



Case No.: UNDT/NY/2010/019/
UNAT/1622

Judgment No.: UNDT/2011/058

Date: 30 March 2011

Introduction

1. The Applicants challenge a promotion exercise conducted in 2006 for the P-3 level post of Russian Editor (“the Post”) Official Records and Editing Section (“ORES”), Department of General Assembly Conference Management (“DGACM”), in relation to which they applied but were unsuccessful.

2. Briefly stated, the Applicants and a third candidate were interviewed as internal candidates for the Post, with th

Procedural history

6. In October 2006, the Applicants separately sought administrative review of the decision to appoint the initially-successful candidate, and not either of the Applicants, to the Post, ultimately appealing the matter in January 2007 to the Joint Appeals Board (“JAB”). The JAB appears to have decided to deal with the Applicants’ separate appeals together, due to the similarities in facts and timing.

7. On 6 March 2008, the JAB issued its Report No. 966, concluding unanimously that the Respondent had “quite” shoulder its burden of proving that the [Applicants] were given full and fair consideration for the post”. The JAB recommended four months’ net-base salary each Applicant as compensation.

8. On 18 June 2008, the Secretary-General rejected the JAB’s recommendation, and on 4 September 2008 the Applicants jointly appealed this decision to the former United Nations Administrative Tribunal.

9. On 6 January 2010, by way of email, the parties were advised that the case had been transferred to the New York Registry of the Dispute Tribunal. The issue of the joinder of proceedings has not been raised by either party, and the Tribunal has deemed it appropriate to deal with the Applicants’ cases in a single judgment.

Issue

10. The main substantive issue to be addressed by the Tribunal may be formulated as follows: did the Respondent properly exercise his discretion and follow proper procedures during the initial selection exercise for the Post, as well as when subsequently filling the Post with the ultimately-successful candidate?

Summary of relevant facts and procedure

11. On 25 July 1988, the (then) Acting Chief of the Russian Translation Service (“RTS”) sent a memorandum to the (then) Department of Conference Services (“DCS”) confirming the names of the 1987/1988 UN Language Training Course graduates. The Applicants were both amongst these graduates, each having passed the examinations in translation and editing that year. According to the Respondent’s Reply to Order 258 (NY/2010) of 29 September 2010, para. 2, this means that,

September 1997. The record reflects that an initially-successful candidate had never sat for, nor passed, the competitive exam required to be placed on the roster of Russian Editors (a required competency for the Post). The record also reflects that the initially-successful candidate did not possess two years' prior experience in editing (another required competency for the Post).

15. On 8 August 2006, an "Announcement of Vacancy" ("VA") was advertised internally for the Post with closing date of 22 August 2006 (see Applicants' Application to the former UNAT, Annex 4). This VA did not contain all information required in Vacancy Announcements under SF/Al/2002/4, sec.4.5 (qualifications, skills and competencies required; the classified functions of the post; date of posting; and deadline for receipt of applications). The VA did not include the classified functions of the post, the date of posting, or more importantly, whether the Post was a fixed-term contract or a temporary vacancy.

16. The VA listed the relevant Responsibilities, Competencies and Qualifications and skills as follows:

Responsibilities:

Edits texts of a specialized nature in order to ensure accuracy, clarify, cohesion and conformity with United Nations standards, policies and practice.

Consults with author departments and translators and revisers and carries out research to clarify ambiguities and rectify substantive errors.

Checks his/her language version against the language of the original draft, redrafts incorrect or unclear passages and translates and inserts any passages that have been omitted.

...

Competencies:

Professionalism – Solid writing and analytical skills; ability to spot errors and inconsistencies in a text quickly; sensitivity to nuance; firm grasp of research techniques

Judgment and decision-making – Good judgment, discretion and

19. In the File Note, the candidates were evaluated based on whether they satisfied the basic eligibility requirements for the Post as outlined in the VA as well as on their interview performance. The File Note states that competencies evaluated in the interviews conducted on 13 September 2006 included “professionalism, planning and organizing, and teamwork. The File Note, however, omits stating whether the three VA competencies of “judgment”, “decision-making” and “communication” were evaluated.

20. The File Note states that all three candidates were considered to have met the eligibility requirements (a statement that is factually incorrect, as the initially-successful candidate lacked the two requirements of being a rostered candidate and of having prior editing experience) and were therefore invited to be interviewed by a panel on 13 September 2006.

21.

24. On 27 September 2006 the Applicants were separately informed that they had not been selected for the Post.

25. By email of 29 September 2006, OHRM advised the Executive Office that the candidate who had been recommended for the Post (i.e., the initially-successful candidate) did not meet the eligibility requirements for the Post, as his name did not appear on the roster of Russian Editors. As stated above, the Applicants' names had been on the roster of Russian Editors throughout the entire selection exercise.

26. After the initially-successful candidate was eliminated from the Post, the Applicants were not reconsidered for the Post.

27. The Post was awarded to another candidate (i.e., the ultimately-successful candidate), whom the Respondent terms as "internal candidate" on a "lateral transfer" under ST/AI/2002/4, Annex I, section (a) and footnote (a) (see Respondent's reply of 3 December 2010 to Order No. 307 (NY/2010) of 18 November 2010, para. 9).

28. However, when the ultimately-successful candidate purportedly was "transferred", the ultimately-successful candidate could not have qualified for a "lateral transfer" under ST/AI/2002/4, Annex I, section 1(a), since that provision only applies to "staff" of the United Nations and not to "former staff". At the time of her appointment to the Post, the ultimately-successful candidate was not employed with the United Nations; while the ultimately-successful candidate had served as a permanent staff member of ORES in the 1980s, she had terminated her service with the United Nations, and following her departure was placed on "a roster of eligible retired/former staff members" (see the Respondent's reply of 10 March 2010 to Order No. 68 (NY/2010) of 3 March 2011, para. (iii)). This status would convert the ultimately-successful candidate from supposedly being an "internal" candidate, into an "external" candidate.

29. Further complicating the situation regarding the ultimately-successful candidate are the answers provided by Respondent in his response to Order No. 91 (NY/2010) of 21 March 2011:

... [the ultimately-successful candidate] was not appointed to the post, but hired on a Temporary Appointment. While on that Temporary Appointment, she carried out numerous functions depending on the needs of the department [DGACM] at any given time, including the functions of the post.

Upon examination of [the ultimately successful candidate's] Personnel Action ('PA') history, she was hired by both the Official Records Editing Section and the Russian Victim Reporting Section on a variety of Temporary, When Actually Employed ('WAE') and non-regular Fixed Term appointments from May 2006 to present. ...

From the available records and having regard to chronology, [the ultimately-successful candidate] most likely began performing the functions of the contested post in late 2006 or early 2007, following the cancellation of the initial selection process in September 2006. There she is likely to have commenced carrying out the functions of the contested post while she was employed on a Temporary Appointment from 7 June 2006 to 31 December 2006. However, this is not entirely clear from the available records including the PA history.

...

The available records do not show when [the ultimately-successful candidate] stopped carrying out the functions of the contested post. This is because she was responsible for carrying out several functions in the language department depending on the needs of the department at any given time. Therefore, she was not on a contract against one particular post and so it is difficult to ascertain when she stopped completing one set of functions and began another. ...

30. These answers, in sum, state that:

a. the ultimately-successful candidate was appointed to the Post (if not appointed to the Post, how can the contention be made that the Post was filled with the ultimately successful candidate?);

- b. the ultimately-successful candidate ~~was~~ “on a contract against one particular post and so it is difficult to ascertain when she stopped completing one set of functions and began another”;
- c. the ultimately-successful candidate

In accordance with required procedure [presumably the staff selection procedure under ST/AI/2002/4, *including* Annex I] steps were taken to recruit from a roster of candidates established on the basis of competitive examination results. One candidate could not be considered because of his promotion to the P-4 level. Another candidate notified OHRM that, for family reasons, she could not consider a post away from Moscow at this time. A third candidate, a staff member in another DGACM function, said she could not consider a switch from her current position at this time. While other eligible candidates have been under consideration, temporary assistance has been secured to ensure that the functions associated with the post are fulfilled. *Ibid.*, para. 4)

36. Other than the Respondent's statement above regarding steps that were taken "to recruit from a roster of candidates [other than the Applicants] established on the basis of competitive examination results" this statement is without further documentary support in the record. The Respondent has not tendered documentary evidence to support his contentions regarding this phase of the selection process used for the Post, namely that the process was a competitive one and that all temporary roster candidates were unavailable, except for the ultimately-successful candidate.

37. Given the out-of-date status of the roster of Russian Editors at the time, and pending creation of a new roster of Russian Editors, DGACM filled the Post by appointing the ultimately-successful candidate, namely the wife of the (then and current) head of RTS, Mr. Kirill Speransky.

38. The selection exercise for the Post occurred in February of 2006 and the ultimately-successful candidate occupied the Post until November 2009, which is a period of time greater than one year permitted for temporary posts (see ST/AI/2002/4, sec. 1 ("Definitions" for "temporarily vacant post" and "vacant post")). In November 2009, another selection exercise for the Post occurred.

39. As for the ultimately-successful candidate's qualifications to fill the Post, the Respondent states in his 10 March 2010 reply to Order 68 (NY/2010) that:

[The ultimately-successful candidate] was on a list of approved editing candidates as she had previously passed the language exam. The list is comprised of former and retired staff members. The Official Records Editing Section (ORES) refers to this list when positions need to be filled temporarily, as it did in the present case. [The ultimately-successful candidate] was the top candidate on the list who was locally available and thus was recruited to temporarily fill the post pending the generation of a new roster.

40. With the above answer, the Respondent has not provided any official documentary evidence demonstrating the fact that the ultimately-successful candidate indeed had “previously passed the language exam when this was so (see para. 11 above regarding the Applicants’ competency exam). According to the documentation provided by the Respondent in his response to Order No. 91, at the time of the selection exercise for the Post, the ultimately-successful candidate held a short-term, temporary appointment *as a verbatim reporter and not as an editor*. Where is the documentation of the ultimately-successful candidate’s passing the required competency exam? Did the ultimately-successful candidate pass this exam one, five, ten or more years previously? If she had passed this exam, why was she also not included on the roster of Russian Editors? (See the Respondent’s 15 October 2010 reply to Order No. 258 (NY/2010) of 29 September 2010, Annex 1 (Interoffice Memorandum of 4 August 1988, “Appointment of Russian Translators”).

41. The Respondent appears to be saying that DGACM maintains two different rosters of editors—one for current staff members and one for former staff members. Yet, it is unclear from the Respondent’s answer, reproduced para. 39 above, where DGACM retains the authority to keep a “list comprised of former and retired staff members” that may be used to fill positions whenever DGACM deems it appropriate to do so.

42. DGACM appears to have maintained an out-of-date roster of Russian Editors, which is required to be updated annually (See the now abolished ST/AI/2002/4 (Staff selection system) of 23 April 2002, sec. 1 (“Definitions”—Roster).)

Applicable law

43. Under its resolution A/RES/57/305 (Human resources management) of 15 April 2003, the General Assembly:

44. *Notes* that the time needed to complete a national competitive examination cycle from the deadline for the applications until the successful candidate is placed on the roster is one year or more, and requests the Secretary-General to significantly reduce the time needed, and to report thereon to the General Assembly at its fifty-ninth session;

44. Staff regulation 4.4 provides (emphasis added):

Subject to the provisions of Article 101, paragraph 3, of the Charter, and without prejudice to the recruitment of fresh talent at all levels, the fullest regard shall be had, in filling vacancies, *the requisite qualifications and experience of persons already in the service of the United Nations.* This consideration shall also apply, on a reciprocal basis, to the specialized agencies brought into relationship with the United Nations. The Secretary-General may limit eligibility to apply for vacant posts to internal candidates, as defined by the Secretary-General, if other candidates shall be allowed to apply, under conditions to be defined by the Secretary-General, *when no internal candidate meets the requirements of Article 101, paragraph 3, of the Charter as well as the requirements of the post.*

45. Former staff rule 104.15(b)(i) required that appointment to posts requiring special language competence be made exclusively through competitive examination.

46. ST/AI/2000/1 (Special conditions for recruitment or placement of candidates successful in a competitive examination for posts requiring special language skills) of 12 January 2000 was operative at the relevant time. It applied to the placement of internal candidates who are successful in a competitive language examination for posts, which include editors, in accordance with the provisions of ST/AI/1998/7, sec. 1.

47. Under ST/AI/2000/1, sec. 2.1, candidates successful in a competitive language examination:

... shall be placed on a roster, in order of ranking order. They shall be selected from the roster as vacancies occur, taking into account not only their ranking but also the needs of service and the combination of languages and skills offered by individual candidates.

48. Under ST/AI/2002/4, sec. 1 (“Definitions”—Roster) (emphasis added):

Roster: list of candidates who have been endorsed by a central review body for a particular vacancy but not selected for it, and who have indicated an interest in being considered for selection for a future vacancy with similar functions at the same level. Roster candidates may be selected without referral to a central review body. *The roster is valid for one year.*

49. ST/AI/2002/4 includes the following relevant provisions:

2.4 Heads of departments/offices retain the authority to transfer staff members within their departments/offices to vacant posts at the same level.

7.6 For each vacancy, the programme manager 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/or decision by head of the department/office.

50. ST/AI/2002/4, Annex I, “Responsibilities of the head of department/office”, (“Annex I”), in part provides:

1. The head of department /office has the authority:

- (a) To transfer staff laterally within his or her department/office;
 [footnote (a): “The Under-Secretary-General for General Assembly Affairs and Conference Services has authority to transfer laterally language staff, including interpreters, translators, editors, verbatim reporters, proofreaders and production editors, up to and including those at the P-5 level, who serve in New York, Geneva, and Nairobi. This authority may be extended in the future to language staff at the Economic Commission for Africa, the Economic Commission for Latin America and the Caribbean, the Economic and Social Commission for Asia and the Pacific and the Economic and Social Commission for Western Asia.”];

...

Pending the revision of ST/AI/2002/10 to reflect the inclusion of the Regional Commissions in a pilot programme, the purpose of this email is to advise that effective immediately, all language vacancies up to and including those at the P5 level can be filled under this arrangement. In other words, vacancies can be circulated internally, i.e., outside galaxy but via e-mail

- a) from the requesting office to the DGACM Executive Office
- b) DGACM Executive Office will seek comments from the Director of the respective Divisions at New York, if necessary
- c) From the DGACM Executive Office to the OUSG for Mr. Chen's or Ms. Kane's approval
- d) Upon approval (or otherwise) from the OUSG to the DGACM Executive Office
- e) Information from d) above will be communicated by the DGACM Executive Office to the requesting office, with copy to OHRM
- f) If DGACM, New York, is neither the receiving nor releasing office *the two duty stations concerned should liaise among themselves on the release date and other particulars of the move.*

...

Applicants' submissions

53. The Applicants' primary contentions may be summarised as follows:

- a. The Respondent erred by admitting an ineligible candidate to the selection process without first consulting with the roster, and the whole selection process was compromised from the onset;
- b. The whole process lacked transparency, because the Respondent did not notify the Applicants about the ~~bad~~ decision to ~~reject~~ the initially-successful candidate;
- c. The initially-successful candidate is described as "the most suitable candidate", rather than ~~the~~ *only* suitable candidate; the Programme Manager discussed with the other members ~~of~~ the interview panel the option of re-evaluating the two remaining candidates ~~and~~ there would have been no reason

to discuss the option of re-evaluating the remaining candidates (the

footnote (a), where authority is given to the head of department or office to “transfer staff laterally within his or her department or office”.

b. The authority under ST/AI/2002/4, Annex I, sec. 1(a) and footnote (a) was amplified under a 6 January 2005 memorandum from the Assistant Secretary-General for Human Resources Management (“the ASG/OHRM”) to the Under-Secretary-General, DGACM, regarding lateral transfer of language staff worldwide, as explained by Ms. Neetae, aJ

Administrative Tribunal Judgment No. 1031 (*Klein* (2001), Judgment No. 1118, *Khuzam* (2003));

e. The Administration “must be able to make at least a minimal showing that the staff member’s

vacancies, consideration should be given to persons already in the service of the United Nations” provided that they fulfill “the requisite qualification and experience”. Should an internal vacancy announcement yield no successful candidates, the programme manager would proceed, as it has happened in this case, with the selection from a roster of candidates established on the basis of the results of a competitive examination in accordance with General Assembly resolution 55/258. The selection process here did not yield any qualified candidates, and the Respondent had no option but to seek temporary assistance to ensure that the functions associated with the post are adequately fulfilled”;

- i. The File Note demonstrates that the Respondent actually reviewed the Applicants’ abilities and that they were both deficient in their professionalism; hence, it was the lack of qualifications of the Applicants rather than the i.

I. In his Reply to Order 91, the Respondent makes various contentions for the first time, including that the ultimately-successful candidate was not assigned against any particular post within the Organization; further the Respondent now cites as authority ~~ST/AI/2010/4~~, sec. 13 for the first time.

Consideration

55. As stated in *Liarski* UNDT/2010/134, the Tribunal generally will not substitute its decision for that of the Organization in the discretionary matters of appointment and promotion, but the Tribunal may examine whether the selection process was carried out in an improper, irregular or otherwise flawed manner and assess whether the resulting decision was vitiated by undue considerations or was manifestly unreasonable. (See *Selanki* UNDT/2009/045, *Joshi* UNDT/2009/047, *Tsoneva* UNDT/2009/048, *Krioutchkov* UNDT/2010/065, *Rolland* UNDT/2010/095.)

56. The Applicants challenge the entire selection process as being “compromised from the onset”. The Applicants challenge several aspects of this matter: (1) the fact that they were not given full and fair consideration for the Post; (2) the failure to select one of the Applicants, once their initially-successful candidate was found to be ineligible for the Post; (3) the fact that the ACAGM maintained an out-of-date roster of Russian Editors, contrary to the General Assembly’ resolution A/RES/57/305 and ST/AI/2002/4, sec. 1 (“Definitions”—Roster); and (4) the selection of the ultimately-successful candidate to fill the Post on a temporary basis, rather than either of the Applicants.

right was honoured in good faith in that the Administration gave ‘fullest regard’ to it” (see para. 48(d) above).

Respondent’s inconsistent legal positions

58. The Tribunal preliminarily notes that the Respondent has presented conflicting and changing legal arguments to the Tribunal. The Respondent argues:

9. The situation qualified as ~~an~~ internal vacancy because the rule in [ST/AI/2002/4] footnote a) of annex 1~~st~~ applied. The note provides for the lateral ~~ans~~fer of staff members in language services. A lateral move is the movement of staff member to another vacancy at the same level within the UN system ~~and~~, in this case in particular, the language services section. The ~~teral~~ move is therefore limited to internal candidates. Any vacancy announcement for which only internal candidates may apply is ~~an~~ internal vacancy.” (Respondent’s Reply to Order No. 307, para. 9).

59. It may be helpful to differentiate distinct terminological concepts of “lateral transfer” under ST/AI/2002/4, Annex I, set(a) and footnote (a), versus “lateral move” for mobility purposes (ST/AI/2002/4 “Definitions”—Lateral moves, versus the required selection procedures for internal vacancies (see ST/AI/2002/4 “Definitions”—Internal candidates)). It is clear from ST/AI/2002/4 that a lateral transfer under Annex I, sec. 1(a)~~is~~ the same as a lateral move.

60. The Respondent has changed the rationale used to justify the selection procedures in this case. The selection for the Post of the initially-successful candidate was first justified on the basis that the selection constituted an internal lateral transfer for purposes of ST/AI/2002/4 Annex I, set(a) and footnote (a); then it was justified on the basis that the Post constituted an “internal vacancy”; but the Post ultimately was filled with the selection of an external candidate on a temporary basis. All contentions cannot exist simultaneously.

61. As of 21 March 2011 the Respondent yet again changed the legal theory of the case, stating that the ultimately-successful candidate ~~was~~ assigned against any

particular post within the Organization (and not to the “Post”), citing as authority ST/AI/2010/4, sec. 13, for the first time. This administrative instruction is inapplicable to this case, as it was enacted following the filling of the Post.

62. As stated by the Applicants in the Response to the Respondent’s Reply to Order No. 307:

1. The Applicants assert that the characterization of the disputed vacancy as being “internal” contradicts the fact that at some point, right after the rejection of the initially selected [i.e. initially-successful] candidate, the Respondent attempted to fill that vacancy, without changing its status, from the roster of the EXTERNAL candidates. Thus, instead of proceeding to reconsider the remaining internal candidates, i.e., the Applicants, the Respondent unjustifiably rejected them. The Applicants further believe that had the vacancy at issue been either “external” or “internal”, the action taken by the Respondent would still have been erroneous for the following reasons: if the vacancy had been external in nature, the Respondent should have published it in Galaxy and submitted it for CRB approval; but if it had been internal in nature, the Respondent should not have turned down the Applicants in favor of the potential external candidates (original emphasis).

63. The Tribunal concurs with the Applicants’ observations in their entirety.

Did the Post qualify as a lateral transfer under Annex I?

64. ST/AI/2002/4 was in force at the time of the selection exercise and sets out general provisions relating to the appointment and promotion of staff that were relevant at the time of the Post’s selection process.

65. The Respondent, nevertheless, contends that the staff selection system procedures of ST/AI/2002/4 do not apply in cases such as the present one, due to the Post qualifying as having been undertaken pursuant to Annex I, sec. 1(a) and its footnote (a): sec. 1(a) grants permission to the head of department/office to “transfer staff laterally within his or her department/office” and footnote (a) states that “[t]he

Under-Secretary-General for General Assembly Affairs and Conference Services has authority to transfer laterally language

process would seem to be contrary to staff rule 104.15(b)(i), which demands this for posts requiring special language competences.

69. Furthermore, the procedures adopted in light of Annex I, footnote (a), are announced in a 6 January 2005 memorandum regarding lateral transfer of language

case—especially that there was no need to “requesting office”—demonstrates that ST/AI/2002/4 Annex I, sec. 1(a) and footnote (a), are incorrectly used to justify the selection procedures in this case.

72. Thus, Annex I, sec. 1(a) and footnote (a), were not intended to be cited in cases involving a competitive selection process within a department.

73. Simply stated, the Post did not qualify as a lateral transfer for purposes of Annex I, sec. 1 (a) and its related footnote (a); those provisions have been improperly relied upon to justify the selection procedures in this case.

Did the selection procedures for the Post meet the requirements under ST/AI/2002/4, Annex I, sec. 1(a) and footnote (a)?

74. At the outset, the Tribunal notes that since it was the Post that was supposed to have qualified under ST/AI/2002/4, Annex I, sec. 1(a) and footnote (a), the Tribunal’s discussion in this judgment evaluates both selection exercises (that of the initially-successful candidate, as well as the ultimately-successful candidate) against that administrative instruction.

75. The Respondent effectively interprets Annex I, sec. (a) and footnote (a), to mean that for lateral transfers: (1) vacancy announcement needs only be circulated internally; (2) the status of candidates (as 15-, 30- or 60 mark) has no relevance (insofar as all candidates are internal); (3) there is no involvement of the Central Review Body; and (4) there is no requirement to announce the outcome of the selection process.

76. The Respondent’s submissions are troubling in their application to this case for a number of reasons.

77. First, as already discussed, Annex I has been incorrectly interpreted and relied upon in this case.

78. Second, the procedure employed by the Respondent in this case appears to have been the truncated one set forth in Annex I, sec. 1 (d) rather than the one cited by the Respondent as a lateral transfer under Annex I, sec. 1(a) and footnote (a). To summarise the factual sequence according to the Respondent—that is, to accept his case at its best—the Respondent circulated a vacancy internally, interviewed three candidates that applied, the Head Office found only one who met the required competencies, but was ultimately ineligible as he was not a roster candidate, reconsidered the roster (without the Applicants, despite the fact they were on the roster) and, claiming to find no other appropriate candidate on it, appointed an external candidate to the Post. The Respondent in fact seems to have (incorrectly) utilized the relevant provisions of Annex I, sec. 1 (d), to fill the Post in this case, while claiming to rely on the lateral transfer provisions of Annex I, sec. 1(a) and footnote (a).

79. Third, even if the Post qualified as a lateral transfer, there is no suggestion that the Under-Secretary-General conducted the purported lateral transfer in this case, as was required under Annex I, sec. 1(a) footnote (a), and the Respondent has not explained how or to whom this authority was properly delegated. As well, the Respondent has not demonstrated that the required documents under the Guidelines were forwarded to the relevant Under-Secretary-General, as would have been the required procedure for a lateral transfer under Annex I, sec. 1(a), footnote (a).

80. Fourth, the Respondent's selection procedure actions are incongruous with the power that Annex I, sec. 1(a) and footnote (a), seem to permit. For example, why was the initially-successful candidate rejected on the basis of his not being on the roster of Russian editors, when footnote (a) contains no reference to a requirement that laterally transferred staff be selected from a roster? And, how was the ultimately-successful candidate placed on the Post (i.e. a non-lateral transfer)?

Was the selection exercise for the

indication, which leads to the ineluctable conclusion that the Applicants were also considered suitable for the Post by the interview panel.

84. Further, the File Note goes no way to persuade that the Applicants failed to meet the required competencies. Indeed, the File Note fails to assess all the applicants on the required competencies stated in the Vacancy Announcement. The File Note is unsigned, calling into question who authored the document, when in fact the document was generated, and whether it was written with the specific goal of eliminating the Applicants from consideration for the Post. The File Note does not meet the required standard of a "reasoned and documented record of the evaluation of

87.

retired/former staff members and that ultimately-successful candidate was the only candidate who was “locally available” from this temporary roster.

92. A number of difficulties exist, including: (a) the Respondent now contends that the ultimately-successful candidate was placed on the Post at all, but rather filled a number of positions within DGACM simultaneously; (b) DGACM appears to have maintained an out-of-date roster of Russian Editors, which should have been available to fill the Post; (c) the Respondent has not provided any official documentary evidence demonstrating the fact that the ultimately-successful candidate indeed had previously passed the language exam when this was so; and (d) it is unclear under what authority DGACM was authorized to keep a “list ... comprised of former and retired staff members” that could be used to fill positions whenever DGACM deemed it appropriate to do so.

93. The candidate who was eventually awarded the Post, i.e., the ultimately-successful candidate, was Ms. Speransky, wife of the Head of RTS, Mr. Speransky (who then and now holds the position of Chief, RTS, Translation Services, DGACM). While the ultimately-successful candidate had at one time been in the service of the United Nations, at the time the Post was filled, the ultimately-successful candidate was a retired/former staff member, i.e. not a United Nations Staff Member. This means that two qualified candidates for the Post—Mr. Kozlov and Mr. Romadanov—who were in active service to the United Nations were incorrectly passed over in favor of a retired/former staff member within DGACM.

94. In a nutshell, the violations outlined above can be summarised as follows:

- a. the selection procedure employed in this case admitted a candidate to the interview who was unqualified in two respects (not on the roster and lack of prior editing experience);
- b. the File Note is unsigned and its authorship is uncertain;

- c. as per the File Note, the interview panel did not rank on all competencies announced in the Vacancy Announcement;
- d. the Vacancy Announcement does not meet the requirements of ST/AI/2002/4;
- e. the Vacancy Announcement does not specify what kind of a contract the Post held—a “vacant post” or a “temporarily vacant post” under ST/AI/2002/4, sec.1;
- f. the panel improperly rejected the Applicants’ candidacies and did not return to the roster to reconsider one of them when the initially-successful candidate was found to be ineligible;
- g. DGACM kept an out-of-date roster of Russian Editors;
- h. following the ineligibility of the initially-successful candidate, the Post was filled by the ultimately-successful candidate, without any announcement of the vacancy or competitive selection process; and
- i. the ultimately-successful candidate may not have possessed current credentials for the Post at the time of her selection.

95. The Tribunal finds that the Respondent has not made a minimal showing that the Applicants’ statutory rights were honoured in good faith in that the Administration gave fullest regard to them in the selection process for the Post.

96. Further, the Respondent has not met the burden of showing that the Respondent’s discretion was exercised fairly and without extraneous considerations or improper motivation, particularly when appointing the wife of the Head of RTS to the Post.

Compensation

97. The Tribunal will call for further submissions on the issue of compensation in a separate Order before deciding that issue.

101. The coincidences are too great to credibly believe that they occurred spontaneously without prior planning among individuals both within and without the selection process.

102. Under the article 101.3 of the Charter of the United Nations:

The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity.

103. The Tribunal considers it to be a fundamental responsibility of the Respondent to verify all candidate credentials before beginning a selection process, for a failure to do so can lead to the unfortunate set of events that is presently before the Tribunal. The JAB observed that the pre-verification is “not the common procedure within the Organization” and that the selection panel “accepts at face value” a candidate’s credentials. The Tribunal recognizes that, at present, this may not constitute the current practice under the Organization’s staff selection rules, but the Tribunal questions whether that is either good legal practice or good management practice.

104. The Tribunal urges management to implement whatever reform measures are necessary so that staff selection procedures within the Organization are fully respected and applied.

Accountability measures

105. Under art. 10.8 of its Statute, the Tribunal as part of its Judgment may “refer appropriate cases to the Secretary-General of the United Nations or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability”.

106. The Tribunal refers this case to the Secretary-General of the United Nations for possible enforcement of accountability measures to determine whether the unfortunate possibility of nepotism may have occurred in this case. It is for the Secretary-General to determine which persons within and without the selection

110. The Tribunal urges management to implement whatever reform measures are necessary so that staff selection procedures within the Organization are fully respected and applied.

111. The Tribunal refers this case to the Secretary-General of the United Nations, pursuant to article 10 of its Statute, for possible enforcement of accountability measures.

(Signed)

Judge Marilyn J. Kaman

Dated this 30th day of March 2011

Entered in the Register on this 30th day of March 2011

(Signed)

Santiago Villalpando, Registrar, New York