



Case No.: UNDT/NY/2009/111

Judgment No.: UNDT/2010/134

Date: 26 July 2010

## **Introduction**

1. The applicant, a Programme Budget Officer in the Office of Programme Planning, Budget and Accounts (OPPBA), appeals the decision not to select him for a P-5 level Senior Programme Budget Officer post advertised on 28 February 2007. The applicant alleges that he was not given full and fair consideration for the post.

2. The applicant filed an application with the Dispute Tribunal on 3 September 2009. A directions hearing was held on



- b. The evaluation criteria were arbitrary, incorrect and not in accordance with the existing requirements. The panel's evaluation of the applicant contained errors of fact and wrong findings, including with respect to the applicant's skills, competencies and experience. Furthermore, it is unclear how the successful candidate, who in the past had been evaluated at a lower score than the applicant, became more eligible than him for the current post.
- c. The failure to give full and fair consideration to his candidature in several selection exercises demonstrated a pattern of discrimination against him in comparison with other candidates who possessed less competence and a shorter length of service than the applicant.
- d. The JAB denied him due process because it failed to consider his request to review all pertinent documents and information relevant to his appeal.
- e. The respondent did not produce the information regarding the designation of the successful candidate to perform significant functions in financial management, personnel management and general services administration, as required by ST/AI/2006/3 and ST/SGB/2005/7. No evidence has been produced as to whether the applicant was considered for designation to perform significant functions.

8. The applicant requests compensation calculated on the basis of the difference between a P-5 salary with corresponding steps that would have accrued and his present P-4 salary, beginning from the date when his promotion to P-5 would have become effective in 2007. He also requests compensation in the amount of one year's net base salary for denial of due process and discrimination against him.

## **Respondent's submissions**

9. The respondent's principal contentions are:
  - a. The applicant received full and fair consideration for the post. Experience and qualifications listed in the vacancy announcement were in line with the requirements set out in the generic job profile for the post of a Senior Finance and Budget Officer/Section Chief at the P-5 level. The number of years of experience was not required to be specified in the vacancy announcement. In any case, the length of experience is only one of the requirements and all the recommended candidates had more than ten years of experience. Both the applicant and the successful candidate were found to be eligible for the post. The final selection decision was made in compliance with sec. 9.2 of ST/AI/2006/3, which provides that:

The head of department/office shall select the candidate he or she considers to be best suited for the functions, having taken into account the Organization's human resources objectives and targets as reflected in the departmental human resources action plan, especially with regard to geography and gender, and shall give the fullest regard to candidates already in the service of the

ecotpns[a7,ahy aT23-1.15 Td(wTjiTST/rod(wTjr22(j the )2224 e. )]TJEMC eCt e.i3



is the decision not to select the applicant for the P-5 post advertised on 28 February 2007. Submissions regarding the non-selection of the applicant for other vacancies are only relevant insofar as they may inform the motive behind the impugned decision.

11. It is the applicant's submission that the JAB denied him due process by failing to consider all relevant documents and information. The Dispute Tribunal is empowered to hear appeals of contested administrative decisions, and not of the JAB's findings, recommendations or reports. Therefore, the submission of the applicant regarding the proceedings before the JAB is not a matter for consideration by this Tribunal. In any event, the Tribunal has considered the relevant documents and information.

12. On 7 June 2010, I ordered the respondent to provide the applicant with redacted copies of the selection records, including interview evaluations, for the contested selection exercise. The documents were subsequently provided to the applicant and, on 22 June 2010, the applicant filed a submission with his comments, including with respect to the evaluations of

Case No.



relevant experience in financial management. Hands on experience in UN financial environments. Work experience in peacekeeping or other field operation is highly desirable.

16. Therefore, the experience criterion in the vacancy announcement was in line with the relevant generic job profile. Having found this, I now turn to whether the generic job profile used to create the vacancy announcement was contrary to any established rules.

17. I find that the applicant's reliance on the Guidelines for Determination of Level and Step on Recruitment to the Professional Category and Above is misguided. The Guidelines provide the minimum experience requirements for placement at certain levels and state that the required experience for holders of a PhD or Masters degree for P-5 level is ten years. However, the Guidelines provide that "[f]or candidates appointed under the 100 series after selection for a vacancy advertised under ST/AI/2006/3, effective 1 January 2007, the grading guidelines are to be used **only for determination of step** on recruitment. These candidates have, by definition, been found to meet the requirements of the post and are appointed at the level of the post in all cases" (emphasis in original). The Guidelines further envisage that vacancy announcements may not necessarily require a certain number of years of experience—they state that "[w]here a [vacancy announcement] does not specify number of years of experience, [human resources officers should] go to step I of the salary scale and use candidate's experience and academic qualifications to determine additional steps". Therefore, even if I were to accept the Guidelines as anything more than a mere internal procedure of an advisory—rather than binding—nature, their language plainly demonstrates that they do not create a requirement that a certain number of years of experience is to be included in every generic job profile or vacancy announcement.

18. Whether or not the generic job profile in question was in violation of ICSC/22/R.17, referred to by the applicant, is a more difficult question and, in the end, one that the Tribunal does not need to consider. ICSC/22/R.17 states that the proposed standard for financial management specialists (described as "Tier II

Case No. UNDT/NY/2009/111

Judgment No. UNDT/2010/134

Case No. UNDT/NY/2009/111

Judgment No. UNDT/2010/134







successful candidate, the applicant would have been appointed. Therefore, I find that the applicant is not entitled to any compensation as his rights had not been breached.

### **Conclusion**

30. I find that the requirement of progressively responsible experience in the vacancy announcement in question corresponded to the relevant generic job profile and was not prejudicial to the applicant. Further, although the Organisation failed to properly carry out and document its consideration of the designation of the successful candidate to perform significant functions in financial management, this did not result