



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/041/
JAB/2008/082
Judgment No.: UNDT/2010/012
Date: 27 January 2010
Original: English

Before: Judge Adams
Registry: New York
Registrar: Hafida Lahiouel

ROGER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for apg

Case No.

The French educational system

5. The French educational system is legislated in the *Code de l'Education*, which

- b. In 1968 she obtained the *Brevet d'Enseignement Commercial*, a Certificate obtained after two years of the first cycle (“*premier cycle*”).
- c. In March 1972 she obtained a *Certificat de Fin de Cycle d'Etudes du C.E.P.T.* or

Professions, an official academic body which lists all accredited private or public establishments in France recognized as conferring official or equivalent university degrees.

9. I should mention that, in order to demonstrate that she could have undertaken university studies in order to qualify to take the examination, the applicant tendered

12. Whilst the applicant was working at the DPI, she was informed by a former proofreader in the French unit of the course offered by the Centre which, as the applicant was given to understand, qualified a person as a proofreader under the French educational system. The applicant informed her colleagues that she had registered with the Centre to undertake a correspondence course to obtain what she described as “the diploma of proofreader” so that when a competitive examination was held she would have the necessary background to undertake it. Her colleagues encouraged her in this endeavour. In 2006 the applicant raised the matter several times with the new Chief of Section informing him, in substance, that she was undertaking a course which under the French educational system leads to the profession of proofreader, and that she hoped that when a competitive examination for French language proof readers/copy preparers/production editors was eventually contravened, she would, by then, have the diploma and would be already performing as a proofreader. The Chief of Section was encouraging and acknowledged the excellence of her work as a proof reader. Indeed, he approved payment by the Organization of the cost of the Centre’s course. When the examination was announced, the applicant’s colleagues were very encouraging and, it seems, thought that the course she had undertaken with the Centre was a degree, which entitled her to sit for it. The Chief of Section gave evidence at the hearing that, until he saw the examination notice, he was not aware of the actual prerequisites for taking the examination. He said, and I think this was not really disputed by the applicant, that he had never told the applicant that she did qualify for the examination, although he thought she would have been an excellent candidate.

13. The notice of the examination was given by circular on 27 February 2008, ST/IC/2008/15. (It seems that the last examination had been conducted some 10 years or so previously.) On 8 April 2008 the applicant applied to take the examination. The Board of Examiners rejected her application on 22 April 2008 on the basis that she neither satisfied the primary requirement nor qualified to be considered for waiver. The applicant said, and I accept that, that her work colleagues

were surprised by this and thought that her experience and qualifications should have enabled her to take the examination.

Applicant's submissions

14. The course at the Centre fulfilled the requirements of cl 4(c) of ST/IC/2008/15. Even if it did not, she was led to believe by some of her colleagues, including supervisors, before taking the course that it would be adequate to qualify for the examination. Furthermore, if the academic merit of her various qualifications, especially the certificate from the Centre, are not recognized, this amounts to discrimination against French nationals, since though she has qualified to be a professional proofreader in France, this is not recognized by the UN. Moreover, since the purpose of the examination is to identify staff able to undertake the full responsibilities of proofreader and she has already demonstrated this ability both through the excellence of her work in the Section and by successfully completing the course at the Centre, the requirement that a formal University degree (which might have nothing to do with the relevant skills) as an essential prerequisite before she can be permitted to take the examination is so unreasonable as to be outside the powers of the Board of Examiners.

15. Lastly, the applicant had worked in the UN system for over five years before 1989 and had obtained adequate post-secondary educational qualifications from the Centre, which was an institution of equivalent status to a university. Thus, she came within the waiver provided by cl 6 of ST/IC/2008/15 and the Board should have considered whether the requirement of cl 4(c) could be waived.

Respondent's submissions

16. Cl 4(c) of ST/IC/2008/15 is unambiguous. It is clear that the Centre is not a university or other institution of higher learning evaluated and accredited in accordance with the system administered by the French Government and recognized by the State authorities; the course completed by the applicant did not lead to a

university degree or its equivalent; it did not even last three years. Moreover, students are not admitted through a competitive examination and do not need to hold the *baccalauréat* and the certificate provided by the Centre is not obtained through a final exam and is not a national diploma.

17. As to the requirements of cl 6, the Centre was not a university or equivalent institution and the applicant's five years of service with the UNDP was not service with the United Nations Secretariat.

18. It would have been clear to the applicant from the United Nations Human Resources Handbook that promotion to P-2 level requires a Bachelor/Master degree

highest, than that the applicant's colleagues and supervisor assumed that she might qualify for the examination and were expressing their expectations rather than giving any assurances, and that no reasonable person would have relied on what they said for the purpose of making a decision about whether or not to undertake university or equivalent studies in order to be able to sit for the examination. The applicant had no reason for believing that these persons would have had a sufficient understanding either of the French educational system or of the nature of the Centre or the course to give her informed or reliable advice about the question. If she did rely on what they told her, it was not reasonable for her to do so. Moreover, they did not assert, nor did they have, any authority to bind the Organization as to the prerequisites for candidature.

21. There is no evidence one way or another whether the applicant consulted ST/AI/2003/7 concerning recruitment into the Professional category, or the guidelines from the United Nations Human Resources Handbook cited above. Had she done so, it is inevitable that she would have realized that her qualification from the Centre, 22.5664 Tw umaso

application to General Service staff without reference to any distinctions between occupational groups, carved out that class of staff and applied different rules to their eligibility for competitive examination as well as a different supervisory structure in the creation of a Central Examination Board and Boards of Examiners to replace the *ad hoc* boards that were applicable under the 1998 Administrative Instruction.

26. The two Administrative Instructions can be made consistent in two contradictory ways: first, by regarding ST/AI/1998/7 as applying to all staff up to P-3 seeking appointment to a language post requiring a Professional category staff member and ST/AI/2003/7 as applying to all General Service staff seeking recruitment to the Professional category except posts requiring special language skills; and, secondly, by regarding ST/AI/1998/7 as applying only to language staff in the Professional category seek

