



Before: Judge Francis Belle

Registry: Geneva

Registrar: René M. Vargas M.

SMON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nicole Wynn, ALD/OHR, UN Secretariat

Rosangela Adamo, ALD/OHR, UN Secretariat

Introduction

1. On 12 December 2018, the Applicant, a staff member with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), filed an application to contest the decision not to select her for the temporary position of Aviation Quality Assurance Officer, at the P-3 level, in the Department of Field Support (“the Post”).
2. On 25 January 2019, the Respondent filed his reply. The Respondent submits that the application is without merit as the Applicant was fully and fairly considered for the Post in accordance with ST/AI/2010/4/Rev.1 (Administration of temporary appointments).

Facts and procedural history

3. On 7 April 2018, a temporary job opening for the Post was advertised, and the Applicant applied.
4. A total of 65 candidates applied for the Post, out of which four candidates were shortlisted. It was noted, however, that three of the four shortlisted candidates did not have all the experience needed for this position.
5. A table entitled “evaluation criteria analysis (preliminary evaluation) and final evaluation” shows that the Applicant was considered having required and desirable education and required work experience, but did not have one of the three desirable fields of experience, that is, experience in Operator Certification or as an Airworthiness or Operations Inspector.
6. Also, according to the “United Nations Comparative Analysis Report” for the Post, which provides analysis of the qualifications of the four shortlisted candidates, the Applicant met all the requirements of education but did not meet all of the desirable qualifications of the Post. In particular, it was noted that while the Applicant possessed

some relevant experience in the development and implementation of the aviation quality audit area, she did not have experience in the Operator Certification or Airworthiness/Operations Inspection area. It was further noted that the Applicant's experience in the air transport operations area in the field environment is limited to five months and as such was not significant.

7. On 13 August 2018, having not received any updates on the selection process, the Applicant requested a management evaluation of the selection decision for the Post.

8. On 18 August 2018, the Applicant was informed that the selection process had been completed and that her application was not successful.

9. By letter of 17 September 2018, the Under-Secretary-General for Management informed the Applicant that following consideration of this request for management evaluation, the Secretary-General had decided to uphold the contested decision.

10. On 12 December 2018, the Applicant filed the present application with the Nairobi Registry of the Dispute Tribunal.

11. On 25 January 2019, the Respondent filed his reply.

12. On 19 March 2019, the case was transferred to the Geneva Registry.

13. On 10 November 2020, following the Tribunal's case management steps, the parties filed their closing submissions.

Consideration

Standard of review and the issues of the case

14. It is trite law that the Dispute Tribunal's judicial review is limited. In general, the Appeals Tribunal often refers to its judgment in *Sanwidi* 2010-UNAT-084 (para. 42) in which it defined the scope of review by finding that "the

role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate”. The Appeals Tribunal further held that “the Dispute Tribunal is not conducting a merit-based review, but a judicial review” explaining that a “[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker’s decision”.

15. In matters of staff selection, it is well established that the Secretary-General has broad discretion. When reviewing such decisions, the Tribunal shall examine “(1) whether the procedure as laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration” (*Abbassi* 2011-UNAT-110, para. 23). The Appeals Tribunal has further held that the role of the Tribunals is “to assess whether the applicable regulations and rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals’ role is not to substitute their decision for that of the Administration” (*Ljungdell* 2012-UNAT-265, para. 30).

16. As the Appeals Tribunal reiterated in *Lemonnier* 2017-UNAT-762 (see para. 32), citing *Rolland* 2011-UNAT-122, “the starting point for judicial review is a presumption that official acts have been regularly performed”. The Appeals Tribunal held in *Rolland* that if the management is able to minimally show that an applicant’s candidature was given full and fair consideration, the burden of proof shifts to the applicant who then must show through clear and convincing evidence that he or she was denied a fair chance of selection (*Rolland*, para. 26).

17. In the present case, the record shows that the Applicant was one of the four shortlisted candidates but was not selected because she did not have highly desirable experience listed in the temporary job opening, namely, experience in Operator Certification or as an Airworthiness or Operations Inspector. Another candidate who fully met all the required and desirable qualifications was selected for the Post.

18. The Applicant challenges the impugned decision on three grounds: (1) the inclusion of highly desirable requirement of having experience in Operator Certification or as an Airworthiness or Operations Inspector was improper; (2) the assessment concerning her candidacy was flawed; and (3) the principle of gender equality was not applied. The Tribunal will review each issue in turn.

Inclusion of the highly desirable criterion at issue

19. First, the Applicant argues that this specific highly desirable requirement of having experience in Operator Certification or as an Airworthiness or Operations Inspector has no legal, technical or operational grounds to be included in the job opening as these functions were not listed under the job responsibilities, nor is this criterion listed in the United Nations Human Resources database of generic posts or in the United Nations Aviation Standards (“AVSTADS”). The Applicant argues that this desired experience is exclusive functions of states that are not needed in the United Nations, and that various aviation specialists can review the air operators’ certificates, not only inspectors. Therefore, this highly desirable requirement is unnecessary to perform a job and likely tailored to select a pre-selected candidate.

20. In response, the Respondent submits that this criterion was included in the job opening based on the classified generic job description for the position approved on 11 March 2009, and that this standard desirable criterion or similar criteria has been included in other vacancy announcements for positions in Air Transport Service.

21. In a “Request for classification action” for the Post, which was approved on 11 March 2009, there is a “length and type of practical experience required” section in which it is stated that “Operational experience with a Government Department of Civil Aviation or within the airline industry, and familiarity with the preparation and responsibility for implementation of rules, regulations, operating manuals and flight and ground procedures deemed necessary for flight safety and operations inspection and certification is desirable”.

22. In the vacancy announcements used for the Post prior to the issuance of the temporary job opening at issue, the following criteria were included:

a. 2009 vacancy announcement: “Operational experience with a Government Department of Civil Aviation or within the airline industry and familiarity with the preparation and responsibility for implementation of rules, regulations, operating manuals and flight and ground procedures deemed necessary for flight safety and operations inspector and certification is desirable. Experience in the international development and implementation of Master Surveillance Plans, Inspector Policy and Procedure Manuals in all functional areas of flight operations inspector is highly desirable”;

b. May 2016 vacancy announcement: “Certification in Aviation Quality Audit as Aviation Safety Inspector for Airworthiness and Operations is required”; and

c. September 2016 vacancy announcement: “Certification in Aviation Quality Audit as Aviation Safety Inspector for Airworthiness and Operations, or equivalent, is desirable”.

23. While the exact wording of this criterion has not been the same, the Tribunal notes that similar criteria have been included in the vacancy announcements for the Post based on the classification document approved in 2009.

24. The Applicant argues that various aviation specialists can review the air operators’ certificates, not only inspectors, and thus this criterion is unnecessary.

25. The Applicant may be right that the desirable criterion in question is more restrictive and that candidates with other types of experience would be able to perform these functions. However, that does not mean that the Administration cannot include more restrictive and yet reasonable criteria, considering that the Secretary-General has broad discretion in matters of staff selection.

26. Therefore, the Applicant's argument that this criterion was included without any legal, technical or operational grounds and was tailored to select a pre-selected candidate is without merit.

Assessment process under ST/AI/2010/4/Rev.1

27. Second, the Applicant raises several questions regarding the assessment process. She questions why a competency-based interview and/or other appropriate evaluation mechanisms was not conducted. She also submits that the assessment of her qualifications was done in an unfair, incorrect, and subjective manner to deliberately diminish her credentials. She submits that she in fact had proven expertise in this highly desirable criterion and the Administration deliberately ignored her previous experience as Chief Aviation Quality Assurance at the United Nations Headquarters for almost 10 years.

28. She also questions the veracity of two comparative analysis reports produced by the Respondent since one is undated and the other is dated 17 August 2018, which is the date subsequent to the selection decision itself (18 May 2018). She therefore raises a question whether they were created after the fact. She also argues that the Administration failed to provide verifiable and convincing evidence of the selected candidate's credentials to prove that the selected candidate indeed met all required and desirable criteria.

29. The Respondent responds that the Applicant was fully and fairly considered in accordance with ST/AI/2010/4/Rev.1, which does not require a competency-based interview or other assessment. The Administration showed that a comparative analysis of all applications was performed against the criteria in the job opening and that the Applicant was not the most suitable candidate as she did not satisfy the desirable criterion in question.

30. Section 3.5 of ST/AI/2010/4/Rev.1 provides that assessment of candidates for a temporary job opening “will be undertaken through a comparative analysis of the applications” and “[t]he assessment may also include a competency-based interview and/or other appropriate evaluation mechanisms, such as written tests, work sample tests and assessment centres”.

31. The record shows that the Administration indeed conducted a comparative analysis of the applications as required by relevant law. As the Respondent pointed out, a competency-based interview or other evaluation mechanisms may be utilised but are not required.

32. The Applicant questions the veracity of the comparative analysis reports, but the Tribunal notes that a comparative analysis table is undated but signed by the Chief, Air Transport Section. Another report titled “United Nations Comparative Analysis Report” has a “run date” of 17 August 2018 and thus it appears that this is the date when this report was generated. The Tribunal further notes that the recommendation memorandum and two comparative reports contain the same information regarding shortlisted candidates and thus there is no basis to question the veracity of these reports.

33. The Applicant submits that her qualifications were unfairly assessed, particularly her previous experience as Chief Aviation Quality Assurance at the United Nations Headquarters for almost 10 years was deliberately ignored. However, it is stated in the comparative analysis report that the Applicant “possesses some relevant experience for the post most of it is in the development and implementation of Aviation Quality Audit area and not in the Operator Certification or Airworthiness/Operations inspection area”. Therefore, the Tribunal notes that, contrary to the Applicant’s claim, the Applicant’s experience in aviation quality assurance was taken into account.

34. The Applicant states that the Administration failed to provide verifiable and convincing evidence that the selected candidate met all education and work experience criteria and demanded the disclosure of such documents. However, the Applicant does not provide any basis to question the qualifications of the selected candidate. Therefore, the Administration is not required to disclose documentation relating to the selected candidate to satisfy a requirement that the Administration minimally show that the applicant's candidature was given a full and fair consideration.

35. Accordingly, the Tribunal finds that the assessment was conducted properly and that the Applicant's qualifications were fully and fairly considered in accordance with relevant law.

Principle of Gender Equality

36. Finally, the Applicant argues that the principle of gender equality might have not been applied as she is a fully qualified female candidate, with extensive experience in the subject area and yet was not provided with an equal opportunity to be further assessed after being shortlisted.

37. The Respondent submits that this claim is without merit. The Respondent submits that the Hiring Manager considered the Gender Parity Strategy and, yet, since there was gender parity at the P-3 level in the Department of Field Support, the Hiring Manager concluded that the selection of a male candidate did not impact the gender balance. The Respondent further submits that the qualifications of the selected male candidate, who met all highly desirable and desirable criteria for the Post, were superior to the Applicant's.

38. ST/AI/1999/9 (Special measures for the achievement of gender equality) requires that vacancies in the Professional category and above shall be filled by a woman candidate provided that her qualifications meet the requirements for the post and are substantially equal or superior to those of competing male candidates.

39. As discussed above, the Applicant was found not the most suitable candidate for having not met the highly desirable criterion. Therefore, she was not substantially equal or superior to those of competing male candidates and non-selection of the Applicant did not violate ST/AI/1999/9.

40. In light of the foregoing, the Tribunal finds that the contested selection decision was lawful.

Conclusion

41. In view of the foregoing, the application is dismissed.

(Signed)

Judge Francis Belle

Dated this 30th day of November 2020

Entered in the Register on this 30th day of November 2020

(Signed)

René M. Vargas M., Registrar, Geneva