



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

CHAWLA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Elizabeth Gall, Nairobi Appeals Unit, ALS/OHRM

Steven Dietrich, Nairobi Appeals Unit, ALS/OHRM

Introduction

1. On 27 July 2011 the Applicant filed an Application with the United Nations Dispute Tribunal (UNDT) requesting a review of the administrative decision not to recommend him for the post of P-5 Chief Supply Officer for which he had applied.

Facts

2. The Applicant joined the United Nations in June 2001. In October 2010 the Applicant was assigned to the United Nations Mission in Liberia (UNMIL) as a P-4 Supply Officer. From 7 December 2010, the Applicant was designated “Officer-in-Charge” of the Supply Section in UNMIL.

3. On 13 August 2010, generic vacancy announcement 424630 (“GVA 424630”) was issued for the post of Chief Supply Officer at the P-5 level. The purpose of this GVA was to create a roster of qualified candidates for anticipated and immediate job openings within various field missions administered by the Department of Peacekeeping Operations (“DPKO”). The Applicant applied for GVA 424630 on 20 August 2010 and was interviewed on 19 November 2010 by an interview panel.

4. The Interview Panel was chaired by the Chief of Integrated Services Section of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), Mr. Pittfield. The other panel members were the Chief Supply Officer of the United Nations Interim Force in Lebanon (UNIFIL) and the Chief of Contracts Management of the African Union - United Nations Hybrid Operation in Darfur (“UNAMID”). The Chief, Supply Operations, Logistics Support Division, Department of Field Support (DFS), was also present during the interview as an observer on behalf of DFS.

5. After the competency-based interviews, the interview panel prepared a list of qualified candidates for inclusion on a roster for GVA 424630. The Applicant was not included on this list, which was then transmitted to the Field Central Review Board

(FCRB) for review. On 5 April 2011, the FCRB endorsed the list of recommended candidates and they were placed on the roster for the post of Chief Supply Officer at the P-5 level.

6. On 8 April 2011, the Applicant received an email from the Recruitment Unit of the Field Personnel Division (“FPD”), DFS, informing him that his candidacy for GVA 424630 was not successful. He wrote to FPD/DFS the same day to request a reason for his unsuccessful candidacy.

7. On 11 April 2011, the Applicant requested a management evaluation of the decision not to recommend him for placement on the roster for the post of Chief Supply Officer, P-5. On 31 May 2011, the Management Evaluation Unit (MEU) responded to the Applicant’s request, determining that the impugned decision “comported with the applicable Regulations, Rules and administrative guidance.” The Applicant appeals the decision of the MEU.

8. On 22 February and 17 April 2012 hearings were held in this matter. The Tribunal heard from the Applicant and from Mr. Pittfield. The Applicant was given the opportunity to cross-examine Mr. Pittfield.

The Parties’ submissions

9. The Applicant contends that the interview panel did not recommend him on the grounds that his “teamwork” and “vision” competencies were not of sufficient breadth and depth for a P-5 position, and that this conclusion was subjective and reflects the fact that the interview panel did not properly consider the merits of his candidacy. The FCRB accepted the recommendation of the interview panel and consequently the Applicant was not placed on a roster for future P-5 Chief Supply Officer vacancies.

10. The Applicant argues that as a consequence of this decision, he was not selected for the P-5 position of Chief Supply Officer in UNMIL, which he had occupied on a temporary basis from November 2010 until September 2012. The successful candidate for that position was selected from the roster referred to above.

11. The Applicant argues that the FCRB should have reviewed all relevant facts rather than simply the evaluation made by the interview panel. Such matters would include the fact that the Applicant was working against a P-5 Chief Supply Officer post and had been Chief Supply Officer in Chad for three years, thus having substantial experience in the position. Further, whereas the panel found him deficient in the competencies of “vision” and “teamwork”, the FCRB should have taken account of the fact that his performance appraisal reports had consistently rated him as “outstanding” or “fully competent” in these areas.

12. The Respondent argues that all staff members have a right to “full and fair consideration” or “fair and adequate” consideration for a vacancy to which they apply, and nothing more. The Applicant does not, therefore, have a right to be selected for a particular post, nor to be recommended for it. Since the Secretary-General has a broad discretion in making decisions about appointments and promotions, so long as his decision is not taken on erroneous, inconsistent or fallacious grounds¹ and he acts in good faith and within the law, the Applicant has no grounds to complain of his non-selection.

13. The Respondent further argues that the role of the FCRB is not to carry out a fresh evaluation of the candidates but to check that the selected candidates were evaluated on the basis of the evaluation criteria in the vacancy announcement and that the applicable procedures were carried out in accordance with ST/AI/2010/3 (Staff selection system).

Consideration

14. Besides the general rights conferred upon staff members in the Regulations and Rules, staff selection procedures are currently governed by ST/AI/2010/3. This was applicable at the time of the selection process in issue. Section 2.3 of ST/AI/2010/3 states:

Selection decisions for positions up to and including D-1 level are made by the head of department/office/mission, under delegated authority, when

¹ The Respondent cites *Bertucci*, 2011-UNAT-121.

the central review body is satisfied that the evaluation criteria have been properly applied and that the applicable procedures were followed.

15. Section 7.5. of ST/AI/2010/3 states:

Shortlisted candidates shall be assessed to determine whether they meet the technical requirements and competencies of the job opening. The assessment may include a competency-based interview and/or other appropriate evaluation mechanisms, such as, for example, written tests, work sample tests or assessment centres.

Section 7.6 states:

For each job opening, the hiring manager or occupational group manager, as appropriate, shall prepare a reasoned and documented record of the evaluation of the proposed candidates against the applicable evaluation criteria to allow for review by the central review body and a selection decision by the head of the department/office.

16. Section 7.8 of ST/AI/2010/3 states:

For generic job openings in peacekeeping operations and special political missions, the Director of the Field Personnel Division of the Department of Field Support shall ensure that the process has been complied with and that the recommendations are reasoned and organizational objectives and targets have been taken into account, and shall transmit the proposed list of qualified, unranked candidates including normally at least one female candidate to the field central review body for inclusion in a roster.

17. “Evaluation criteria” are defined in the Administrative Instruction as “criteria used for the evaluation of applicants for a particular position. Evaluation criteria must be objective and related to the functions of the generic job profile or the individually classified job description and must reflect the key competencies that will be assessed”

18. In *Rolland* 2011-UNAT-122, the Appeals Tribunal stated:

All candidates before an interview panel have the right to full and fair consideration. A candidate challenging the denial of promotion must prove through clear and convincing evidence that procedure was violated, the members of the panel exhibited bias, irrelevant material was considered or relevant material ignored. There may be other grounds as well. It would depend on the facts of each individual case.

19. It is trite law to state that a staff member of the United Nations does not have a right to be promoted. As stated in *Liarski*, UNDT/2010/134, “[g]enerally the Tribunal will not substitute its decision for that of the Administration in the discretionary matters of appointment and promotion, but the Tribunal may examine whether the selection process was carried out in an improper, irregular or otherwise flawed manner and assess whether the resulting decision was tainted by undue considerations or was manifestly unreasonable.”

20. In the present case, 19 candidates were shortlisted for interview, including the Applicant. Of these, 13 were recommended for selection, but not the Applicant. The interview panel consisted of four staff members: a D-1, two P-5s, and a P-4. Following interviews, they produced an evaluation table for each candidate, summarising the candidate’s response to particular competency-based questions and ranking their response as ‘Superior’, ‘Good’, ‘Acceptable’, ‘Marginal’ or ‘No evidence’. Nonetheless, those candidates who fell short of ‘Acceptable’—of which the Applicant was one—were not recommended. The interview panel commented that the Applicant “was unable to demonstrate to the panel that he meets the competencies of teamwork and vision” and therefore they did not recommend him for the post.

21. The FCRB appears to have reviewed the evaluation tables and concluded that the criteria were properly applied.

22. On the face of it, there is no impropriety in the evaluation process and subsequent endorsement by the FCRB.

23. The Chair of the interview panel, Mr. Pittfield, provided testimony to the Tribunal during the course of the hearing. He told the Tribunal that he chaired the interview panel and that it was a “very experienced panel”. He stated that before the interviews began the panel agreed that they would simply rate the competencies of each candidate as either ‘Acceptable’ or ‘Marginal’ and that if anyone fell short of ‘Acceptable’ they would not be recommended.

24. Mr. Pittfield commented on the Applicant's performance in the interview and stated, having reviewed the evaluation table in respect of the Applicant, that his answers to the 'Vision' and 'Teamwork' competency questions "were not very sophisticated." He told the Tribunal that the P-5 Chief of Supply would be in charge of many hundreds of staff and really needed to understand how to deal with, for example, troublemakers, under-performers, moral issues, and to give credit where it was due. He stated that the main difference between a P-4 Chief of Supply and a P-5 Chief of Supply was that the latter was "more sophisticated." When reminded that the Applicant had been a P-4 Chief of Supply in Chad, and then for MONUSCO, and finally UNMIL, and asked what the Applicant needed in order to be considered competent for a P-5 position, Mr. Pittfield said that he had "inherited" Chiefs at the P-5 level, some of whom he did not believe should have been at that level. He went on to state that just because someone has satisfactory performance ratings from within the UN, he had learnt over the years that such ratings were often given to avoid trouble. He stated that when the interview panel in the present case had convened he had told them that they must ensure that the roster was populated with people who the panel really believed could do the job at P-5 level.

25. The Tribunal finds it odd that the Applicant, who was considered competent to act as a P-4 Chief of Supply Officer was considered not to possess the requisite competencies to be rostered for a P-5 position according to the yardstick prescribed by Mr. Pittfield himself. Mr. Pittfield did not elaborate on the level of sophistication a P-4 should possess before being considered to be eligible for a P-5 position. To that extent, the use of the term "sophisticated" by Mr. Pittfield is strange, but what is alarming is that he added that many staff members have moved to a P-5 level without deserving it, because their respective supervisors gave them positive performance evaluations to avoid trouble. If what Mr. Pittfield has asserted has any semblance of truth in it, then the Office of Human Resources Management (OHRM) and supervisors may have a problem. The Tribunal is concerned that this problem may remain unanswered if no particulars of this practice that Mr. Pittfield alerted the Tribunal to are forthcoming. The Tribunal wishes to emphasise that this observation comes as a result of Mr. Pittfield giving testimony under oath before the Tribunal.

26. The above notwithstanding, the burden of establishing bias or the perception of bias which lies on the Applicant has not been fully established. Though it appears that the Respondent has made a minimal showing of regularity in the recruitment process in point, the burden of proof was on the Applicant to show “through clear and convincing evidence”² that he was not given full and fair consideration for the vacancy. Whilst the Tribunal is sympathetic towards the Applicant, who clearly felt that some of his answers in the interview were misinterpreted against him, and who feels cheated of an opportunity to get onto a P-5 roster, there is little evidence beyond surmise and suspicion. There is not enough evidence to satisfy the Tribunal that the process was so tainted that it was unfair.

27. During the course of the hearings and in his written submissions to the Tribunal, the Applicant has questioned the appropriateness of the selection of one RJ, who, having been placed on the roster, was then given the position of P-5 Chief of Supply at MONUSCO. The Applicant suggested that the selection of RJ was reflective of bias on the part of Mr. Pittfield, who was RJ’s supervisor, thought highly of him, and admitted in cross-examination that he had not disclosed the fact of his close working relationship to RJ to the other members of the panel. Further, the Applicant submits that it is more than a coincidence that RJ, Mr. Pittfield, and one other member of the interview panel are all former military from the same country.

28. The Tribunal has noted the Applicant’s concerns in this regard. However, whether or not there is an irregularity in the selection of RJ—and the Tribunal makes no finding in this regard—the selection of RJ to a post following his conclusion on the roster could not be to the detriment of the Applicant since the Applicant himself was not even put on the roster. Unless the Applicant could show specific bias against himself, the Tribunal finds itself unable to infer that his non-inclusion in the roster benefited RJ and thus served to assist in the allegedly improper selection of the latter.

29. Although the Tribunal has unreservedly stated that it cannot find there to have been any bias against the Applicant in this matter, the fact remains that a candidate being

² *Rolland*, 2011-UNAT-122.

interviewed by their immediate supervisor as part of an interview panel may raise a suspicion of bias in the mind of a person directly concerned. It would be wise if in such situations a panel member discloses the nature of the relationship he or she may have with a candidate to the other panel members and to the relevant Central Review Body.

Conclusion

30. The Application is dismissed.

(Signed)

Judge Vinod Boolell

Dated this 18th day of July 2012

Entered in the Register on this 18th day of July 2012

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi