
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2020/011

Judgment No.: UNDT/2021/025

Date: 19 March 2021

Original: English

Before: Judge ~~of~~ Judge Judge

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c. Referring to *Fernandez* UNDT/2018/033, it is the well-established case law that “outsourcing and subcontracting of the substantive part of the evaluation and decision-making process to the external experts who do not fall under the auspices and direction of the Secretary-General and applicable Staff Regulations and Rules is unlawful”;

d. It “clearly follows” from *Fernandez* that “the outsourcing of the recruitment process or its parts to the external experts who are not [United Nations] staff members ‘makes the whole process procedurally flawed and must lead to the illegality of the contested decision’”. When the “external experts”

30. The Tribunal notes from the consistent jurisprudence of the Appeals Tribunal that the Applicant bears the burden of proving any allegation on ulterior motives (see, for instance, *Parker* 2010-UNAT-012 and *Kisia* 2020-UNAT-1049). The Appeals Tribunal has further found that “[t]he mental state of the decision-maker usually will ... have to be proved on the basis of circumstantial evidence and inference drawn from that evidence” (see para. 39 in *He* 2016-UNAT-686).

31. The Tribunal notes that the assessments regarding the Applicant’s competencies in “accountability” and “empowering others” between his electronic performance assessment system (“ePAS”) reports for 2016-17 and 2017-18 and the competency-based interview panel’s findings, in fact, significantly differed—in the ePAS reports, it was found that his performance was either “fully competent” or “outstanding”, while the panel only rated his performance as “partially satisfactory”.

32. While the discrepancy evidently shows a difference in opinion, in the lack of any further substantiation of ill-motivation, it does, however, not indicate anything more. Also, the Appeals Tribunal has held that an assessment panel has no duty to consider the performance reports and reflect that consideration in its own assessment (see, *Riecan* 2017-UNAT-802, paras. 20-22). Similarly, the Applicant has failed to demonstrate how the circumstances surrounding the hiring managers could lead to a finding concerning them, or someone else on the assessment panels, holding an unlawful bias against the Applicant.

33. Accordingly, also referring to *Lemonnier* and *Sanwidi*, the Tribunal rejects the Applicant’s claim regarding bias.

Conclusion

34. The application is rejected.

(Signed)

Judge Joelle Adda

Dated this 19th day of March 2021

Entered in the Register on this 19th day of March 2021

(Signed)

Nerea Suero Fontecha, Registrar, New York