



UNITED NATIONS DISPUTE TRIBUNAL

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

EDELENBOS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Stéphanie Cochard, UNOG

Introduction

1. On 29 June 2009, the Applicant filed an application with the former United Nations Administrative Tribunal contesting the decision not to promote her to a P-5 post of Senior Human Rights Officer in the Office of the High Commissioner of Human Rights (“OHCHR”). She requested the Tribunal:

a. To rescind the Secretary-General’s decision not to follow the recommendation of the Joint Appeals Board (“JAB”);

b. To order the Respondent to pay her, in accordance with the recommendation of the JAB, an amount equal to three months’ net base salary;

c. To order the Respondent to pay her adequate monetary compensation and order any additional relief that the Tribunal may consider appropriate;

d. To take appropriate measures to ensure that similar irregularities do not recur.

2. The case, which was pending before the former Administrative Tribunal, was transferred to the United Nations Dispute Tribunal on 1 January 2010 pursuant to the transitional measures set forth in General Assembly resolution 63/253.

3. By a further written submission on 7 February 2011, the Applicant provided, at the request of this Tribunal, additional information to justify the damage allegedly sustained and the financial compensation sought. Estimating that, were it not for the procedural irregularities complained of, she would have

Facts

4. The Applicant entered the service of the United Nations on 1 October 1991 as Associate Human Rights Officer at level P-2 at the Centre for Human Rights. She was given a permanent appointment in 1995, then promoted to P-3 in 1998, and P-4 in 2004.

5. On 26 July 2007, the P-5 post of Senior Human Rights Officer in the Treaties and Council Branch of OHCHR was advertised under Vacancy Announcement 07-HRI-OHCHR-414120-R-Geneva, with a closing date for applications of 24 September 2007.

6. The Galaxy recruitment system recorded a total of 48 applications for the post in question, 14 of them supposedly from 30-day mark candidates, including the Applicant and the candidate finally selected, and 34 of them from 60-day mark candidates. All the applications were reviewed at the same time.

7. In February 2008, a selection panel conducted interviews for the above-mentioned post, and for a similar P-5 post that was also vacant, with a total of 11 candidates, including the Applicant and the candidate who was finally selected.

8. On 26 March 2008, following the interviews, the programme manager suggested that the High Commissioner send the Central Review Board a list of four qualified candidates, including the Applicant, for the two posts in question. The candidates were ranked, with a recommendation that the candidate finally selected and one other candidate be appointed to the two vacant posts, with the Applicant in third place and another candidate in fourth.

9. On 11 April 2008, the Central Review Board approved the selection process followed, and proposed that the High Commissioner for Human Rights proceed with her final selection.

10. By email of 28 April 2008, the Chief of Human Resources of OHCHR, on behalf of the High Commissioner, asked the Office of Human Resources Management (“OHRM”) at the United Nations Secretariat, New York, to approve the selection of a male candidate for the post to which the present appeal refers.

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15. By letter of 10 September 2008, the Administrative Law Unit, on behalf of the Secretary-General, rejected the Applicant's request for review, and on 26 September 2008 the Applicant lodged her appeal with the JAB.

16. The JAB submitted its report to the Secretary-General on 26 March 2009. It found that the candidate selected, a 60-day mark candidate, had been reviewed at the same time as the Applicant, a 30-day mark candidate. It recommended that the Secretary-General pay the Applicant three months' net base salary.

17. By letter of 1 June 2009, the Deputy Secretary-General notified the Applicant of the Secretary-General's decision not to follow the recommendation of the JAB, and to reject her appeal.

18. On 29 June 2009, the Applicant filed the present Application before the

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process that it considered necessary to pass judgment, namely the interview reports and the interview panel's recommendations, the related Galaxy reports, the Central Review Board's recommendation, an email exchange between the OHCHR and OHRM (April-June 2008), and the final selection decision as recorded in Galaxy. Those documents had been obtained by the JAB, which had used them to reach its conclusions, but had not shared them with the Applicant. The Tribunal also ordered the Applicant to keep the said documents confidential.

24. On 7 February 2011, the Applicant provided additional information to substantiate her damage. She also submitted observations on the documents relating to the selection process. On 14 February 2011, the Respondent replied to the Applicant's latest written submissions.

25. On 18 February 2011, a hearing was held in which the Applicant and Counsel for the Respondent took part in person.

Parties' contentions

26. The Applicant's contentions are:

a. The selection process was irregular. The successful candidate was wrongly treated as a 30-day mark candidate when in fact he was a 60-day mark candidate, which amounts to a violation of section 7.1 of administrative instruction ST/AI/2006/3. The fact that the selected candidate fully met the requirements for the post has no bearing on the irregularity pointed out above;

b. The Secretary-General may not argue that, as long as the programme manager had not selected a qualified candidate and had not submitted his proposal to the Central Review Board, he was entitled to review the applications from 30-day mark staff members at the same time as those of all the other 60-day mark candidates;

c. The fact that the candidate selected is a man with the same nationality as the Applicant reinforces the impression that the selection

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the Tribunal recalls that, when the Admi

31. While the Administration argued in some of its written submissions that the candidate selected fulfilled the requirements for a 30-day mark candidate, it abandoned that argument in its pleadings before the Tribunal, so that it is no longer disputed that the candidate finally selected, who did not have geographic status while the post in dispute was subject to geographical distribution, should have been treated as a 60-day mark candidate, in accordance with section 5.6 cited above.

32. On the other hand, it was argued before the Tribunal that it was proper for 30- and 60-day mark candidates to be reviewed together, without contravening the provisions of administrative instruction ST/AI/2006/3.

33. However, the said administrative instruction stipulates:

4.5 ... Staff members are encouraged to submit their applications as early as possible, because staff fulfilling the eligibility requirements set out in section 5.4 shall be considered 15 calendar days after posting, and those fulfilling the eligibility requirements set out in section 5.5 shall be considered 30 calendar days after posting.

...

6.2 Applications of candidates eligible to be considered at the 15-day mark but received before the 30-day mark shall nevertheless be transmitted for consideration to the department/office, provided that the head of department/office has not submitted to the central review body a proposal for one or more candidates eligible to be considered at the 15-day mark. Applications for a vacancy posted with a 60-day deadline from candidates eligible to be considered at the 30-day mark but

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retirement age until 2020, her pension rights will not be adversely affected by the unlawful act committed and no account need be taken of this factor.

43. The Tribunal therefore considers that, in view of the foregoing, an award