



UNITED NATIONS DISPUTE TRIBUNAL

Original: English

Introduction

1. The applicant applied for three P-5 translator positions in the Arabic Interpreters Section in New York (AIS) in the Department of General Assembly and Conference Management (DGACM). She was not recommended as a qualified candidate for two of these positions as it was found that she had not demonstrated the required competencies during a competency-based interview, particularly regarding teamwork. The applicant appeals this decision, which she also claims resulted in her being excluded from the third and similar P-5 position. The applicant now works for the UN in Vienna.

Facts

2. On 19 October 1982 the applicant started at the UN as an Arabic interpreter at the P-1 level. After successive promotions, she became a P-4 translator in 1989, where she has served at step-15 for the past four years. Since 2000, the applicant has submitted several applications for the P-5 positions in question in AIS.

3. The filling of P-5 vacancies and the e-PAS evaluations in the Arabic Interpreter Section (AIS) have been mired in controversy for years. It appears the issues in relation to the applicant initially started in 2000 and 2003 when the applicant appealed decisions concerning two different promotion processes to the UN Administrative Tribunal. In 2007 the Administrative Tribunal held that the applicant had not been given fair consideration concerning two of the positions, referring, *inter alia*, to violations of her due process rights. However, this judgment deals with different questions to those relevant here.

4. While the applicant's case was pending before the Administrative Tribunal, other promotion exercises began in April and May 2004 for two P-5 positions in AIS. This was the commencement (called the first round) of the selection process out of which the present case arises. The applicant applied for both positions and was interviewed in early November 2004. At this time, she had sought rebuttal of earlier

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other candidates were unaware of these notifications. On 12 October 2005 the applicant filed a further request for suspension of action regarding this process. Her request was granted and the promotion process was suspended again.

7. In December 2005, upon the recommendation of the Staff Council, OHRM decided to establish a working group to review the promotion process. This group,

“other desirable skills” (20) and “competencies” (80). The last category was divided into the following sub-categories: “professionalism” (45), “teamwork” (5), “leadership” (5), “commitment to continuous learning (5) and “interview” (20). Of these, teamwork was to be rated according to whether the candidate “helps colleagues and ... helps organize work in booth, ie documents, statements, etc”, while the score for the interview was to be based on whether the candidate “communicates well ... is alert focused”.

10. Also attached to the note was an explanation of the performance/promotion criteria, which read as follows –

According to OHRM and CR bodies:

1. The promotion criteria comprise of two parts:

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a) CID16orTT1 1 TC2_

based”, involved no testing of any translation skills of the candidates either in writing or orally. Instead, the candidates were asked a range of similar pre-prepared questions concerning the competencies mentioned in the vacancy announcement. The PCO also prepared the evaluation criteria (approved by OHRM) and, based on these, interview questions were drafted jointly by the panel members. During the interviews, each panel member took handwritten notes and placed grades in tables prepared by the PCO. This material has not been produced.

13. The PCO testified that, following the interviews, she prepared a narrative in respect of each candidate reflecting the handwritten notes and tables of scores of the panel members, convening a meeting to ascertain that the narrative fairly reflected what the members had written, having first provided them with the notes to enable the comparison to be made. The panel members confirmed the accuracy of these narratives. That concerning the applicant (the narrative) was as follows –

[The applicant] has not demonstrated the competencies required for this post and is therefore not recommended.

Professionalism:

When asked about the benchmarks for measuring performance as a senior interpreter, [the applicant] referred only to “best performance” and did not go beyond that failing to answer questions meaningfully. [The applicant]’s answer were incomplete and vague. She provided an example of the need to be politically aware during sensitive and demanding high profile meetings. She failed though to demonstrate awareness of additional supervisory functions of the post of senior interpreter, including deputizing for the Chief of section, and punctuality.

Teamwork:

[The applicant] provided examples about teamwork. She explained how she helped free lance interpreters assigned to politically sensitive meeting by staying after her assignment was over in order to brief them about the situation. She also demonstrated how she at one point had helped with solving a technical problem when assigned as a team leader. But [the applicant]’s responses on questions related to her interaction with Secretariat staff revealed tension in her relationships with colleagues. She feels “entitlement” to services, and “impatience”

when such services are not forthcoming, an attitude that could strain relations and adversely affect the whole team. She also referred to “specific arrangements” made with regard to punctuality which run counter to being available without conditions all the time to undertake assignments. [The applicant] twice referred to “territorial issues” and specific working habits in responding to questions on how she rises above differences, which points towards another possible source of tension in relation with team members.

COMMUNICATION:

During the interview, [the applicant] came across as a good communicator. However, she was unable to demonstrate that she uses her good communication skills as part of a competency needed for the discharge of her duties with the members of her team in the booth or with the Secretariat staff at large. References to strained relations with Conference and Document officers during the interview were a case at point.

Commitment to continuous learning:

[The applicant] demonstrated that she had adequate IT skills although she mentioned that she uses DT search to download terminology, which shows that she is not exactly aware of how or for what purpose the data base is used.

Leadership:

[The applicant] did not provide convincing arguments about her leadership skills. She was short in specific examples that could have demonstrated those skills. She supervised junior colleagues and shared handwritten glossaries with them but could not elaborate on how or why her team members would trust he

Division, DGACM, all of the seven candidates' scores were listed, ranging between 129.5 and 154, placing the applicant in an overall fifth place with a total of 147.56, comprising 135 points for the "overall evaluation" and 12.56 points for the interview.

15. Also submitted to the USG for his consideration regarding the final selection of the two candidates were documents described as "interview matrix", "promotion criteria matrix", "overall matrix (with interview and promotion criteria)", list 12, the vacancy announcement, the P-5 generic job profile, the interview questions, the candidates' evaluations, the agreed interview evaluations and the individual interview evaluation forms. It appears as neither the panel members' own notes nor their scoring matrixes were not provided to the USG.

16. In what appears to be the "interview

(14/20); “delivery” (3/5), “endurance” (3/5), “preparation studies docs.& glossaries” (3/5), “ability to cope with fast delivery” (3/5), “punctuality, presence” (3/5), “teamwork, helps colleagues, organizes docs” (3/5), “lead/guidance” (2/5), “ct. to learning, contributions to the profession” (3/5). The applicant’s total score noted on this table was 50.56, which included her interview score of 12.56.

18. Finally, in the “overall matrix (with interview and promotion criteria)” was noted each candidates’ total score out of 180 (the applicant receiving the abovementioned total score of 147.56) which was accumulated upon the basis of the candidate’s scores in the following categories (in parenthesis is noted the applicant’s score): “Work Experience ... X yrs @ UN Capacity in Range of UN Meetings, including SC, GA” (50/50); “Language ... (VA)” (15/15); “Education ...” (15/15 points); “Other Skills ... ‘C’ languages 10 Consecutive 5 IT Skills 5” (17/20); “Professionalism ... Quality of target and source language, accuracy, delivery” (30/45); “Team Work” (3/5); “Leadership” (2/5); “Commitment to learning” (3/5), and “Interview” (12.56/20). The last five scores were imported from the promotion criteria matrix, although categories were named slightly differently and “Professionalism” was the accumulated figure for all the first four categories listed in the promotion criteria matrix.

19. The PCO disclosed in her evidence that she had adjusted several of the scores to reflect, as I understand her evidence, the comparative ratings given by the panel members but her explanation was somewhat confused. Thus, although she said that the panel concluded that the applicant had not demonstrated sufficient competence for the teamwork requirement of the posts, the PCO said she noted her score in the overall matrix under this head as 3 (where two members of the panel had given the applicant 2.5 and three had given her 3, thus upgrading slightly). I am somewhat skeptical about the reliability of the PCO’s recollection in this particular respect, having regard to the complexity of the process and the lapse of time. I think it fair to state, however, that I thought she was telling the truth as best she could. The fundamental problem was the unnecessary complication introduced by the use of the matrices without consistent terminology

25. The PCO made subtle, arbitrary changes in the interview matrix concerning both the criteria and their relative weight. The weighting of the criteria in the promotion criteria matrix and the interview matrix was substantially different to the weighting accorded by the performance/promotion criteria of the ASG. This was therefore also *ultra vires* and unlawful. For instance, “professionalism” was weighted twenty-five percent in list 12, twenty percent in the interview matrix and seventy-five percent in the promotion criteria matrix. According to list 12, the interview was to account for 20 out of a possible total of 180 for each candidate, but ultimately the entire selection process was predicated on this interview. Furthermore, the results of the interview were double-counted as they formed part of both the interview rating itself (20/180) and the basis for extrapol

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31. The applicant demonstrated the required competencies for the position as shown by the records of the case. Even if the Tribunal finds that the applicant did not comply with the “teamwork” requirement, she was still suitable, since ST/AI/2006/3 states that a candidate will be deemed as having been a successful candidate if he/she demonstrates at the competency-based interview *most or all* of the competencies required for the post. (It is unclear on which section in the Instruction the applicant bases this submission, but it is assumed that she refers to sec 7.5 which states that: “For candidates identified as meeting all or most of the requirements of the post, interviews and/or other appropriate evaluation mechanisms, such as written tests or other assessment techniques, are required.”)

32. In determining whether the applicant possessed the required competencies, the independent scores given by the panel should be decisive rather than the PCO’s subjective opinion as reflected in her narrative. The respondent bears the burden of proving that the applicant failed to demonstrate the required competencies, since the respondent had the access to the evidence (*Sefraoui* (UNDT/2009/95)). In this regard, the respondent only relied on the PCO’s witness statement regarding her narrative which did not necessarily reflect the other panel members’ opinions. It is unproved that the applicant did not demonstrate the required competencies, for which the Tribunal should rely on the available evidence, namely the matrices. If these had not been manipulated by the respondent, the applicant would have shown the required competencies.

33. The respondent violated sec 1.8 of ST/AI/1999/9 (Special measures for the achievement of gender equality) since the applicant demonstrated that she possessed the required competencies. Based on the overall matrix the applicant was substantially equal to a successful male candidate for which reason the applicant should have been chosen. By giving all candidates the maximum rating in terms of years of experience, the respondent effectively ignored sec 1.6 of the Instruction since this deprived the applicant of the advantage of having her years of experience calculated cumulatively as stipulated in the mentioned Section.

34. The violations of the applicant's rights have caused her career to plateau and will also have implication for her pension rights and entitlements.

Respondent's submissions

35. The initial recommendation in the first round should not be upheld. The cancellation of the first round was correct, since the process violated the staff selection policy as the evaluation criteria were inconsistent with ST/AI/2002/4 (Staff selection system). The applicant also accepted the procedure outlined by the ASG in connection with the withdrawal of the second round promotion exercise by not objecting to it at a subsequent meeting (assumedly the 8 November meeting) with the ASG, despite the fact that she had refused to cooperate with the working group established to solve the problems.

36. The third round selection process was in full accordance with par 7.5 and Annex II of ST/AI/2006/3, and the PCO did not act outside the scope of her authority

manipulated the interview scores or that the entire selection process was predicated solely on the interview. Even though the matrices show that the interview was accorded only 20 out of 180, the applicant did not demonstrate during the competency-based interview that she possessed the required competencies. The PCO's weighting of the criteria was proper and accurate, as demonstrated by the evaluation of the applicant's professionalism in the promotion criteria matrix and the overall matrix. Some recommended candidates scored less than the applicant in some skills but demonstrated all competencies, which is consistent with par 10 of the Guidelines to ST/AI/2006/3 for the promotion evaluation, which states that the documented record should compare the candidates against the evaluation criteria and not against each other.

39. The applicant's single score for communication skills was not reflected in the promotion criteria matrix since these were tested during the interview. This matrix instead included the combined scores given to the candidates for sub-elements for each competency, such as professionalism, teamwork, leadership and commitment to continuous learning. No extraneous factors therefore existed to explain the absence of communication from the core competency matrix.

40. The PCO did not admit that the relative weights of the criteria in the ASG's promotion criteria were not reflected in either the promotion criteria matrix or the

candidates, and the PCO did not add any more factors than those predetermined by the management.

42. As to reliance on the narrative and not the scores, the PCO acted in full compliance with sec 7.6 of ST/AI/2006/3, which requires the submission of a written record of evaluations. Similarly, par 10 of the Guidelines to ST/AI/2006/3 state that “the written record should ... be included in GALAXY under the applicable heading or headings of competencies, educati

uses descriptive language comparing the particular attributes of a candidate to the competencies necessary to satisfy the requirements of the position, it will not always make it clear whether the candidate possessing the particular attribute to some degree or other, is sufficiently qualified in that respect for appointment. Merely to describe the candidate's attributes will not in this event indicate whether he or she has – to use simpler language – passed or failed. This evaluation follows from or is explained by the descriptive narrative. In this case, the panel agreed that the applicant “has not demonstrated the competencies required for [the] post” and the description of her attributes made it clear that the shortcomings which were identified were the reason for this overall evaluation. These were clearly significant and adversely affected each competency and fully justified the overall evaluation.

47. It is, of course, inherent in such an evaluation that no numerical score can ever be more than indicative. Part of the problem is that the use of numbers gives what is, and inevitably must be, an essentially misleading impression of precision. To take but one example, one merely has to ask, what is the actual difference in leadership skills that distinguishes a score of, say, 3 from a score of 3.5. It is for this reason that it is imperative that the panel state whether a candidate did or did not demonstrate possession of the requisite attributes for appointment. If shortcomings in any particular respect were sufficient to put the candidate out of contention, then it would be desirable – from the point of view of transparency – to indicate the particular quality that was found to be lacking. This is sometimes difficult to do since many of the required attributes overlap to a greater or lesser extent and it might well be that it is the overall accumulation of shortcomings which will render the candidate unsuitable. In this case, the narrative did not identify, as it happened, any particular lack as placing the applicant out of contention: a number of matters were identified as unsatisfactory for a variety of specified reasons. It seems to me that, providing the narrative was a fair reflection of the true consensus of the panel, then it was both clear enough and sufficient to satisfy the requirements of transparency and good faith or, in the argot of administrative law, due process. The evidence of the PCO, therefore, that the narrative trumped the scores makes good sense.

48. It follows that little, if anything, useful was added by the matrices, so far as the applicant in particular was concerned. But their potential advantage was that they enabled an indication (and no more, for the reasons explain

proper, but necessary, providing, of course, that there was indeed a consensus. Of course, if there had been a dissent, transparency required that dissent to be fairly stated. I also accept that, although her recollection as to the scoring was confused and unreliable, whatever she thought she was doing was done honestly and with good intentions. However, the lack of competence displayed cannot be ignored and was especially unfortunate given the necessity for a fair and transparent process. In the end, there is no adequate explanation for the apparent contradiction between the scores and the consensus decision expressed

53. At its simplest, the scores suggest that the applicant in fact qualified for consideration (though, on this basis, she certainly would not have been the preferred

significance of the score for the “interviews” misconceives the elements of this item. It does not refer to the overall function of the interview of assessing the candidates’ competencies.

57. It remains necessary to deal with the e-PAS issue but this can be briefly done. First, there is a live question about the reliability generally of the e-PAS evaluations in the AIS over the relevant period. Secondly, accepting the applicant’s e-PAS evaluations, as amended on rebuttal, to be appropriate – as must be done in all fairness to her – they related to her position as a P-4. It is reasonable to infer that the requirements of a P-5 post required not only a higher degree of competence where the functions were more or less identical to those of a P-4 post, but that some functions were significantly different: for example the nature of working with a team and the requirement of leadership. These different attributes, it is fair to infer, were clearly in the minds of the panel and provided the context for the evaluations expressed in the narrative. Accordingly, the decision at the outset to exclude reference to e-PAS evaluations was not unreasonable and I am not persuaded that consideration of the applicant’s claims was unfairly handicapped by this exclusion.

58. It follows from this that it was not only proper but essential for the PCO to put

prior attempts which had directly involved the applicant. To do otherwise is to compound the inevitable disappointment, which is a natural consequence of failure, with entirely unnecessary distress that, in part, the rules are designed to avoid. In short, it is one thing to accept the decision of the umpire following a fair contest and another to feel (not entirely unreasonably) that one has been cheated of what one feels is deserved. The transparency and logic of the process should have prevented this from occurring.

60. Since the shortcomings in the process have not affected the propriety of the outcome, compensation should be nominal but sufficient to reflect the real, and not trivial, interest of the applicant in compliance with her contractual rights. Accordingly, I award the applicant the sum of USD1,000. The application is otherwise dismissed.

(Signed)

Judge Michael Adams

Dated this 7th day of April 2010

Entered in the Register on this 7th day of April 2010

(Signed)

Hafida Lahiouel, Registrar, New York