



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2016/084

Judgment No.: UNDT/2018/100

Date: 8 October 2018

Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: Nairobi

Registrar: Abena Kwakye-Berko

INTRODUCTION

1. At the time of the application, the Applicant served as a Human Resources Officer, on a fixed term appointment, at the FS-6 level with the United Nations Mission in South Sudan (UNMISS). She is based in Juba, South Sudan.

PROCEDURAL HISTORY

2. On 21 November 2016, the Applicant filed this application with the United Nations Dispute Tribunal (UNDT/the Tribunal) in Nairobi, challenging the recruitment process pertaining to two Generic Job Opening (GJO) Roster positions that she had applied for. GJO 36628 was advertised in 2014 for a post at the FS-6 level, and GJO 40276 was advertised in 2015 for a post at the P-3 level.

3. The Respondent filed his Reply to the application on 21 December 2016.

4. On 4 September 2018, the Tribunal issued Order No. 128 (NBI/2018) setting this matter down for a case management discussion (CMD).

5. The CMD took place, as scheduled, on 7 September 2018. The Applicant, who is self-represented was present in person, as was counsel for the Respondent. Both parties agreed that this matter could be decided on the basis of their respective written submissions and that they had no further submissions to make.

FACTS

6. The Applicant joined the Organization on a fixed term appointment as a Secretary at the G-4 level on 15 April 1992.

7.

Chief Security Advisor, the Staff Counselor and the Welfare Officers, the HRO works on the mission's response to a natural disaster/incident with focus on anticipating, planning and coordinating the overall HR response in coordination with FPD. Performs other related duties as required.

FS-6

Competencies

PROFESSIONALISM

TEAMWORK

COMMUNICATION

P-3

Competencies

PROFESSIONALISM

TEAMWORK

PLANNING AND ORGANIZING

FS-6

Education

32. The official acts of the Respondent enjoy a presumption of regularity.² The Secretary-General is vested with a wide discretion to select staff members for positions within the Organization. It is within the discretionary authority of the Secretary-General.³ The Dispute Tribunal will not substitute its own judgment for that of the Secretary-General.⁴ Selection for a position is a competitive process.⁵

Legal Analysis

A case of non-selection

33. The Applicant avers that she is not challenging the selection process. She advances the position of contesting the evaluation criteria and the rostering process for two individually classified job openings which require different skill sets and competencies. However, her theory of prosecution deals does in fact deal with the overriding issue of how staff are selected or, in her case, not selected as a result of applying to fill an existing job opening.

33. By administering one written portion of this test for two classified jobs, the one examination herein met the standards of testing for two individually classified job openings. The P-3 GJO was based on the complexity of its functions and the range of its responsibilities. As such, the aptitude and competency to perform the complex functions and the range of responsibilities required for a P-3 Human Resources Officer can be and were ascertained from a common written test administered on a common platform that accepts only one answer for each question, whether it is meant for the FS-6 or P-3 GJOs. Bear in mind that successful candidates for each job opening were then subjected to competency-based interviews uniquely tailored to the respective job openings. And administering separate tests would have made no difference in the scoring since

² *Rolland*, UNAT-2010-119 at para. 26.

³ See *Safwat*, UNDT/2010/066, paragraph 39 (holding that it was within the discretionary authority of the Administration to evaluate an applicant's qualifications for the post); *Dumbalt*);

Case No.

35. The
was unlawful is without merit. The written assessment consisted of a Multiple Choice Questionnaire, and a Situational Judgment test, and an essay section. The same written essay was presented for both GJOs. The record shows that the assessment criteria for the essay section of the test for both GJOs were the same. The essay was divided in four (4) short questions. Each question was worth twenty (25) points with the total of one hundred combined score of seventy four percent (74%) was below the minimum pass mark required for the P-3 GJO. However, she was deemed to have passed the written assessment for the FS-6 GJO and subsequently interviewed for the position on 14 March 2016. On 25 August 2016, she was placed on the roster for the FS-6 GJO.

36. ST/AI/2010/3 (Staff Selection System), specifically section 7.5, provides as follows:

Shortlisted candidates shall be assessed to determine whether they meet the technical requirements and competencies of the job opening. The assessment may include a competency-based interview and/or other appropriate evaluation mechanisms such as, for example, written tests, work samples tests or assessment centres.

37. The Hiring Mana -based test or
other qualification exercise, which may be essay questions, technical test and/or
section 5.4.5 of the Inspira Manual for the
Hiring Manager.

38. The Applicant did not reach the next stage in the rostering exercise for the GJO because she failed to obtain the passing score for the written assessment of 75 per cent, 5 percentage points more than the FS-6 GJO passing score. She was given full and fair consideration.

39. The written assessment branch of the two different GJOs was administered which required some different skills sets and competencies overall. In accordance with the Staff Selection System, a written assessment forms an integral part of the evaluation criteria for every GJO. Section I (f) of ST/AI/2010/3 states:

The Applicant has not suffered the loss of a fair chance of promotion as a consequence of the contested decision

48.

Resolution 69/203, provides that compensation for harm may be awarded only where supported by evidence.

49. career opportunity is without merit. She bears the burden of substantiating the pecuniary and/or non-pecuniary damages that she claims to have suffered as a consequence of the contested decision.⁶

50. In this regard, the Applicant states as follows:

The Staff Selection System requires staff members to have roster membership in order to be selected for a particular position. Presently, I am serving

52. However, please note that whilst it is entirely understandable that by missing the opportunity to advance to the competency-based interview for the P-3 position by one point is disappointing, this does not amount to a viable legal challenge of the entire process. The passing scores were different due to the added complexity of the duties and competencies required for the P-3 position.

53. Accordingly, the contested decision was lawful. The application is rejected.

(Signed)

Judge Alexander W. Hunter, Jr.
Dated this 8th day of October 2018

Entered in the Register on this 8th day of October 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi