
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/061

Judgment No.: UNDT/2017/029

Date: 26 April 2017

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

RIECAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON LIABILITY AND
RELIEF**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Steven Dietrich, ALS/OHRM
Alister Cumming, ALS/OHRM

and upheld the administrative decision not to recommend him for the said position.

9. The Applicant's case is that he was not given a full and fair assessment by the assessment/interview panel.

10. The finding of the assessment/interview panel that the Applicant did not fully meet the requirements of the competencies of professionalism and leadership are contrary to the Applicant's performance evaluation reports (e-PAS) for the five consecutive preceding reporting periods.

11. During the said preceding five consecutive reporting periods, the Applicant was assessed by three different First Reporting Officers (FROs) as fully competent for leadership. During the same five reporting cycles, he was assessed in three cycles as outstanding for professionalism and in the two remaining cycles as fully competent also for professionalism.

12. Moreover, the assessment/interview panel's report with regard to the competency of professionalism is not a truthful record of the Applicant's answers to questions asked by the said panel. The relevant and substantial parts of the answers given by the Applicant to the panel were not recorded in its report of his interview. For instance, two of the examples given by the Applicant during the interview with respect to dealing with incompatible data on prices and Millennium Development Goals (MDGs) were not recorded.

13. The suggestion of the assessment/interview panel's report that the Applicant's professionalism was limited to the statistics-related information technology (IT) did not emanate from the interview. Rather, that view was evidently brought in by the Economic Commission of Europe (ECE) representative on the panel who knew the Applicant's expertise in IT when he worked at the ECE.

22. The said record showed that all the candidates were asked the same questions and assessed against the same competencies. All the candidates were assessed against the applicable evaluation criteria of professionalism, communication, teamwork, leadership and managing performance.

23. The Applicant was found to have fully met the competencies of communication, teamwork and managing performance. The panel concluded that he had only partially met the position's requirements on the competencies of professionalism and leadership.

24. The Applicant has failed to provide any actual evidence of irregularity on the part of the Respondent in the selection process. He has therefore failed to discharge the burden of showing that he was denied a fair chance of selection.

25. The Respondent followed the guidelines for competency

interview panel or that a note-taker be present. This means that there is no legal requirement for the presence of an *ex-officio* panel member during the interviews. Therefore, the absence of an *ex-officio* panel member neither vitiated the selection exercise nor impacted on the full and fair consideration of the Applicant.

30. Similarly, although the Inspira Recruiters' Manual refers to *ex-officio* panel members and a note-taker, it does not state that such *ex-officio* members or a note-taker must be present at the interview.

31. The panel members evaluate the performance of candidates at the interviews and it is their responsibility to create the record of the evaluation which is a summary of the Applicant's answers and not a transcript of the interview.

Guide were not followed; and (3) there was no *ex-officio* member or note-taker at the interview.

37. The assessment/interview panel in its report had rated the Applicant as only partially meeting the requirements in the competencies of Professionalism and Leadership. The said report with regard to the Applicant's performance in the two competencies is hereunder reproduced:

Professionalism

The candidate is familiar with using statistics-related information technology in his work. However during the interview, he did not demonstrate sufficient substantive knowledge and competence in the production and application of economic statistics when responding to a question asked about the production of statistics in national and international institutions. Despite prompting from the panel, his response to dealing with problems of incompatible data, in prices series and MDG statistics, did not provide a clear methodology of how he would address this problem. He has produced a number of reports and papers on statistical issues, and is capable of reviewing and editing the work of other colleagues. He gave an example of the challenges he faced when he moved to a different duty station five years ago. He showed his persistence and commitments to his work by adapting to the new working culture and resolving staff conflict issues. He gave another example of some of his work in ECE where he observed deadlines to achieve results and showed that he was motivated by professional concerns.

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consideration at all. It has already been submitted that the assessment/interview panel is not bound by any candidate's e-PAS reports.

45. Nevertheless, the question must be asked whether an assessment/interview panel is obligated to put the e-PAS of an internal candidate submitted in the process of a job selection into any kind of consideration in its assessment. In order to answer this question, it is imperative to briefly and quickly examine the purpose of the performance appraisal system of staff members of the United Nations Organization.

46. One of the purposes of the Performance Appraisal System within the United Nations is to recognize successful performance and to address underperformance in a fair and equitable manner. Performance ratings that show successful performance on the part of the staff member in question justify the award of salary increment.

47. Successful performance ratings shall be considered during the selection process for a staff member for a post at the same level or at a higher level, without prejudice to the Secretary-General's discretionary authority to appoint staff members.

48. In *Simmons* 2012-UNAT-222, the Appeals Tribunal held that e-PAS reports are important for the staff member because they inform him/her of how well or how poorly he/she has performed and how his/her performance has been adjudged by reporting officers and gives opportunity for performance improvement.

49. The Appeals Tribunal went further and held that not only is the e-PAS report helpful in the staff member's professional development and for other uses, it is also helpful to interview panels when the staff member is being considered for promotion or selection to a higher post or a fresh post.

50. In other words, both ST/AI/2010/3 and the pronouncements of UNAT affirm that where the e-PAS reports of a staff member are available to an assessment panel in the course of a selection process, the panel has a duty to

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and holds that the Applicant's candidacy for the position of Chief, Development Statistics and Information Branch was not given full and fair consideration.

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62. In view of the foregoing, the Tribunal awards the Applicant three months' net base pay at the salary the Applicant was drawing on 24 April 2014 with interest on the award of compensation at the US Prime Rate from the date of this Judgment to the date the payment is actually made to the Applicant.

63. All other pleas are refused.

(Signed)

Judge Nkemdilim Izuako

Dated this 26th day of April 2017

Entered in the Register on this 26th day of April 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi