
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/012
Judgment No.: UNDT/2018/136 Corr.1
Date: 21 December 2018
Original: English

Before: Judge Alessandra Gr(AleeW*ñBT/F1 48.544 0.48001 ref*EMC /P AMCID 113a15

Opening no. 63461. The ASG/OICT concluded that Ms. SS (name redacted) was the most suitable rostered candidate for the position. On the same day the Applicant was informed that Ms. SS was selected for the position but had not yet accepted and that her release from her position was not yet negotiated.

6. On 12 October 2016, at 7:04 p.m., the Applicant received an email notification from Inspira that another candidate from a roster of pre-approved candidates had been selected for the post.

7. After being informed on 11 October 2016 that another candidate was selected for the position, on 12 October 2016, the Applicant filed a request for management evaluation of the decision not to select him for Job Opening no. 63461.

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explore the ongoing informal resolution of [the case] through current *inter partes*

41. Upon the request of the Tribunal, the parties presented their arguments regarding joining Case No. UNDT/2017/063 with the present case. The Applicant indicated that the two cases are connected as the second decision contested in the present case, namely the decision not to fully and fairly consider him for

to file their closing submissions based only on the evidence already before the Tribunal.

44. On 2 April 2018, the parties filed their closing submissions.
45. On 25 September and

ii. It fails to explain how the Applicant met the requirements, not referring in any way to what he had stated in both his cover letter and Personal History Profile, which certainly details an extensive level of experience in this area, namely 31 years.

h. If this evaluation had been submitted as a case to a Central Review Board, it would have been sent back as not explaining how or why. The evaluation matrix showed the assessments of three other applicants in addition to Ms. SS. One other was rated as, . The comments under work experience in the evaluation are exactly the same as in evaluation. This is not individually assessing suitability for the position; it was just cut and pasted, indicating that no effort was taken whatsoever in assessing his experience. The other

the Hiring Manager), neither message made reference to any ERP experience of Ms. SS whatsoever. ERP experience also was listed as the primary requirement in other job openings for the same post, such as Job Opening no. 63461, previously encumbered by Mr. MM prior to his resignation and which was upgraded from the P-5 level to the D-1 level after the approval of the ICT strategy and budget. When justifying the selection and announcing the appointment of Mr. MM, the Hiring Manager specifically highlighted Mr. MM experience. ERP experience was also required for Job Opening no. 54326 (D-2). When announcing the lateral transfer of Ms. DLP (name redacted) from Umoja to OICT, the Hiring Manager again specifically highlighted

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evaluation criteria have been properly applied and that the applicable procedures were followed. If a list of qualified candidates has been endorsed by the central review body, the head of department/office/mission may select any one of those candidates for the advertised job opening, subject to the provisions contained in sections 9.2 and 9.5 below. The other candidates shall be placed on a roster of pre-approved candidates from which they may be considered for future job openings at the same level within an occupational group and/or with similar functions.

[]

2.5 Heads of departments/offices retain the authority to transfer staff members within their departments or offices, including to another unit of the same department in a different location, to job openings at the same level without advertisement of the job opening or further review by a central review body. Heads of mission retain the authority to transfer staff members, under conditions established by the Department of Field Support, within the same mission, to job openings at the same level without advertisement of the job opening or further review by a central review body.

2.6 This instruction sets out the procedures applicable from the beginning to the end of the staff selection process. Manuals will be issued that provide guidance on the responsibilities of those concerned focusing on the head of department/office/mission, the hiring manager, the staff member/applicant, the central review members, the recruiter, namely, the Office of Human Resources Management (OHRM), the Field Personnel Division of the Department of Field Support, executive offices and local human resources offices as well as the occupational group manager and expert panel. Should there be any inconsistency between the manuals and the text of the present instruction, the provisions of the instruction shall prevail.

Section 3

Scope

3.1 The process leading to selection and appointment to the D-2 level shall be governed by the provisions of the present instruction. For positions at the D-2 level, the functions normally discharged by a central review body shall be discharged by the Senior Review Group prior to selection by the Secretary-General.

3.3 Heads of departments/offices who have been delegated authority to appoint and promote staff up to and including the D-1

level for service limited to the entity concerned are encouraged to opt for the full application of the system for upcoming job openings, in which case the appointment of the individual selected as a result would not, or would no longer be, limited to service with the entity concerned. Should the head of department/office exercise this option, the case would be considered by a Secretariat central review body and would be referred to the Secretary-General for decision if the central review body found that the evaluation criteria had not been properly applied and/or that the applicable procedures had not been followed.

Section 4

Job openings

4.8 The deadline for applying for job openings *shall* normally be:

- (a) 60 calendar days after posting for position-specific job openings in the Professional and above categories, unless in cases of unanticipated job openings OHRM or the local human resources office exceptionally approves a 30-day deadline;

4.9 Generic job openings *will* be posted for the period of time that is deemed sufficient to attract the number of qualified candidates sufficient to satisfy the vacancies projected through workforce planning.

Section 7

Pre-screening and assessment

7.5 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 sample tests or assessment centres.

7.6 For each job opening, the hiring manager or occupational group manager, as appropriate, shall prepare a reasoned and documented record of the evaluation of the proposed candidates against the applicable evaluation criteria to allow for review by the central review body and a selection decision by the head of the department/office.

7.7 For position-specific job openings, up to and including the D-

a. Applicants with a first level university degree combined with additional qualifying experience (earned after receipt of degree) are also considered to have met the educational requirements equivalent to a Mast

b. Certain positions require specialized studies for which a first-level university degree and experience cannot be substituted, such as Medical Doctors. For such positions, the minimum requirements shall be indicated as advanced in both the job opening and evaluation criteria.

When evaluating academic credentials of staff members and

Education Database (WHE
Educational, Scientific and Cultural Organization (UNESCO) and the
International Association of Universities (IAU). This database
provides a comprehensive list of higher education institutions
sanctioned or accredited by

applicants are subsequently invited for a competency-based interview.

3. Short-listed applicants shall be assessed to determine whether they meet the technical requirements and competencies of the job opening. Hiring Managers or

information should be provided in the transmittal memorandum for submission to the relevant Central Review body. In identifying and assigning the panel of assessors, by nomination, the Hiring Manager must ensure that the individuals selected fulfil the appropriate requirements as follows:

- a. Professional knowledge and experience:
 - i. Years of professional work and intrinsic knowledge of the subject area or work in the job family.
 - ii. Relevant occupational experience/employment for the previous five years is desirable.
- b. Personal qualities: Self-responsibility, ability to listen, ability to express him/herself clearly, patience, reliability and flexibility to handle changing circumstances, sense of humour, persistence, judgment and ability to quickly recognize and understand a situation and to be able to think analytically.
- c. Freedom from outside pressure: There is no appearance of a conflict of interest.
- d. Competency-based selection and interviewing skills and follow-up programme: Training module has been completed prior to serving on the panel.
- e. Training in Inspira: Completion of Inspira self-study training.

9.4 Conducting Assessment Exercises

1. A reasoned record shall be prepared for the applicant who has passed the assessment exercise and the interview, against the applicable evaluation criteria set out in the job opening. The Hiring Manager convokes the most promising applicants for a written or other assessment exercise as stipulated in the job opening and evaluation criteria, whom he/she short listed based on the recorded preliminary evaluation of their application. Such invitations are sent in advance of the anticipated date of the interview, i.e. the notice period is at least five working days. The message will normally contain:

- a. reference to the position;

- b. date, time and means (in person, by e-mail) of where and how the assessment will be held;
- c. the name and functional title and department/office/mission of each assessor (optional);
- d. a note to the effect that the applicant's answer to the written test may be reviewed for plagiarism;
- e. a request for confirmation, from the applicant, of continued interest and availability.

15.6 Consideration of Roster Applicants

1. When a new Job Opening is posted, Inspira will send an automatic job alert to the applicants that he/she will be considered as a roster candidate in that Job Opening (a roster candidate is preapproved for selection for a position with similar functions within the same job code (i.e., job family, category/level, functional title (which may vary slightly from the posting title) and roster type), alerting them to apply if they are interested and available for immediate selection.
2. Roster candidates must express their interest and availability for published job openings by submitting an updated PHP and cover letter to the relevant Job Opening in Inspira. This process is functionally identical to applying to the Job Opening.
3. When a roster candidate applies to a job opening in the same job code for which they were rostered, the Inspira tool
4. RM column on the Manage Applicants page. Inspira roster
5. Hiring Managers may immediately recommend the selection of a qualified roster applicant from among the released rostered applications. The Hiring Manager is not required to interview the rostered applicant. In order to speed up the process, under such circumstances Hiring Managers need not record their evaluations of new non-rostered applications. Selection of a rostered applicant does not require a further review by the Central Review bodies. One or preferably several roster applicants found suitable may be recommended for selection at this stage.

6. In order to move the recommendation of the roster applicant forward for selection, the Hiring Manager shall be required to enter a final evaluation for the proposed roster applicant.

15.7 Selection of Roster Candidates

1. In instances where a selected candidate for a position-

9. Where only roster candidates are recommended for selection by the Hiring Manager, further reference to the Central Review body is not required.

60. The Tribunal notes that Job Opening no. 63461 clearly indicated that the key responsibilities of the incumbent of the post are, *inter alia*, to formulate and

advanced university degree and not in a completely different area of studies, and that

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changed during the selection process any
university degree to apply, be considered and /or selected for the post.

63. The Tribunal also considers that if the vacancy announcement/job opening allows also a first level university degree in a related field to the required areas of studies, a clear and accurate language must be used providing complete information,

required for the post and to expressly identify and enumerate them together with the required work experience in the required and/or related fields of studies, after a careful verification in order to ensure a fair selection and to prevent any misrepresentations/errors in the identification of such related fields of studies. Therefore, the Tribunal considers that the use of a general formulation of a vacancy announcement/job opening must be avoided, because such a form may include elements which are not applicable to the requirements for a particular post. Such a first level degree usually requires at least 2 years or more extensive and continuous work experience in the required field(s) or related field(s).

64. The Tribunal underlines that the selection process must be conducted, from the beginning

that such first

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publicly her antagonism to _____ person and positions affirming that as long as she would be in charge of OICT, [the Applicant] would never be selected for any position

73. Section 9.3 of t _____ (version October 2012) provides, in relevant parts, as follows:

2. It is suggested that the members participating in evaluating the assessment exercise be the same members as the panel conducting the competency-based interviews. Ideally, all applicants for one job opening are to be assessed and/or interviewed by the same assessors.

3. In the event that changes occur during the evaluation process in either the members participating in evaluating the assessment exercise or the members conducting the competency-based interview, reasoned and relevant information should be provided in the transmittal memorandum for submission to the relevant Central Review body. In identifying and assigning the panel of assessors, by nomination, the Hiring Manager must ensure that the individuals selected fulfil the appropriate requirements as follows:

- a. Professional knowledge and experience:
 - i. Years of professional work and intrinsic knowledge of the subject area or work in the job family.
 - ii. Relevant occupational experience/employment for the previous five years is desirable.
- b. Personal qualities: Self-responsibility, ability to listen, ability to express him/herself clearly, patience, reliability and flexibility to handle changing circumstances, sense of humour, persistence, judgment and ability to quickly recognize and understand a situation and to be able to think analytically.
- c. Freedom from outside pressure: There is no appearance of a conflict of interest.
- d. Competency-based selection and interviewing skills and follow-up programme: Training module has been completed prior to serving on the panel.
- e. Training in Inspira: Completion of Inspira self-study training.

that all these requirements are applicable to the Hiring Manager when acting either as a member of an assessment panel or individually when shortlisting and selecting a rostered candidate.

77. In order to preserve the fairness of the entire selection procedure, the

80. The Tribunal is of the view that the fundamental human rights principle of equal treatment of staff members from art. 8 of the United Nations Charter, which includes, *inter alia*, equal treatment, fairness and transparency during the entire procedure for selection and/or promotion of staff, is fully respected only when all the candidates for each job opening are fully and fairly considered for the post. Moreover, according to art. 7(c) of

the case to the Secretary-General for the enforcement of accountability under art. 10.8 of the Statute of the Dispute Tribunal.

84. As established by the consistent jurisprudence of the Appeals Tribunal, a staff member has no right to be selected for a post, but has a right to be fully and fairly considered for it (see, for instance, *Andrysek* 2010-UNAT-110 and *Luvai* 2014-UNAT-417). Further, a staff member has the right to an equal opportunity to be promoted in his/her employment to an appropriate higher level, subject to no considerations other than those of seniority and competence. This right is of fundamental nature, as recognized by the United Nations Charter, art. 101, and the International Covenant of Economic, Social and Cultural Rights, art. 7(c).

85. In *Korotina* UNDT/2012/178 (not appealed), the Tribunal stated as follows:

As the Tribunal stated in *Villamorán* UNDT/2011/126, at the

Charter of the United Nations, followed by resolutions of the General Assembly, staff regulations, staff rules, Secretary- and administrative instructions. Information circulars, office guidelines, manuals, memoranda, and other similar documents are at the very bottom of this hierarchy and lack the legal authority vested in properly promulgated administrative issuances.

Circulars, guidelines, manuals, and other similar documents may, in appropriate situations, set standards and procedures for the guidance of both management and staff, but only as long as they are consistent with the instruments of higher authority and other general

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computer science, information systems, mathematics, statistics, or related field to these specific areas, if any, or the equivalent first university degree in computer science, information systems, mathematics, statistics or related field, if any, together with the relevant number of years of working experience in the required fields. Further, the Tribunal underlines that business administration or public administration are not related fields to computer science, information systems, mathematics or statistics, and that a Master degree in these areas is not equivalent to a Master s degree in computer science, information systems, mathematics or statistics.

90. In accordance with art. 10.5(a) of the Statute of the Dispute Tribunal, as an alternative to rescinding the contested selection decision for Job Opening no. 63461, the Respondent

process by conducting a *de novo* full and fair evaluation, including a new comparative analysis of the rostered candidates which fulfill all the requirements for the post, as detailed in the Job Opening;

b. As an alternative to rescinding the contested decision, the Respondent may elect to pay the Applicant three months of net base salary, pursuant to art. 10.5(a) of the Statute of the Dispute Tribunal;

c. The above shall be paid within 60 days from the date this judgment becomes executable, during which period the US Prime Rate applicable as at that date shall apply. If the sum is not paid within the 60-day period, an