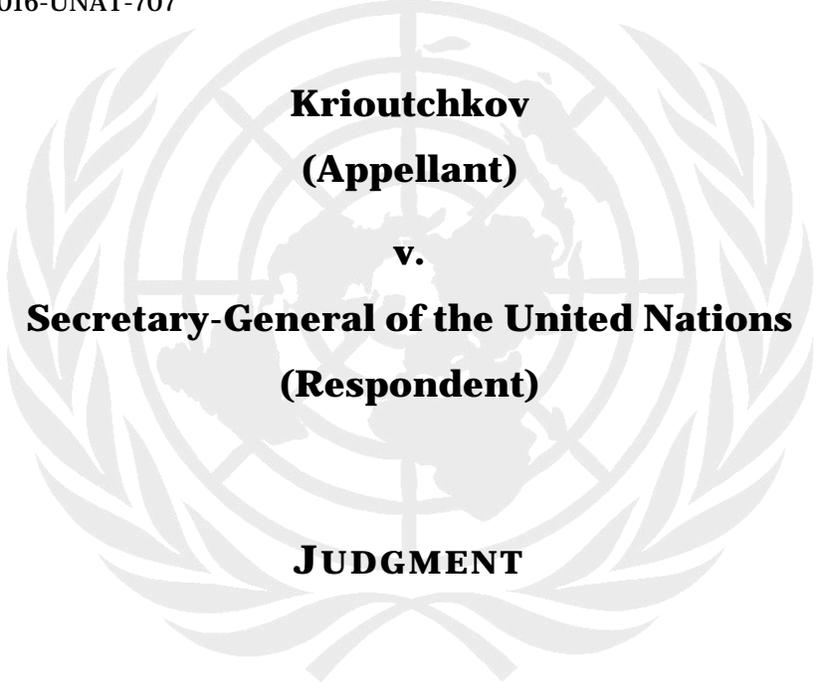




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2016-UNAT-707



**Krioutchkov
(Appellant)**
v.
**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before: Judge Martha Halfeld, Presiding
Judge Deborah Thomas-Felix
Judge Sabine Knierim

Case No.: 2016-941

Date: 28 October 2016

Registrar: Weicheng Lin

Counsel for Mr. Krioutchkov: Self-represented

Counsel for Secretary-General: Carla Hoe

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Vladislav Krioutchkov against Judgment No. UNDT/2016/041, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 26 April 2016 in the case of *Krioutchkov v. Secretary-General of the United Nations*. Mr. Krioutchkov filed the appeal on 24 June 2016, and the Secretary-General filed an answer on 23 August 2016.

Facts and Procedure

2. Mr. Krioutchkov was a Russian Translator at the P-3 level at the Economic and Social Commission for Asia and the Pacific in Bangkok at the material time.

3. On 17 December 2013, the post of Russian Reviser (P-4), Russian Translation Service, with the Department for General Assembly and Conference Management, at the United Nations Headquarters, was advertised under Job Opening (JO) 13-LAN-DGACM-31928-R-NEW YORK (L). Mr. Krioutchkov applied, was shortlisted, and was invited to take a technical evaluation test.

4. In an e-mail dated 5 April 2014, the Chief of the Russian Translation Service and the Hiring Manager asked Mr. Krioutchkov to confirm his availability for the technical evaluation test between 11 and 14 April 2014. The Chief explained that the test would be administered through a testing web site and the link to the test would be e-mailed to him. “Once you get access to the test through the link that you received you will have 12 hours to paste your translation and revision texts on the test web site.” Mr. Krioutchkov and the Hiring Manager continued their e-mail exchanges on the logistics of the written test. The test was rescheduled to accommodate Mr. Krioutchkov’s conflicting commitments. To Mr. Krioutchkov’s query on whether any special equipment and/or skills were required, the Hiring Manager replied, by e-mail dated 17 April 2014, that no specific equipment was required “but naturally [he] need[ed] a computer with internet connection, a web browser and [his] favourite text editor”.¹

5. On 30 April 2014, Mr. Krioutchkov opened the online link to the two-question written test. On the same day, he wrote to the Hiring Manager stating that the test required special equipment, such as a Russian keyboard and a printer, and special skills, i.e. typing, and added

¹ Impugned Judgment, para. 3.

that the Hiring Manager's "misleading statements prevented [him] from taking the test".² Mr. Krioutchkov did not answer either of the two questions of the test.

6. On 27 August 2014, Mr. Krioutchkov was notified of his non-selection for the post.

7. Mr. Krioutchkov appealed. In Judgment No. UNDT/2016/041 now under appeal, the Dispute Tribunal rejected his application. The UNDT identified the core issue from the manner in which Mr. Krioutchkov argued his case as "whether it was lawful to require [Mr. Krioutchkov] to type in Russian as part of the competitive selection exercise".³ It answered the question in the affirmative. "The administration of a written test is a lawful and [...] common means of assessing the technical skills of candidates in a selection process", as long as it is "fair and reasonable, and not designed deliberately to confer an advantage on a preferred candidate or, alternatively, to disadvantage a particular candidate".⁴ In the present case, the UNDT found that "the Administration's decision requiring relatively senior specialists in the Russian language to be able to type in Russian is within the discretion allowed to the Administration and, absent irrationality or perversity, it is not for the [Dispute] Tribunal to interfere".⁵ In any event, the Dispute Tribunal was of the view that Mr. Krioutchkov's application would not be receivable "insofar as he might be deemed to be including a challenge to the intermediary or preparatory requirement that the written test answers be typed".⁶

Submissions

Mr. Krioutchkov's Appeal

8. The UNDT erred on a question of law and on a question of fact, resulting in a manifestly unreasonable decision.

9. Typing was not mentioned as a requirement for the P-4 post in either JO 31928, the P-4 Reviser Generic Job Profile, the underlying job description for the post or the Organization's official websites for language professionals. It therefore could not have been used for evaluation. By unofficially making typing a disqualifying requirement, the Secretary-General undermined Mr. Krioutchkov's selection chances. By requiring candidates

² *Ibid.*, para. 4.

³ *Ibid.*, para. 9.

⁴ *Ibid.*, paras. 19 and 21.

⁵ *Ibid.*, para. 21.

⁶ *Ibid.*, para. 17.

to type in some selection exercises but allowing candidates to handwrite the tests in others, the Secretary-General created confusion, uncertainty and unequal conditions and undermined the objectivity and uniformity of the selection processes. The requirement of typing answers during the test was designed to disqualify Mr. Krioutchkov as a completely suitable roster candidate and was imposed to “intimidate, discriminate against and demonstrate bias and prejudice”.

10. Mr. Krioutchkov’s chances to successfully compete for promotion to the P-4 level were unequal to those of New York-based candidates from the very beginning. He has been repeatedly included in the P-4 roster since 2008, but has never been selected, in contrast to all other candidates who were normally selected within one to two years without any additional evaluation tests. The roster treatment is the result of a biased approach of a particular manager on the basis of prolonged practice of promoting Russian translators from within a particular unit, in violation of the principle of securing the highest standards of efficiency, competence and integrity.

11. Mr. Krioutchkov requests that the Appeals Tribunal “modify the UNDT judgement and [...] award appropriate relief”.

The Secretary-General’s Answer

12. The Dispute Tribunal correctly upheld the contested decision. The Administration acted within the bounds of its discretion and reasonably decided that it would be appropriate to assess the skills of shortlisted candidates that were competing for a P-4 position as a Russian Reviser, by means of a written test, which required candidates to type their answers. Among the shortlisted candidates, Mr. Krioutchkov was the only one who opened the test but failed to answer either question. His candidacy was given full and fair consideration.

13. Mr. Krioutchkov has failed to satisfy the requirements of Article 2(1) of the Appeals Tribunal Statute and to identify any excess or failure of jurisdiction, errors of law, material errors of procedure, or material errors of fact. He makes a general and vague assertion at the beginning of his appeal, and reiterates the arguments that he advanced before the UNDT in an attempt to have the Appeals Tribunal consider his original arguments before the UNDT *de novo* and come to a different conclusion.

14. The Secretary-General requests that the Appeals Tribunal uphold the UNDT Judgment and dismiss the appeal in its entirety.

Considerations

Procedural issue - request for production of document

15. The Appellant requests that the Secretary-General produce the underlying job description for the post, in order to verify if a typing requirement was introduced since the last revision. In light of the reasons below, having exhaustively examined the case, this Tribunal finds that it is neither necessary nor useful for the fair and expeditious resolution of the case to grant Mr. Krioutchkov's request.

Alleged errors of law and errors of fact, resulting in a manifestly unreasonable decision

16. The new internal justice system, as established by General Assembly resolution 61/261, is based on a two-tier system, consisting of a first instance, the Dispute Tribunal, and an appellate instance, the Appeals Tribunal, the latter rendering binding decisions and ordering appropriate remedies.⁷ This system is highly centered on "the importance for the United Nations to have an efficient and effective system of administration of justice so as to ensure that individuals and the Organization are held accountable for their actions in accordance with relevant resolutions and regulations".⁸

17. According to Article 2 of the Appeals Tribunal's Statute, the competence of this Tribunal is limited to certain issues. For a first instance decision to be vacated or overturned, an appellant must provide proof that the first instance tribunal, in rendering its judgment, exceeded its jurisdiction or competence, failed to exercise jurisdiction vested in it, erred on a question of law, committed an error in procedure such as to affect the decision of the case, or erred on a question of fact, resulting in a manifestly unreasonable decision.

⁷ General Assembly resolution 61/261.

⁸ *Ibid.*, preamble.

18. It follows that it is not enough for an appellant to disagree with the findings of fact or the conclusions of law made by the trial court. Rather, for an appeal to succeed, an appellant must persuade this Tribunal that the contested decision fulfills the objective criteria of its competence.⁹ In the present case, however, this did not occur.

19. In his appeal, Mr. Krioutchkov argues that the job opening did not mention “keyboarding or typing” and that he was eliminated from the selection process, as had happened twice before, “as part of long term and system[-]wide discrimination”. The Appellant contends that translators dictate or handwrite and that the latter technique was subsequently allowed for JO 38908, where he successfully passed the test and was placed on the roster. He alleges that banning handwriting in some cases creates “confusion and uncertainty destroying [his] chances for [...] full and fair consideration”.

20. The Appellant contends that “typing already became obsolete” and that imposing a typing requirement contrary to the job opening and the P-4 Reviser Generic Job Profile amounted to an arbitrary revision of the conditions of service, since typing in the context of translation services was done by specialized general service staff as opposed to staff of the language professionals’ category. The Administration effectively violated his conditions of service, “creating a new post of self-typing reviser not mentioned anywhere in the system”.

21. It must be highlighted that, whereas it is uncontested that “keyboarding and typing” was not explicitly mentioned in the job opening for the contested P-4 position, it would have been a reasonable and normal conclusion to draw for Mr. Krioutchkov in light of the instructions he received from the Chief of the Russian Translation Service. These are reflected in the following excerpts of their e-mail exchange: “The test will consist of two parts: 1) translation of a text from English into Russian; and 2) revision of a text in Russian.”¹⁰ “You only need to have an Internet connection to get the test and to upload it. You can work at the office, at home or elsewhere.”¹¹ “You don’t need any special equipment but naturally you need a computer with internet connection, a web browser and your favourite text editor.”¹²

⁹ *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29, citing *Tsoneva v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-045.

¹⁰ E-mail from Chief, Russian Translation Service to Mr. Krioutchkov, dated 5 April 2014.

¹¹ E-mail from Chief, Russian Translation Service to Mr. Krioutchkov dated 11 April 2014.

¹² E-mail from Chief, Russian Translation Service to Mr. Krioutchkov dated 17 April 2014.

22. Considering the fact that the test was to be taken online, with the Appellant being based in Bangkok and the test being administered from New York, it would have been normal to expect that the candidate would use a Russian keyboard to type his answers.

23. With respect to the provision that “[a]pplicants work on paper” stipulated in the *Compendium of administrative policies, practices and procedures of conference services*,¹³ the Appeals Tribunal notes that this provision is directed to candidates *in loco* who would receive the papers “in a sealed envelope that may be opened or closed only with two signatures” “in all centres” “at the same time”.¹⁴ This also explains why the test in the Bangkok Exam Centre also stated that it was “a paper based test”.

24. Therefore, Mr. Krioutchkov’s submissions do not convince this Tribunal. In the present case, the conditions of the examination were different from those envisaged in the *Compendium*, as the exam was administered online taking into account the time difference between New York and Bangkok, where the Appellant was based. There was thus no manner in which the Appellant could have participated in the examination other than by typing his answers to the exercise, uploading the text and submitting it by e-mail. There was, in the very specific circumstances, no possibility of sending handwritten answers or dictating the answers.

25. While handwriting was allowed in a subsequent examination for another job opening, JO 38908, the Appeals Tribunal notes that in that case, candidates had been advised accordingly and consented to such a procedure prior to the examination. Conversely, in the present case, handwriting had not been discussed or requested prior to the examination, although the Appellant had had the opportunity to request it, as he indeed did in the case of the subsequent examination. Therefore, handwriting was not prohibited, but simply not envisaged or even requested. Moreover, in the present case, candidates sitting the exam were advised that they would be required to work on a computer with “text editor”, which inherently implied that the examination would require typing.

26. Similarly, Mr. Krioutchkov’s contention that the Organization should have provided formal training for typing prior to the administration of the examination cannot succeed since the other rostered candidates were able to pass the examination without such training by the

¹³ Department for General Assembly and Conference Management, *Integrated Global Management, Compendium of administrative policies, practices and procedures of conference services*, para. 69.

¹⁴ *Ibid.*

Organization. Moreover, it is generally expected that experienced translators, like the Appellant, are also experienced in typing, just as it can be expected that they are able to “draft ... summary records”, prepare “terminological bulletins and glossaries, technical vocabularies” and, furthermore, are able to “correctly interpret messages from others and respond appropriately”, as well as “ask questions to clarify”, as mentioned in the concerned job opening.

27. Turning to Mr. Krioutchkov’s argument that typing was obsolete or a competency required in a different job category, we note that all the other candidates involved in the selection process successfully typed their answers and submitted their exercises. Therefore, it does not respond to the requirements of equal treatment to provide the Appellant with special conditions for the exercise, which was, furthermore, a personal activity that did not include any special help in typing.

28. As to Mr. Krioutchkov’s contention that he has been repeatedly included in the P-4 roster since 2008, but has never been selected, in contrast to all other candidates who were normally selected within one to two years without any additional evaluation tests, we note that the Appeals Tribunal has previously held in *Charles*, that:¹⁵

The roster is a pool of assessed candidates reviewed and endorsed by a central review body and approved by the head of department/office who are available for selection against a vacant position.

29. The Appeals Tribunal understands that the Appellant may be frustrated by the fact that he has been on the roster for many years without obtaining a promotion, particularly because he has a wide experience in his professional area, having allegedly occupied different posts in Nairobi, New York and Bangkok for over 25 years. Nevertheless, having clearly and unconditionally accepted the invitation for the technical evaluation, he is now precluded from arguing bias against the examination itself. Moreover, being on the roster does not create an expectancy or entitlement to promotion. In the present case, actually, not all rostered candidates who submitted texts for evaluation were successful. Only three out of five who presented their texts managed to obtain the required minimum points. The mere fact of being on the roster does not guarantee a promotion.

¹⁵ *Charles v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-416, para. 28.

30. Moreover, and contrary to Mr. Krioutchkov's contention, when the Organization invites rostered candidates to a technical evaluation, it does not avoid the "best qualified candidates"; it rather creates conditions so that these candidates can compete on equal terms.

31. As to the argument of "long term and system[-]wide discrimination", the Appeals Tribunal notes that, in the present case, the Appellant has been given the opportunity to extensively present his arguments before this system of justice, albeit unsuccessfully. We also note his submission that he has brought previous cases to the attention of this system of justice.

32. The Appeals Tribunal finds no reason to overturn the impugned decision, particularly since the Appellant did not complete the evaluation exercise, all candidates having been afforded equal treatment. Thus, the challenged decision is far from being absurd or perverse; in fact, the opposite is true: it is manifestly reasonable.

33. Having carefully examined the case, the Appeals Tribunal finds no merit in Mr. Krioutchkov's appeal.

Judgment

34. For the foregoing reasons, the appeal is dismissed and Judgment No. UNDT/2016/041 is affirmed.

Original and Authoritative Version: English

Dated this 28th day of October 2016 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Knierim

Entered in the Register on 20th December 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar