

UNITED

6. On or about 20 June 2010, the Field Personnel Division, Department of

- a. She is currently a Conduct and Discipline Officer in UNAMID and has also been a member of the FCRB since 2009.
- b. The role of the FCRB is to review the selection process and to make sure that it conforms to the Staff Rules and Regulations.
- c. She has come across situations where an Expert Panel does not interview all eligible candidates or where mistakes are made by Expert Panels in considering candidates. The role of the FCRB in such situations is to correct the errors.
- d. The FCRB may on some occasions fail to catch all the errors and could clear recommended candidates without seeing the errors. In some instances a flawed exercise by an Expert Panel may pass unnoticed by the FCRB as they have to juggle several duties as well as their regular jobs.
- e. The MINURCAT process was mission-specific and is not the same as the Expert Panel process. In the MINURCAT process, there were few members and they employed very mission-specific criteria.
- f. Before a candidate's interview, two steps were required to be passed, that is, initial clearance by the Occupational Group Manager based on the baseline qualifications set out in the vacancy announcement and clearance by the Programme Manager to ensure that the candidate meets the mission-specific criteria. Prior to 22 April 2010, technical clearance was required.
- g. There are some general problems recognizable in the MINURCAT evaluation. There is no evidence that the mission-specific criteria were actually tested for and the candidates recommended were not shown to have actually met those criteria which were very narrow. It was also not shown why a large number of candidates were eliminated.
- h. The MINURCAT evaluation is problematic because the

They state that some responses were marginal without stating why the responses were considered marginal.

- i. When there are mission-

n. If the Expert Panel had to interview all the candidates who have been technically cleared, they would have to interview hundreds of candidates.

o. An expert panel may be generic or targeted to find candidates in a specific mission. An Expert Panel targeted for a specific mission, as is the MINURCAT case, is different for a generic population of the rosters.

21. Mr. Siri's evidence is summarized below:

a. Currently as the Director of Mission Support in MINUSTAH, he is involved in the selection of senior staff at the P-5 and D-1 levels. At MINURCAT, he was also the Director of Mission Support and participated in the selection of candidates.

b. He is familiar with the selection exercise for the Senior Legal Officer position in MINURCAT.

c. Because of the specifics of the position, a Legal Officer was a member of the interview panel. The Chief Judicial Affairs Officer was present as well as a Human Resources official and himself.

d. The interviews were recorded by a Human Resources Officer who took notes.

e. The Applicant did not meet the minimum competencies in two areas of "planning and judgment" and "decision-making". As she was regarded as "marginal", she was not recommended to the FCRB. The two recommended candidates were to be placed on the roster.

f. He approved and signed the evaluation report relating to the Applicant. The report was transparent and fair. All the panel members agreed that the candidate would be rated as "marginal".

g. The selection process for the post was not completed because, in
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instead a Senior Legal Officer from Headquarters was recruited for a six-month period on a temporary appointment from November 2010 until the close of the mission on 30 April 2011.

22. On 15 May 2013, the Office of Legal Affairs (OLA) informed the Applicant that she had been placed on the P-5 Senior Legal Officer roster as a result of a

Merits

27. She was entitled to an interview by the Expert Panel when it conducted its exercise for the P-5 Senior Legal Officer position in June 2010. The Expert Panel interviews serve to populate the roster in their respective occupational groups; it is from this roster that hiring managers in the peacekeeping operations are to select their candidates. An Expert Panel must consider all candidates.

28. Having been technically cleared (and being one of the few female candidates), she was entitled to a full and fair consideration for the roster for Senior Legal Officer, particularly given that she had performed the functions for 19 months at the United Nations Mission in Sudan (UNMIS).

29. The Expert Panel made an arbitrary decision not to interview a number of candidates including the Applicant in the interest of expediency.

30. Contrary to the Respondent's argument that the decision of the Expert Panel not to consider her for the FCRB roster in light of MINURCAT's consideration was a valid exercise of discretion, taking into account the need to preserve resources, the Applicant submits that

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c. The report's summaries of her responses on "planning and organizing" and "judgment and decision-making" do not reflect her answers at all and appear to be those of another candidate.

d. The summary of her responses to the "teamwork" and "communication" interview question is erroneous.

e. The overall evaluation refers to a male candidate.

39. The Applicant submits that the evaluation report supports her argument that the MINURCAT selection exercise suffered from serious procedural errors.

40. With respect to the Expert Panel's evaluation report of her 30 March 2011 interview, the Applicant observes as follows:

a. Her interview took place on 30 March 2011, despite the report stating that it took place in April 2011.

b. The evaluation report was finalized on 2 August 2011, over four months after the interview process took place. It was submitted to the FCRB on 11 August 2011, over two months after the latest time it was supposed to have been submitted according to the interview panel chair.

c. Fair process requires that an evaluation report be done contemporaneous to the interview, or immediately thereafter – not four months after the interview took place.

d. The timeline indicates that FPD waited to see whether she would file an appeal before finalizing its report and submitting it to the FCRB.

e. The delays in FPD's actions are prima facie evidence of retaliation ~~de~~ ~~atoc~~ ~~FP~~ ~~pefoiz~~

g. An examination of the evaluation of the specific competencies upholds her argument of bias and the absence of a fair and accurate record.

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b. Given that in memoranda dated 4 and 7 February 2013, the Assistant Secretary-General, Office of Human Resources Management, approved the

46. The Applicant's claim that the interview of 30 March 2011 constituted the Applicant's receipt of the response by management is misconceived. Staff rule 11.4 states that a response from the MEU must be in writing. It cannot be by way of performance. The Applicant's claim that the granting of a second interview process was a response is incorrect and not supported by the record of her correspondence with the MEU.

47. The Applicant cannot validly claim that the deadlines for 50 9rg 0.990 062-29(v)331()-h3(c)-3(o

the outcome of her evaluation as they did not impact on her full and fair consideration for the roster.

51. On 30 March 2011, the Applicant was interviewed for the FCRB roster pursuant to a new Expert Panel process. The decision to reconsider the Applicant was taken following her request for management evaluation. The decision was without prejudice to the merits of the original decision to consider the Applicant during the MINURCAT application process.

52. If the Applicant had been successful in the interview process, she would only have been recommended for placement on the roster. She was not successful and was, therefore, not placed on the roster.

53. There is nothing in the email from the SRSG/UNMIT that amounts to an assurance that the Applicant would have been selected for the post had she been on the roster.

54. The Applicant's claim that her career prospects have suffered is without foundation. Since being reconsidered by the Expert Panel, she was promoted to the position of Senior Legal Officer at the P-5 level on 20 May 2011.

55. The Applicant's request that she be placed on the FCRB roster should be dismissed. She has not demonstrated that her right to full and fair consideration was breached in the MINURCAT process and she took part in a second interview process where the

60. Part of the documentary record in this case is a series of emails exchanged between the Applicant and Mr. Wallace, a Legal Officer in the MEU in which he advised that MEU would hold her case in abeyance pending the conduct of the interview which took place on 30 March 2011.

61. Staff rule 11.2(c) provides as follows:

The Applicant's case was therefore held in abeyance until 30 March 2011. The Applicant, as a result, had until 30 June 2011 to file her Application which she did on 6 June 2011. Having suspended the time limit for the Applicant's management evaluation request, the Respondent is estopped from arguing that the claim is now not receivable.

65. The Tribunal finds and holds that this Application is receivable.

Was the Expert Panel legally required to interview candidates also being considered by MINURCAT in June 2010? Was the Applicant given full and fair consideration for the FCRB roster during the 7 June 2010 MINURCAT interview?

66. The Respondent submitted that the decision not to consider the Applicant for the FCRB roster by an Expert Panel (in June 2010) in light of her consideration by MINURCAT was a valid exercise of discretion and that FPD decided not to interview the Applicant for the FCRB roster on the basis that the Applicant was already being interviewed by MINURCAT for a P-5 post. Further, this included considering her for the FCRB roster, therefore, rather than consider the Applicant for the same roster twice; FPD decided that she should only be considered once, during the MINURCAT selection exercise. The Respondent submits that this was a lawful exercise of discretion and it took into account a very relevant consideration, namely, the need to preserve resources.

67. The Respondent further submits that the decision not to interview the Applicant unun

procedure as laid down in the Staff regulations and Rules was followed; and whether the staff member was given fair and adequate consideration¹.

69. Further, all the candidates that appear before an interview panel have the right to full and fair consideration. A candidate challenging the denial of a promotion must prove through a preponderance of the evidence any of these grounds: that the interview and selection procedures were violated; that the members of the panel were biased; that the panel discriminated against an interviewee; that relevant material was ignored or that irrelevant material was considered; and potentially other grounds depending on the unique facts of each case².

70. The evidence before the Tribunal is that the MINURCAT process was mission-specific and was not the same as the expert panel process. In the MINURCAT process, there were few members and they employed very narrow, mission-specific criteria. Further, when there are mission-specific criteria, it is presumed that the objective of the Programme Manager is to fill a post, not to populate the roster.

71. The Applicant applied for the generic job opening for the post of “Senior Legal Officer (P-5), multiple duty stations”. ST/AI/2010/3 defines “generic job openings” as,

job openings which are based on generic job profiles, used for the purpose of creating and maintaining viable rosters of qualified and available candidates for immediate and anticipated job openings identified through workforce planning in entities with approval to use roster-based recruitment, peacekeeping operations, special political missions and other field operations.

72. It is the Tribunal’s view that the MINURCAT process was for an immediate job opening with mission specific criteria. Much as it was argued that the MINURCAT interviews in June 2010 were also to be used for populating the roster, the Respondent did not provide any evidence to show if any candidate was rostered as a result of that exercise. The Expert Panel should have interviewed all

¹ Majbri 2012-UNAT-200 at p.98.

² Ibid, at p. 8.

the candidates for the generic job opening for the post of Senior Legal Officer for the purpose of giving them an opportunity to be placed on the roster for similar job openings in the future.

73. In conclusion, the Expert Panel was legally required to interview candidates also being considered by MINURCAT in June 2010 but failed to do so. The Applicant, subsequently, was not given full and fair consideration for the FCRB roster prior to June 2010.

74. Further, the uncontested evidence before the Tribunal is that the MINURCAT interview of 7 June 2010 was marred by several fatal deficiencies as enumerated by the Applicant, namely:

a. The evaluation report states that she attended the University of Assas, a school which she has never attended.

b. The evaluation report states that she worked with USA Property an organization where she has been employed q-137(a)-3(n)31(d)-32()-115(w)-2(n)-11(i)22(c)-2h(n)31(

June 2010 MINURCAT interview. She has also established that the Expert Panel was legally required to interview candidates also being considered by

was supposed to have been submitted according to the interview panel chair.

c. The Expert Panel members did not sign off their agreement to the evaluation report.

g. The evaluation report and cover memorandum were submitted to the FCRB on 11 August 2011. However, it was only one year later that the FCRB “reviewed and approved the process.

79. The Tribunal is convinced that the errors highlighted by the Applicant coupled by the excessive delay in compiling the interview report vitiated the entire process. The interview report was only produced pursuant to an order of the Tribunal after the excessive delay. The Tribunal agrees with the Applicant that the interview results were arranged to support the Administration’s position in this case.

80. The Applicant was not given full and fair consideration during the 30 March 2011 Expert Panel interview. For these procedural errors, the Applicant is entitled to compensation.

Conclusion

81. The Tribunal orders the Respondent to pay the Applicant compensation of two months’ net base salary at the level she encumbered in UNMIS for the procedural errors.

82. The Applicant is also entitled to moral damages. The Tribunal recognizes the stress caused to the Applicant by the circumstances of this case and awards USD1000 as moral damages.

83. All other claims are dismissed.

(Signed)

Judge Nkemdilim Izuako

Dated this 31st day of January 2014

Entered in the Register on this 31st day of January 2014

(Signed)

Abena Kwakye-Berko, Acting Registrar, Nairobi