



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/041/
JAB/2008/082
Judgment No.: UNDT/2010/012
Date: 27 January 2010
Original: English

Before: Judge Adams
Registry: New York
Registrar: Hafida Lahiouel

ROGER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Self-represented

Counsel for respondent:
Susan Maddox, ALU

Introduction

1. The applicant, born and educated in France, applied to sit for the 2008 competitive examination for French-language proofreaders/copy preparers/production editors (“the examination”). Those responsible in her Section send a short-list of suitable candidates to the Examinations and Tests Section of the Office of Human Resources Management. The prerequisites for taking the examination were determined by the Board of Examiners and required that candidates must possess certain formal educational qualifications. The Board considered that the applicant did not satisfy the educational requirement. The applicant believed that she was qualified to take the examination and that supportive remarks made about this by her supervisor and work colleagues confirmed her belief upon which she relied. The questions are whether the applicant’s educational attainments satisfied this requirement; if not, whether the educational requirement was so unreasonable as not to be within the authority of the Board to impose; and whether she was entitled to rely on what she had been told about her qualifications.

The prerequisites for candidature

2. ST/IC/2008/15 (27 February 2008) promulgated under ST/AI/1998/7 (Competitive Examinations for Recruitment and Placement in Posts Requiring Specific Language Skills in the Professional Category) invited applications from staff members to take the examination. The Circular stated (cl 4(c)) that the candidates must –

[hold] at least a three-year first-level degree or an equivalent qualification from a university or institution of equivalent status in which French is the language of instruction or hold a university degree from a recognized school of translation.

However, this requirement could be waived (cl 6) –

... for staff members who, in the judgment of the Board of Examiners, have appropriate post-secondary educational qualifications from a

university or institution of equivalent status at which the principal language of instruction is French, in addition to five years of continuous service with the United Nations Secretariat by 31 December 1989.

Higher education in the UN

3. The UNESCO “Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region” (done on 21 December 1979) led to the definition of the term “higher education”, now widely used as a reference within the United Nations system. According to the later “Recommendation on the Recognition of Studies and Qualifications in Higher Education” (of 13 November 1993) –

‘higher education’ means all types of studies training or training for research at the post-secondary level, provided by universities or other educational establishments, that are approved as institutions of higher education by the competent State authorities.

4. In its “Guidelines for determination of level and step on recruitment to the professional category and above” (approved on 30 April 2004) the United Nations Human Resources Handbook provides –

II. ACADEMIC QUALIFICATIONS

4. The minimum required for appointment at the Professional level and higher is the first level university degree from an **accredited (officially recognized)** university or institution. An advanced degree may be required for some functions...[bold in original]

In Section VI, dealing specifically with language staff, para 14 concerns “long term recruitment from the roster of successful candidates from the competitive examination for language staff”, and sub-para 14.1 states that the “P-2 step 1 is granted to candidates who hold a Bachelor/Master degree or equivalent”.

The French educational system

5. The French educational system is legislated in the *Code de l'Education*, which regulates the French educational system, finances public universities and educational institutions, and also validates all degrees, diplomas or certificates. All private institutions are required to be accredited through the Ministry of Education and undergo an official system of inspection and evaluation. Such accreditation is a prerequisite for awarding a degree recognized by the State or a professional certification recognized by the *Commission Nationale de la Certification Professionnelle*, an official public sponsored French academic body, whose mandate is to register all recognized professional training.

6. Education into three different stages: primary, secondary and higher education, this last corresponding to university studies. Generally, education is conducted by academic staff who have gone through a certification process and are civil servants. After five years of primary school, students go on to secondary education which is divided into two cycles. At the end of the first cycle, which takes place in a college the students, may choose between vocational training school for two years and obtain a “*Certificat d'aptitude professionnel*” (“CAP”) or pursue a more general curriculum for 3 years toward the second cycle in a “*lycée*” which prepares students for the “*baccalauréat*”. The *baccalauréat* or an equivalent is a prerequisite for entering university or preparatory classes to the competitive examination for the “*grandes écoles*”. In the non-university sector, on the other hand, students are admitted on the basis of their academic record or, more commonly, by competitive examination and a *baccalauréat* is not usually required.

The applicant's academic qualifications

7. The following is the applicant's academic *curriculum vitae* –

- a. In 1966 she obtained the *Brevet d'Etudes du premier cycle*.

- b. In 1968 she obtained the *Brevet d'Enseignement Commercial*, a Certificate obtained after two years of the first cycle (“*premier cycle*”).
- c. In March 1972 she obtained a *Certificat de Fin de Cycle d'Etudes du C.E.P.T.* (or *Diplôme d'Hôtesse*), another vocational certificate requiring a year's study (1971-1972) from the *Centre D'Etudes de Promotion du Tourisme* in conjunction with the Ministry of Labour and Employment.
- d. In July 1980 she obtained after one year of training a *CAP Banque* which, according to the Ministry of Education, sanctions training in specific vocational skills.
- e. From 15 March 2007 to 15 February 2008 she undertook vocational training from the *Centre d'Ecriture et de Communication* (“the Centre”) for a total of 450 hours and obtained a certificate, *Attestation de formation au métier de correcteur*. The applicant's instructors were highly qualified, being the Head of Proofreaders at the prestigious *Le Monde* newspaper and an Editor and Instructor at the *Ecole Supérieure de Journalisme*.

8. None of these qualifications are the equivalent of the *baccalauréat*. So far as the Centre is concerned, according to the respondent, its website states that it was launched by Mr. Jacques Décourt, a trainer at the *Ecole Supérieure de Journalisme de Lille* with the purpose of improving the quality of the participants' writing skills and that it offers other training, in evening courses or by long distance, led by journalists and writers. The Centre has not been accredited by the Ministry of Education and cannot award a university degree recognized by the State or a professional certification recognized by the *Commission Nationale de la Certification Professionnelle*. Its teaching staff comprises professionals in the printing and editing fields who are not civil servants from or affiliated with the Ministry of Education. It is not listed by the *Office National d'Information sur les Enseignements et les*

Professions, an official academic body which lists all accredited private or public establishments in France recognized as conferring official or equivalent university degrees.

9. I should mention that, in order to demonstrate that she could have undertaken university studies in order to qualify to take the examination, the applicant tendered that a letter of acceptance from a U.S. college as a full-time freshmen for the Spring 2010 semester. No one suggests, however, that the applicant could not successfully undertake university or higher education studies of the kind required as a prerequisite for taking the examination. I would also point out that a U.S. college is unlikely to conduct most of its courses in French.

The role of the Board of Examiners

10. The Board of Examiners considered that completion of the applicant's vocational studies with the Centre was not equivalent to undertaking a university degree and that the Centre is not an institution of equivalent status to either a university or higher studies institution for the purposes of the French educational system. Nor can the certificate provided by the Centre to the applicant be regarded as the awarding of a university or equivalent degree. Accordingly, the applicant was not qualified to undertake the examination according to the criteria specified in either cl 4(c) or cl 6 of ST/IC/2008/15.

Applicant's work history

11. In September 1983 the applicant (a native French speaker) started working for the Department of Information (DPI) at the G-3 level. In October 1987 she was employed by UNDP, resigning in October 1995. From 1995 to 2000 she held various short-term consultancy contracts with UNDP/UNOPS. Since September 2000 the applicant has been employed by DPI as a proofreader assistant in the Copy Preparation and Proofreading Section, holding a G-5 post at level 10. As an assistant, the applicant was not authorized to sign documents for publication. Her professional skills are very highly regarded by her supervisors and work colleagues.

12. Whilst the applicant was working at the DPI, she was informed by a former proofreader in the French unit of the course offered by the Centre which, as the applicant was given to understand, qualified a person as a proofreader under the French educational system. The applicant informed her colleagues that she had registered with the Centre to undertake a correspondence course to obtain what she described as “the diploma of proofreader” so that when a competitive examination was held she would have the necessary background to undertake it. Her colleagues encouraged her in this endeavour. In 2006 the applicant raised the matter several times with the new Chief of Section informing him, in substance, that she was undertaking a course which under the French educational system leads to the profession of proofreader, and that she hoped that when a competitive examination for French language proof readers/copy preparers/production editors was eventually contravened, she would, by then, have the diploma and would be already performing as a proofreader. The Chief of Section was encouraging and acknowledged the excellence of her work as a proof reader. Indeed, he approved payment by the Organization of the cost of the Centre’s course. When the examination was announced, the applicant’s colleagues were very encouraging and, it seems, thought that the course she had undertaken with the Centre was a degree, which entitled her to sit for it. The Chief of Section gave evidence at the hearing that, until he saw the examination notice, he was not aware of the actual prerequisites for taking the examination. He said, and I think this was not really disputed by the applicant, that he had never told the applicant that she did qualify for the examination, although he thought she would have been an excellent candidate.

13. The notice of the examination was given by circular on 27 February 2008, ST/IC/2008/15. (It seems that the last examination had been conducted some 10 years or so previously.) On 8 April 2008 the applicant applied to take the examination. The Board of Examiners rejected her application on 22 April 2008 on the basis that she neither satisfied the primary requirement nor qualified to be considered for waiver. The applicant said, and I accept that, that her work colleagues

were surprised by this and thought that her experience and qualifications should have enabled her to take the examination.

Applicant's submissions

14. The course at the Centre fulfilled the requirements of cl 4(c) of ST/IC/2008/15. Even if it did not, she was led to believe by some of her colleagues, including supervisors, before taking the course that it would be adequate to qualify for the examination. Furthermore, if the academic merit of her various qualifications, especially the certificate from the Centre, are not recognized, this amounts to discrimination against French nationals, since though she has qualified to be a professional proofreader in France, this is not recognized by the UN. Moreover, since the purpose of the examination is to identify staff able to undertake the full responsibilities of proofreader and she has already demonstrated this ability both through the excellence of her work in the Section and by successfully completing the course at the Centre, the requirement that a formal University degree (which might have nothing to do with the relevant skills) as an essential prerequisite before she can be permitted to take the examination is so unreasonable as to be outside the powers of the Board of Examiners.

15. Lastly, the applicant had worked in the UN system for over five years before 1989 and had obtained adequate post-secondary educational qualifications from the Centre, which was an institution of equivalent status to a university. Thus, she came within the waiver provided by cl 6 of ST/IC/2008/15 and the Board should have considered whether the requirement of cl 4(c) could be waived.

Respondent's submissions

16. Cl 4(c) of ST/IC/2008/15 is unambiguous. It is clear that the Centre is not a university or other institution of higher learning evaluated and accredited in accordance with the system administered by the French Government and recognized by the State authorities; the course completed by the applicant did not lead to a

university degree or its equivalent; it did not even last three years. Moreover, students are not admitted through a competitive examination and do not need to hold the *baccalauréat* and the certificate provided by the Centre is not obtained through a final exam and is not a national diploma.

17. As to the requirements of cl 6, the Centre was not a university or equivalent institution and the applicant's five years of service with the UNDP was not service with the United Nations Secretariat.

18. It would have been clear to the applicant from the United Nations Human Resources Handbook that promotion to P-2 level requires a Bachelor/Master degree or equivalent and that the Centre's course could not be so described. Accepting that the applicant discussed with colleagues and supervisors her proposal to take the proof reading course at the Centre, there is no evidence that they fully understood the nature of the course or the status of the Centre as an institution of learning or the likely requirement that university qualifications would be an essential prerequisite for taking the examination. Nor did any of these persons suggest that they were in a position to give the applicant any assurances in this regard and, at all events, none were authorized to do so on behalf of the Organization.

Discussion

19. It follows from the descriptions of the character of a university or equivalent institution in the French educational system as set out above that the Centre could not be so regarded and that the qualification achieved by the applicant, although no doubt worthy and very useful for her work, could not in any sense be regarded as the equivalent of a university degree. Moreover, the applicant could not satisfy the other criterion specified in cl 6, namely "five years of continuous service with the United Nations Secretariat by 31 December 1989".

20. There is no evidence that, when she took the course, the applicant enquired as to whether it was the equivalent of a university degree or, indeed, that she even concerned herself with the question. In my view the evidence shows no more, at its

highest, than that the applicant's colleagues and supervisor assumed that she might qualify for the examination and were expressing their expectations rather than giving any assurances, and that no reasonable person would have relied on what they said for the purpose of making a decision about whether or not to undertake university or equivalent studies in order to be able to sit for the examination. The applicant had no reason for believing that these persons would have had a sufficient understanding either of the French educational system or of the nature of the Centre or the course to give her informed or reliable advice about the question. If she did rely on what they told her, it was not reasonable for her to do so. Moreover, they did not assert, nor did they have, any authority to bind the Organization as to the prerequisites for candidature.

21. There is no evidence one way or another whether the applicant consulted ST/AI/2003/7 concerning recruitment into the Professional category, or the guidelines from the United Nations Human Resources Handbook cited above. Had she done so, it is inevitable that she would have realized that her qualification from the Centre, however useful from the point of view of increasing her skills as a proof reader, would be most unlikely to satisfy the requirements for appointment at the professional level for proof readers (though the criteria were yet to be determined for this group by a Board of Examiners pursuant to the special rules prescribed by ST/AI/1998/7), because the Centre was not an officially recognized university or institution.

22. Finally, I am of the view that – considering the purpose of the examination – it was reasonable to impose the specified prerequisites, with the possible exception, in respect of waiver, of requiring five years service with the Secretariat as distinct from other organizations within the UN System. However, it is unnecessary to do more than express a doubt about this issue since the applicant cannot, at all events, satisfy the other waiver requirement. The criticism of the applicant that there was no requirement of vocational relevance in the required university studies is unconvincing since it is obvious that any course of at least three years university study requires a

high level of language skill and a wide, if perhaps specialized, vocabulary and this attribute is very relevant for the work envisaged to be done by successful examinees. One can reasonably assume that more directly relevant skills would be tested by the examination itself. As to the waiver criterion in cl 6 that the post-secondary qualifications be obtained in a university or equivalent institution, this also is a reasonable requirement.

23. The applicant submitted that the prerequisites were discriminating against persons educated in France. I reject this submission: firstly, the requirements simply applied the educational schemes of tertiary education in various States without any distinction; and, secondly, the course at the Centre was not recognised officially by the relevant French authorities.

24. To be fair to the applicant, I should mention that the Chief of Section in his evidence generally commended the applicant for the high quality of her work and that he stated he believed she was an excellent proofreader. It may well be that – even if she did not overcome the hurdle of the examination necessary to obtain her promotion – the applicant had, objectively speaking, all the skills that would have enabled her to work at the level of the position to which she quite reasonably aspired.

Additional note

25. I should mention that there is a question whether ST/AI/1998/7 was the applicable instrument governing the eligibility criteria applicable to the examination. ST/AI/2003/7, entitled “Competitive examination for recruitment to the Professional category of staff members from other categories”, was promulgated specifically “for the purpose of defining the conditions under which staff members in the General Service and related categories may take competitive examinations for recruitment to the Professional category” and thus appears to apply specifically to the applicant’s situation. Certainly, as at 23 March 1998, the conduct of the examination was controlled by ST/AI/1998/7 so far as all language staff up to P-3 were concerned. The question is whether the later Administrative Instruction, by specifying its

application to General Service staff without reference to any distinctions between occupational groups, carved out that class of staff and applied different rules to their eligibility for competitive examination as well as a different supervisory structure in the creation of a Central Examination Board and Boards of Examiners to replace the *ad hoc* boards that were applicable under the 1998 Administrative Instruction.

26. The two Administrative Instructions can be made consistent in two contradictory ways: first, by regarding ST/AI/1998/7 as applying to all staff up to P-3 seeking appointment to a language post requiring a Professional category staff member and ST/AI/2003/7 as applying to all General Service staff seeking recruitment to the Professional category except posts requiring special language skills; and, secondly, by regarding ST/AI/1998/7 as applying only to language staff in the Professional category seeking appointment in that Category in a language post and ST/AI/2003/7 as applying to all General Service staff seeking recruitment to the Professional category in any occupational group. The fact that ST/AI/2003/7 is the later instrument, expressly refers to a particular category of staff and makes no distinction in terms of occupational group strongly favours the latter interpretation. This would have the consequence, amongst other things, of making the entire process invalid so far as the applicant was concerned, having regard to the different eligibility criteria as between the Administrative Instruction and the Circular and the role on the one hand of the Central Examinations Board and on the other of the Board of Examiners. However, reasonable arguments can also be made favouring the former approach. The practice adopted by management (which I do not criticize) is not a useful guide to interpretation of legal rules.

27. This difficult question was not raised in submissions. Since under both regimes the applicant would fail, because she did not have either the requisite university degree or five years of service in the Secretariat, it is unnecessary to answer it. I raise it in the hope that ST/AI/2003/7 will be amended to make its scope clear.

Conclusion

28. The evidence demonstrates that the administrative decision that the applicant was ineligible to take the examination was correct and her application must therefore be dismissed.

(Signed)

Judge Michael Adams

Dated this 27th day of January 2010

Entered in the Register on this 27th day of January 2010

(Signed)

Hafida Lahiouel, Registrar, New York