



UNITED NATIONS DISPUTE TRIBUN 685.69981TE2 709.83 1

Introduction

1.

4. In his reply to the Application, the Respondent submitted that it was not receivable. In Judgment UNDT/2013/179, this Tribunal found that the Application in

11. His fixed term contract expired on 31 December 2012. As it was not renewed he was separated from service on 1 January 2013.

12. On 18 October 2012, the Applicant applied for the Fukuoka post of Human Settlements Officer. The competencies of the post were listed as: professionalism; judgment and decision-making; planning and organising; and leadership.

13. The Applicant was pre-screened and was found to have met the minimum requirements of the job opening. He was then shortlisted by the hiring manger from a total of 35 applicants as one of four persons to be interviewed for the vacancy. In February 2013, the four shortlisted candidates underwent a competency based assessment by a departmental panel (the Panel).

14. In March 2013, the Panel produced a report which recorded the assessments of each candidate against the competencies listed in the vacancy announcement (VA) for the Fukuoka post.

- a) Candidate 1 fully met all the requirements of each of the competencies.
- b) Candidate 2 (the Applicant) was assessed as having fully met one of the requirements, partially meeting one of the requirements and not meeting the other three requirements. In the overall assessment of the Applicant the Panel noted:

Whilst the interview validated the PHP assessment by the panel, it was clear that he had no experience of working in Asia or the Pacific (indeed the candidate admitted the same), and failed to convince the panel that he had the leadership, judgment and decision making competencies to undertake this position.

- c) Candidate 3 partially met two of the requirements and fully met the other three requirements.

d) Candidate 4 fully met the requirements of each of the competencies.

15. The Panel recommended candidates 1 and 4 for the post.

16. On 22 May 2013,

21. The Applicant then sought further information about the composition and membership of the CRB and the criteria for endorsement by the CRB.

22. The OIC advised that she could not share the identity of the members of the CRB on posts he was candidate for as the information was kept confidential to maintain their independence.

23. On 13 July 2013, the Applicant requested management evaluation of the decision not to provide information of the process leading to and supporting the administrative decision not to include him in the roster; and not to disclose the membership of the CRB.

24. Following a review by the Management Evaluation Unit (MEU) the contested decisions were upheld by the Under-Secretary-General for Management.

Submissions of the Parties

Applicant's submissions

25. The Applicant submits that his employment history and experience with UN-Habitat provides a *prima facie* presumption of irregularity of the impugned administrative decisions and related processes and that these decisions were taken in retaliation to the Applicant's report of prohibited activities in the Libya programme.

26. Based on this *prima facie* presumption of irregularity and due to his lack of knowledge of the records of the selection processes his right to good faith and fair dealing was violated and as a result he was not placed on the roster.

27. Noting that MEU had stated that the selection panel had noted his lack of experience in working in the Asia-Pacific region the Applicant submitted that work experience in Asia or the Pacific was not required in the vacancy announcement and in any event he has work experience in Asia.

28. The issue of work experience is assessed at the prescreening and assessment

b. Pre-approved evaluation criteria for VA 12-PGM-UNHABITAT-25042-R-FUKUOKA (O) (VA 25042):

The word-document provided showing the pre-approved evaluation criteria does not show any reference to the specific job opening and/or to the data-set stored and/or to any date supporting the strong assumption that the document was retroactively generated. In addition, the document does not show the necessary level of detail and/or crucial information e.g., as to what experience concerning the Field of Work is required.

c. The Interview questions for VA 25042:

The document provided showing the questions for the interview does not show any reference to the data set stored supporting the strong assumption that the document was retroactively generated. Given that the Respondent claims that the notes of the panel members were not filed, it remains questionable why the Respondent was able to provide the template for the interview questions.

It is to be noted that none of the documents provided by the Respondent shows any reference to the standard procedures requiring that the evaluation process needs to be recorded in the electronic system of INSPIRA. This only allows for the strong assumption that the entire evaluation process was undertaken in violation of the applicable rules and regulations that, in turn, grossly f the appliw6(N120(n)19()-331(o)--16()-3)-22(rq3.99u)-20(m)89(e)-16()] TJ ET Q

“it was clear that he had no experience of working in Asia or the Pacific (indeed the candidate admitted the same)” is a patent fabrication in that the Applicant’s PHP shows his distinct and relevant work experience in Asia as Director of a USAID-funded ‘Capacity Building Programme for Urban Recovery’ in Kabul, Afghanistan. Therefore, the Panel’s remark in brackets that the Applicant would have admitted the lack of work experience in Asia borders “criminal acting”.

34. Referring to the statement of the Panel that the Applicant “failed to convince the panel that he had the leadership, judgment and decision making competencies to undertake this position”, the Applicant again submits that the comparative report does not reflect the answers given by him supporting the strong assumption that the Respondent’s failure to produce the notes taken by the Panel members is a deliberate act by the Respondent to deprive the Applicant of his right to have reasonable and effective means to contest administrative decisions and, therefore, of his right to due process.

Respondent’s submissions

35. The Respondent submitted that the non-inclusion of the Applicant in the roster after the Fukuoka selection process was proper as it was not discretionary, did not breach any rights of the Applicant nor was it taken in breach of any rule or regulation.

36. Relying on the frame work for inclusion on the roster in ST/AI/2010/3 (Staff Selection Syelbo, th20(n) Respondeen submitted th,eseon candidats pr na te ed the

37. The Applicant was n

44. The pre-approved evaluation criteria are disclosed in a word document which is a snap shot from INSPIRA. The other details are outlined in the Job Opening and the pre-screening questions.

45. The Respondent strongly denies that the interview questions were retroactively generated for the purposes of this litigation.

46. The process was undertaken in full compliance with the relevant rules12 Tf 0 0c10(r)-10(h)19(

candidates against the applicable evaluation criteria is prepared to allow the CRB to review the proposal and the head of department to make the selection decision.⁵

50. Section 7.7 provides that for position specific job openings the hiring manger or occupational group manager shall submit a proposal for candidates to the central review body.

51. Section 8.1 empowers the CRB to review departmental proposals for filling a position specific job opening. It is the responsibility of the CRB to ensure that applications are correctly evaluated against the corresponding evaluation criteria and that the applicable procedures are followed.

52. Section 9.4 provides that candidates for position specific job openings up to and including at the D-1 level included in a list endorsed by a central review body other than the candidate selected for the specific position shall be placed on a roster of candidates pre-approved for similar functions at the level of the opening.

53. Under these rules, it is a requisite for placement on a roster that a candidate should be proposed by a hiring manager following an evaluation and endorsement by the CRB.⁶

54. There is a presumption of regularity in the staff selection processes “that official acts have been regularly performed”.⁷ The Respondent is required to make a minimal showing of regularity and it is for the Applicant to rebut that presumption. The Applicant’s submission that there is a presumption of irregularity is a mistaken statement of the applicable law.

55. The evidence in this case shows that the Applicant passed the preliminary pre-screening step and therefore was deemed to have met the minimum requirements for

⁵ Section 7.6 ST/AI/2010/3.

⁶ Sections 7.7 and 9.4 ST/AI/2010/3.

⁷ *Rolland* 2011-UNAT-122.

the post. He then was assessed by the hiring manager as being amongst the 4 most suitable candidates and was shortlisted for the post.

56. The assessment by the Panel followed the same structure for each of the shortlisted candidates who were evaluated against the competencies listed in the VA. The Panel decided that the Applicant met the competency for planning and organization but did not meet the other three required competencies.

57. In addition to their comments on the specific competencies, the Panel commented in general on the other qualities of each of the candidates in the section marked overall assessment.

58. The overall assessment of Candidate 1 referred to his experience in relevant countries. It noted that Candidate 2, the Applicant, had no experience of working in

considered by the Tribunal in the context of the applicant substantive claim which contests an administrative decision. Usually they may be resolved by preliminary rulings about disclosure before the substantive case is determined and/or in the course of the judgment.

66. Be that as it may, given the seriousness of the Applicant's allegations and for clarity of record, the Tribunal sought and considered submissions from the Respondent on the specific allegations made by the Applicant concerning disclosure.

67.

Case No. UNDT/NBI/2013/061

Judgment No.: UNDT/2014/058