Rules were applied in a fair, transparent and non-discriminatory manner.

28. The Applicant maintains that he meets and exceeds the requisite skills and qualifications for the position as announced in the vacancy announcement but the responsible officers manipulated the system by falsifying his experience in order to clear and select their favorite candidate.

29. According to the vacancy announcement, the required work experience for the position is {a] minimum of ten (10) years of progressively responsible experience in motor vehicle transport operations, movement control, multimodal transportation, logistics management including at least four (4) years in a supervisory position directly related to the coordination of complex surface transport operations in the International environment or a UN en W L W (emphasis added).

30. According to the suitability review dated 11 December 2019, the Applicant did not meet the required criteria related to work experience. It was explained that,

the Job Opening calls for 10 years progressive responsible, relevant experience. In reviewing his PHP, he appears to have at best seven and a half years of experience that could, possibly be considered. This

computed.

32. Upon perusing the Applicant ¶ PHP (whose contents are summarized in attachment 9 to the Applicant ¶ rejoinder), the Tribunal agrees with the Respondent ¶ assessment of the Applicant ¶ work experience with regard to criteria one, i.e., that the Applicant ¶

35. While it might be correct to say that the Applicant ¶ stated roles in his PHP¹⁶ (whose contents are summarized in attachment 9 to A S S O L F D Q W ¶ V U H M R L Q G H U relate to logistics management, the same cannot be said of their relationship with the U H T X L V L W H Z R U N H [S H U L H Q F H R I ³ S U R J U H V V L Y H O \ U H V S transport operations, movement control and multimodal transportation « ´

36. In his closing submissions, the Applicant draws the attention of the Tribunal to documents including 7 H U P V R I 5 H T O R U H O Q E H respective positions he had held and appraisals and achievements for those periods, and requests the Tribunal to verify his duties and responsibilities of CISS positions at the United Nations 3 H D F H N H H S L Q J) R U N F Y C I L Q a n d U S M I X W with the Office of Human 5 H V R X U F H V 0 D O G I E M H a t t h e U N e d N a t i o n s Headquarters in New York to confirm that these positions were indeed directly responsible for the coordination of surface transport operations in both United Nations entities.

37. All that information, even if the Tribunal were to gather it would be irrelevant to this decision. This is because the information was not part of what the decision maker based his decision on. The impugned decision was based on what the Applicant presented in his PHP.

38. With regard to criterion one, based on the information which was before the decision-maker at the time, the Tribunal finds no evidence that the Applicant meets and exceeds the requisite skills and qualifications for the position as announced in the vacancy announcement. Further, that there is no evidence that the responsible officers manipulated the system by falsifying the Applicant ¶ experience in order to clear and select their favorite candidate.

39. About the second criterion; (3 at least four (4) years in a supervisory position directly related to the coordination of complex surface transport operations in the , Q W H U Q D W L R Q D O H Q Y L U R Q P H Q W R U n d e r t h e A p p l i c a n t W L W \ « ´ W seems to only challenge the Respondent ¶ assessment of his experience between July

¹⁶ Reply, annex R/9.

2013 and October 2014, and between January 2009 and May 2010.

40. The Applicant ¶ roles between July 2013 and October 2014 are stated to be;

UNFICYP, Chief Integrated Support Services (Special Post Allowance at the P-5 level)

The position entails direct supervision for all logistics sections, namely Transport, Engineering, Supply, Medical, Movcon and logistics. My responsibilities for Transport among others included overall management and coordination of UNFYCIP surface transport operations of its owned and leased vehicle fleet, as well as formulation of policies controlling the use and safety of the fleet within UNFYCIP area of operation. The total number of Transport staff members I supervised were 18 who were overseeing the maintenance and services for UN and leased vehicles.

41. Th H \$ S S O L F D Q W ¶ January 2009 and May 2010 was;

UNMIN, Chief Logistics Services, (P-4):

The position entails direct supervision for all logistics services namely Transport, Movcon, Engineering and Supply. My responsibilities for Transport among others included overall management and coordination of UNMIN surface transport operations of its vehicle fleet, as well as formulation of policies controlling the use and safety of the fleet within UNMIN area of operation. The total number of Transport staff members I supervised were 17 SM to manage more than 200 vehicles.

42. It is noted that the required experience related to 3 complex surface transport operations ´ The vacancy announcement does no W T X D O L I \ W K H , Z R U G 3 F R P S O H applicants were not guided about W K H Q D W X U H O H Y H O R I 3 F R P S O H [L W \ ´ work experience to fit in that definition, which is problematic. It was left to the Respondent to determine whether D Q D S S O L F D Q W ¶ work experience fit the definition. This is a shortcoming which the Respondent should rectify in future.

43. Be that as it may, the information provided by the Applicant to the decision-maker does not indicate the complexity of the roles which the Applicant executed. For this reason, the Tribunal agrees with the Respondent ¶ assessment of the Applicant ¶ V experience in this regard.

appointment.

