



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2009/60

Judgement No.: UNDT/2011/098

Date: 10 June 2011

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

MEZOUÏ

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

JUDGEMENT

---

Counsel for Applicant:  
François Loriot

Counsel for Respondent  
Stephen Margetts, ALS/OHRM, United Nations Secretariat

## Application

well as in terms of experience. With respect to education, too, it shows that the Applicant only partially fulfilled the requirements of the position, with degrees in linguistics, while the notice required at least one master's level university degree or the equivalent, preferably in economics, social sciences or a related discipline.

8. Of the eight candidates interviewed, the ad hoc panel identified two male internal candidates (hereinafter candidates X and Y) as meeting the requirements of the position in terms of skills and experience, and one female external candidate as meeting most of the criteria of the position as regards skills and, partially, experience. The other five candidates were rated as only partially fulfilling the requirements of the position in terms of skills and diploma or not at all in terms of experience.

9. In a memorandum dated 27 April 2006 addressed to the Assistant Secretary-General for Human Resources Management and setting out the procedure to be followed by the ad hoc panel, the Under-Secretary-General for Economic and Social Affairs recommended the appointment of

15. In a memorandum dated 27 May 2008, the Senior Review Group authorized the disclosure of the documents relating to the selection process to JAB, on condition they not be disclosed to the Applicant.

16. In a memorandum dated 2 June 2008, the Assistant Secretary-General for Human Resources Management sent JAB: (a) the vacancy notice; (b) Applicant's scorecard, reflecting the outcome of her interview with the ad hoc panel (see para. 7); (c) the memorandum of 27 April 2006 from the department chief to the Assistant Secretary-General for Human Resources Management recommending the appointment of candidate X (see para. 9); (d) the memorandum of 11 May 2006 from the Senior Review Group to the Secretary-Ge

considering the lateness of the filing of the request due to the Tribunal's transition from the old to the new system of administration of justice.

25. By Order No. 71 (GVA/2010) of 31 August 2010, the Tribunal took several administrative steps consequent on the referral by the Appeals Tribunal. In particular, it ordered the Applicant to submit a corrected application no later than 1 October 2010 and, at her request (see para. 22), sent her a copy of the memorandum of the Senior Vice Group dated 11 May 2006, as sent to JAB.

26. On 1 September 2010, the Applicant sent the President of this Tribunal a motion for recusal of the judge hearing the case and a request for a change of venue from Geneva to New York.

27. By Order No. 72 (GVA/2010) of 17 September 2010, the President of the Tribunal dismissed the motion for recusal as unfounded and noted that it was up to the presiding judge to rule on the request for a change of venue.

28. In an e-mail dated 19 September 2010, the Applicant reiterated her request for a change of venue. She further requested that Order No. 71 (GVA/2010) be suspended insofar as it directed her to submit her application no later than 1 October 2010 and that the 30-day deadline for submission of the application be extended until such time as the case could be referred to a judge in New York.

29. By Order No. 73 (GVA/2010) of 21 September 2010, the presiding judge rejected the Applicant's request for a change of venue. He also gave the Applicant an additional 15 days, until 15 October 2010, to submit a corrected application.

30. In an e-mail dated 15 October 2010, the Applicant's newly designated Counsel submitted to the New York Registry of the Tribunal — without informing the Geneva Registry where the case was registered and without quoting the case number attributed to the matter by the Geneva Registry — the full application "in order for the Respondent to prepare its Answer within the 30-day timeframe". Counsel for the Applicant explained in his e-mail that he was submitting the application to the New York Registry "for reasons of geographical proximity in accordance with UNDT's rules of procedure".

31. Moreover, in an e-mail dated 17 October 2010, Counsel for the Applicant submitted to the Geneva Registry of the Tribunal — this time without informing the New York Registry — a motion for stay of proceedings and requested confirmation "that a transaction [would] be undertaken ... by UNDT in Geneva" pending a ruling by the Appeals Tribunal on several issues raised by Counsel for the Applicant, namely an appeal against this Tribunal's Orders Nos. 71 and 73 and a request for interpretation of the Appeals Tribunal's judgement 2010-UNAT-043 "on the determination of venue".

32. By Order No. 80 (GVA/2010) of 21 October 2010, the Tribunal dismissed the application for a stay of proceedings submitted by the Applicant and ordered the Respondent to submit its Answer to the application by 22 November 2010, noting the following:

11. What is clear from the facts related above is that by addressing the above-mentioned e-mails of 15 and 17 October 2010 to two different Registries, in full knowledge of Order No. 73 (GVA/2010) of 21 September 2010 whereby the judge in charge of the case refused a change of venue, Counsel for the Applicant attempted to mislead the Tribunal and, by transparent artifices, to impede both the presiding judge's order and Order No. 72 (GVA/2010) dated 17 September 2010 issued by the President of the Tribunal rejecting the request for recusal of the judge hearing the case. The Tribunal is bound to remind Counsel for the Applicant that such manoeuvres are unacceptable; they are to impair the serenity indispensable to the administration of justice and hence the very case he has a duty to defend.

33. On 22 November 2010, the Respondent submitted its Answer to the application.

34. In a letter dated 23 November 2010, the Tribunal gave the Applicant two weeks to submit comments on the Respondent's Answer. In addition, it informed the parties that a hearing would be held on 12 January 2011.

35. In an e-mail dated 24 November 2010, Counsel for the Applicant submitted to the President of the Tribunal ex parte, that is, without informing the Respondent, a new request for recusal of the judge hearing the case, arguing in particular that “critical and hostile” language used by the judge in Order No. 80 had placed the judge in a conflict of interest and calling for formation of a panel of three judges to rule on the motion for recusal.

36. By Order No. 86 (GVA/2010) of 30 November 2010, the President of the Tribunal dismissed the second motion for recusal filed by the Applicant, saying that she had failed to prove the existence of a conflict of interest. He also ~~filed~~ ~~that~~ through his e-mails of 15 and 17 October 2010, Counsel for the Applicant had not only deliberately ignored Order No. 73 (GVA/2010) refusing a change of venue for the case, but had attempted to mislead the Tribunal, and that such manoeuvres amply justified the reprimand ~~that~~ had in fact been issued by the Judge hearing the case. He also reminded Counsel for the Applicant that it ~~was~~ ~~is~~ duty to obey the orders of the Tribunal.

37. In a submission dated 1 December 2010, the Respondent asked the Tribunal to award costs against the Applicant inasmuch as she had ~~clear~~ ~~used~~ procedure through her various frivolous, vexatious and indeed misleading submissions, ~~in~~ ~~the~~ first motion for recusal and the request for change of venue of 1 September 2010, ~~the~~ submission of her application to the New York registry on 15 October 2010, the submission ~~of~~ ~~a~~ request for stay of proceedings to the Geneva registry on 17 October 2010 and the second motion for recusal of 24 November 2010.

38. On 7 December 2010, the Applicant ~~submitted~~ ~~comments~~ on the Respondent's Answer and asked for postponement of the hearing scheduled for 12 January 2011, as she and her Counsel would not be available on that date.

39. In a letter dated 8 December 2010, the Tribunal ~~therefore~~ informed the parties that the hearing of 12 January 2011 was postponed and that a new date would be set in due course.

40. In its ruling No. 2011-UNAT-101 of 1 March 2011, the Appeals Tribunal rejected the Applicant's application for interpretation of ruling No. 2010-UNAT

## Parties' contentions

45. The Applicant's contentions are:

(a) The Senior Review Group did not, prior to the meeting of the ad hoc panel, approve the evaluation criteria for the post in question, as required under Administrative Instruction ST/AI/2002/4;

(b) During the selection process, her application did not receive the full and fair consideration she was entitled to;

(c) Her curriculum vitae and scorecards were manipulated and falsified before the ad hoc panel conducting the interviews. The candidate's scorecards were not signed by the panel members. Her university education was misinterpreted. Her experience and qualifications were systematically undervalued, whereas those of candidate X were exaggerated. The ad hoc panel committed gross errors, particularly in assessing her "intergovernmental and diplomatic skills". The ad hoc panel did not ask the same questions of all candidates; further, it should have established a comparative evaluation grid for candidates. Her interview with the ad hoc panel took only 20 minutes;

(d) The evaluation report, wherein she had received the highest mark, was held back by DESA, which did not make it available to the Senior Review Group;

(e) The Senior Review Group's meeting was irregular and inquorate; the President was absent and there were no evaluation procedures. The minutes of the meeting of 9 May 2006 were not signed by an official authorized to do so, but by an interim president who had not been appointed by the Secretary-General. Under Secretary-General's bulletin ST/SGB/2005/4, the Senior Review Group is required to release its evaluation procedures, but has not done so. The majority of the eight members of the Group, including the President appointed by the Secretary-General, appear to have been absent. Though the Respondent contends that Administrative Instruction ST/AI/392 was respected in this case, it should be noted that that Instruction was no longer in effect at the relevant time but had been replaced by Secretary-General's bulletin ST/SGB/2005/4. The meeting may in fact never have taken place. The procedural irregularities are substantial and sufficient to invalidate the entire selection process;

(f) Moreover, that process was conducted without regard for Administrative Instruction ST/AI/1999/9 (Special measures for the achievement of gender equality). Under that Instruction, she ought to have been classified at the same level as higher than the male candidates and received priority consideration for promotion to the D-2 level. The Office of Human Resources Management did not

48. The Respondent's contentions are:

(a) The ad hoc panel erred in failing to take into account the Applicant's business administration certificate and concluding that she only partially fulfilled the post's education criteria. However, it is very unlikely that that omission had an impact on the overall assessment of her application and hence her chances of promotion. As appears from her scorecard, the ad hoc panel determined during the interview that the Applicant had a number of shortcomings and deficiencies not shown by the three candidates and to meet all or most of the skills criteria;

(b) According to the Appeals Tribunal case law (*Solunki*, 2010-UNAT-044), in determining compensation in the area of promotion, this Tribunal must be guided by two considerations: the nature of the irregularities that led to the cancellation of the disputed administrative decision, and an assessment of the realistic chance of promotion the staff member would have had if the procedure had been legal. In this case, the Applicant had little or no chance of being promoted and is therefore entitled only to minimum compensation. The Secretary-General has adequately compensated her by paying her three months' net base salary;

(c) Administrative Instruction ST/AI/1999/9 stipulates that when a woman applies for a vacant post in the Professional category and she shall be appointed on condition her qualifications meet the requirements for the vacant post and are substantially equal or superior to those of competing male candidates. As the Applicant does not meet those conditions, she could not expect to be appointed under the special measures for the achievement of gender equality;

(d) The Senior Review Group's meetings were consistent with established procedures. Contrary to the Applicant's claim, the Group's membership in 2006 was not eight persons but five and a chairperson, in accordance with bulletin ST/SGB/2005/4. At the meeting of 9 May 2006, the



50. Although the Applicant requested that witnesses be summoned to the hearing, the Tribunal considers that in reviewing appointments to a post given the type of control exercised by the Tribunal over negative decisions, it is generally necessary to hear witnesses. Given the discretionary nature of selection decisions, a judicial control over the legality of such decisions is limited to a review of the regularity of the procedure followed in making the decision and an effort to ensure that no factual error or manifest error of assessment was committed by the persons involved in the procedure. In this case, given the evidence on file, it does not appear that any witness would be helpful to the Tribunal.

51. Furthermore, the Tribunal considers that Applicant has provided documents relevant to

falsified and that she was discriminated against, but she fails to adduce any shred of evidence for her allegations, whereas the Administration placed candidates' scorecards on file after their interview before the panel; the documents are in no way unusual, nor was there any legal requirement for them to be signed by panel members. Neither is use of an evaluation grid, such as the Applicant contends ought to have been used, a regulatory requirement.

58. However, the Applicant is right in asserting, as JAB and subsequently the Secretary-General have recognized, that the ad hoc panel made a material error regarding her university education qualifications. What the Applicant has not established is that the ad hoc panel committed any factual error or manifest error of assessment in evaluating her "intergovernmental and diplomatic skills", and the Tribunal recalls that assessment of the Applicant with respect to that criterion falls within the panel's discretionary power. Similarly, while the Applicant contends that the ad hoc panel did not ask the same questions of all candidates at the interview, her allegation is unsupported by any shred of evidence; and in any event, such a requirement is imposed by any regulation.

59. Third, and as already noted above, given the Tribunal's limited oversight capacity in terms of the ad hoc panel's assessment of candidates' qualifications, the Tribunal cannot usurp the panel's function and rule, as the Applicant requested in writing and at the hearing, that she was the best qualified candidate for the post in question, whereas the panel noted on her scorecard that in terms of skills she only partially met the criteria of the post and that it had found a number of shortcomings and deficiencies in that respect as well as in her experience.

60. Fourth, it is not clear from the evidence on file that in his memorandum of 27 April 2006 addressed to the Assistant Secretary-General for Human Resources Management and recommending the appointment of candidate X, the Under-Secretary-General for Economic and Social Affairs complied with the following provisions of Administrative Instruction ST/AI/1999/9, which require him to explain the choice of a man when a woman is also a candidate:

Selection/appointment

1.8 (a) Vacancies in the Professional category above shall be filled, when there are one or more women candidates, by one of those candidates provided that:

- (i) Her qualifications meet the requirements for the vacant post;
- (ii) Her qualifications are substantially equal or superior to those of competing male candidates;

(b) In accordance with staff regulation 4.4 the fullest regard shall be given to the qualifications and experience of women already in the service of the United Nations;

(c) In evaluating women candidates, particular emphasis shall be given to potential to perform at the higher level, although women may not have been offered such an opportunity in their prior service;

(d) When the qualifications of one or more women candidates match the requirements for the vacant post and the department or office recommends a male candidate, the department or office shall submit to the appointment and promotion bodies a written analysis, with appropriate supporting documentation, indicating how the qualifications and experience of the recommended candidate, when compared to the core requirements of the post, are clearly superior to those of the male candidates who were not recommended ...

61. Fifth, the Applicant contends that many irregularities were committed during the meeting on 9 May 2006, during which the Senior Review Group verified that the ad hoc panel had applied the evaluation criteria, approved the recommendation of candidate X by the Under-Secretary-General for Economic and Social Affairs and recommended that the Secretary-General also give his approval. The Applicant claims that the Group could not legally meet since it had not developed and published its own procedures.



70. Given all the evidence on file and the discussions at the hearing, the Tribunal considers that if no irregularity had been committed the Applicant's chances of appointment could fairly be put at one in four.

71. Regarding compensation for the damages suffered by the Applicant, the Appeals Tribunal, in its judgement No. 2010-UNAT-095, *Antaki*, stated:

Not every violation will necessarily lead to an award of compensation. Compensation may

- (b) All of the Applicant's other claims are dismissed;
- (c) She is ordered to pay the Respondent the sum of US\$ 2,000 as costs.

\_\_\_\_\_  
Judge Jean-François Cousin  
So ruled this 10th day of June 2011

Entered in the Register on 10 June 2011

\_\_\_\_\_  
V́ctor Rodŕguez, Registrar, Geneva

\_\_\_\_\_