



Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

NIKOLARAKIS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat
Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant contests the decision not to promote him to one of 37 Senior Security Officer posts at the S-3 level (“the Posts”), in the Security and Safety Service (“SSS”), Department of Safety and Security (“DSS”). The Posts were advertised by job opening number 10-SEC-DSS-NY-16958-R-NEW YORK (“JO 16958”). The Applicant seeks an award of compensation for anxiety and loss, as well as an order that he receive priority consideration for the next promotion exercise.

2. This case concerns a promotion exercise that took place in SSS/DSS in 2011. The Applicant was not recommended for promotion for the sole reason that the interview panel found that, during the competency-based interview, he did not adequately demonstrate that he met the competency of Teamwork.

3. The Applicant argues that the hiring manager’s decision not to recommend him for promotion was unreasonable because it failed to take into account relevant material, namely his performance assessment reports. On his last two electronic performance assessment system (“e-PAS”) reports prior to the interview, the Applicant had been rated as “outstanding” for the competency of Teamwork.

4. The Applicant also argued that, in making the decision not to recommend him for promotion, the hiring manager failed to take into account the fact that in 2007 he applied for promotion to the same Posts, was recommended for selection, and placed on a roster of pre-approved candidates endorsed by a central review body for vacancies with similar functions. The Applicant’s roster status had expired by the time of the 2011 promotion exercise but he had previously been assessed as meeting all the competencies required for the Posts, including Teamwork.

5. The Applicant’s concern is that if he met the competency of Teamwork for the Posts previously and has, since then, been receiving excellent performance assessment ratings for Teamwork, how could it reasonably, rationally and fairly be concluded that he did not meet the requisite standard for recommendation for

promotion, simply because of an allegedly poor performance during a brief competency-based interview?

Relevant background

6. On 3 November 2010, JO 16958 was published with a deadline of 3 December 2010, later extended to 31 December 2010. The job opening listed three core competencies: Professionalism, Communication and Teamwork. The job opening provided the following information about the Teamwork competency:

Teamwork:

Works collaboratively with colleagues to achieve organizational goals; solicits input by genuinely valuing others' ideas and expertise; is willing to learn from others; places team agenda before personal agenda; supports and acts in accordance with final group decision even when such decisions may not entirely reflect own position; shares credit for team accomplishments and accepts joint responsibility for team shortcomings.

7. The next day, on 4 November 2010, an administrative bulletin was issued by SSS/DSS which announced that they were launching the "long awaited 'S' category promotion exercise". The bulletin contained further information regarding the application and selection procedures, including the following (emphasis added):

Officers will be evaluated based upon a completed application (including meeting the required education and work experience), *performance record*, a written assessment test, and a competency-based interview. Recommended candidates who demonstrate that they meet all requirements will either be selected for the post or their names will be placed upon a roster of candidates for future vacancies.

The same information was repeated in an SSS administrative bulletin dated 7 December 2010.

8. The Applicant passed the written assessment test. By email dated 17 August 2011, sent at 2:13 p.m., he was invited for an interview to take place less than two days later, from 9:30 a.m. to 10:00 a.m. on Friday, 19 August 2011.

9. At 6:10 a.m. the following day, 18 August 2011, the Applicant responded by email, stating (emphasis added):

My [rostered days off] are FRI/SAT so unless admin/CSU [abbreviation unknown] approves overtime of 4hrs for coming in on my day off, I believe we will have to reschedule the interview. Also, please be advised that I will be on annual leave from 8/21-8/28. *Another possibility would be this morning (Thursday 18, August 2011).* I have some affairs I need to attend to and will be at Headquarters until at least 11.30am. Feel free to give me a call if you are able to arran[ge] something. If not, I await your email confirmation for a future date.

Kindly note that I am a member of 'A' Squad, so *the earlier in the AM*, the more convenient it would be.

10. Two hours later, at 8.12 a.m., an Administrative Officer in SSS/DSS responded, inviting the Applicant to attend the Chief's Office at 11:00 a.m. that day for the interview. He was asked to confirm that this was fine with him.

11. Although there is no evidence of the Applicant confirming, in writing, that the rescheduled interview time was acceptable, he did in fact attend the interview at 11:00 a.m. on 18 August 2011.

12. At the hearing on 4 August 2014, Mr. Bryan Black, the Chairperson of the interview panel, testified that at the beginning of each interview it was his practice to welcome candidates, ask them to take a seat and make themselves comfortable, introduce the interview panel, explain the structure of the interview, and ask if the candidate had any questions before the interview commenced. There is no evidence that, at this stage, the Applicant objected to the timing and short notice of the re-scheduled interview.

13. The same questions were put to each candidate and the interview panel used a 7-point scale to grade answers to the competency-based interview questions. The points allocated for an answer indicated how well a candidate had demonstrated the competency by reference to a pre-determined list of indicators. The points system was as follows: 0 – No evidence; 1 – Marginal; 2-3 – Less than Acceptable; 4 –

Acceptable; 5-6 – More than acceptable; and 7 – Superior. A candidate was required to receive a score of at least 4 to demonstrate that he or she met the competency in question.

14. Mr. Black testified that, immediately following an interview, each of the panel members entered their own score for each competency on their individual evaluation sheet. They had their handwritten notes to assist them. The interview panel assessed the Applicant as successfully demonstrating the competencies of Professionalism and Communication. However, the panel found that the Applicant failed to demonstrate adequately the Teamwork competency. Each of the panel members assigned to the Applicant a score of 3.5 out of 7 for this competency.

15. On 3 November 2011, the three interview panel members signed an evaluation record which included a summary of the answers provided by the Applicant to each interview question. The Applicant's answer to the question relating to the Teamwork competency was summarized as follows (emphasis added):

The candidate provided an example from post 106 dealing with a mentally disturbed individual. During an event that was taking place at the UN, the individual lit a banner on fire. The supervisor was involved with all commands, and he detained the individual until the NYPD arrived. He used radio communication and documented the incident. *The panel felt that the candidate's example did not accurately reflect his abilities in the area of teamwork.* The candidate does not meet the competency.

Mr. Black testified that this summary was prepared by a Human Resources assistant, who was present at the interview, based on the handwritten notes of the three members of the interview panel. It is not for the Tribunal to assess the answers to see if they meet the performance indicators. Accordingly, the Tribunal does not consider it necessary to record details of the panel's notes. However, the Tribunal finds that the summary appears to be consistent with the record.

16. The interview panel determined that 46 candidates met all of the evaluation criteria for the job opening and should be placed on the recommended list, which was

unranked. The Applicant was not recommended because the panel considered that during the interview he did not demonstrate competency in teamwork.

17. The Respondent's filing dated 19 June 2014 indicates that Mr. David Bonggi, Chief of SSS/DSS, was the hiring manager. The filing states that a transmittal memorandum, describing the assessment process and the proposal of SSS, was sent on 3 November 2011, via Inspira (the online United Nations jobsite), for review by the central review body. It is not clear from the evidence or the Respondent's filings who was the author of the transmittal memorandum, although in accordance with sec. 7.7 of ST/AI/2010/3, Mr. Bonggi was responsible, as the hiring manager, for transmitting his proposal of qualified candidates to the central review body.

18. A document submitted by the Respondent as evidence, and which appears to have been prepared by SSS, stated:

Upon completion of all interviews, the SSS management conducted the final evaluation in Inspira and entered all interview evaluations and recommendations into the Inspira system. ... The recommended lists consisted only of those who had passed both the written test and the interview.

... the SSS management reviewed once more all data entered in Inspira and submitted the [job openings] electronically to [the Central Review Committee] for review. Emails with the transmittal memos were sent concurrently to the Executive Office informing them that all selection processes had been completed and that the all evaluations and recommendations were ready for review by [the Central Review Committee]. The Executive Office then forwarded the transmittal memos to [the Central Review Committee and Office of Human Resources Management] for review.

Once the notice from [the Central Review Committee] came to inform the Hiring Manager that the [job openings] had been endorsed by [the Central Review Committee], the SSS management started to conduct a further review of relevant records of all those who were on the recommended list. These records included performance records as contained in SSS Internal Performance Database and attendance records as reflected in IMIS. Based on the outcome of the review and also taking into consideration the seniority factor and the need for gender balance in the Service, the SSS management made the final selection decisions.

19. The Respondent's 19 June 2014 filing states:

Following the review and approval of the proposal by the [central review body], Mr. Gregory Starr, former Under-Secretary-General for DSS and then Head of Department, selected the recommended candidates he determined to be the most suitable for the [job opening]. The Applicant could not be found suitable or selected as he was not on the list of recommended candidates that was submitted and approved by the [central review body].

20. Thirty-seven officers were promoted to the rank of Senior Security Officer at the S-3 level, with effect from 1 December 2011.

21. On 6 December 2011, the Applicant was notified by email that he was not being recommended for promotion to any of the Posts.

Performance records

22. The Applicant was rated as "outstanding" on the competency of Teamwork in his two most recent performance appraisals prior to the promotion exercise. In his 2009-2010 performance appraisal report and under a previous rating system, the Applicant received an overall rating of "Fully successful performance". For the eight core competencies assessed, he received six ratings of "fully competent". He received a rating of "outstanding" for the competencies of Teamwork and Accountability. His First Reporting Officer commented (emphasis added): "*Officer Nikolarakis has developed into the ultimate team player and demonstrates excellent core values and competencies in his daily assignments*". In his 2010-2011 performance appraisal report, the Applicant received an overall rating of "successfully meets performance expectations". For the eight core competencies assessed, he received six ratings of "fully competent". He received a rating of "outstanding" for the competencies of Teamwork and Client Orientation. His First Reporting Officer commented: "[the Applicant] works harmoniously with colleagues and people from various backgrounds. Officer Nikolarakis treats everyone with respect and is capable of making the appropriate decision when faced with difficult

situations”. His Second Reporting Officer commented that the Applicant “should receive high consideration for movement to the next level”.

Procedural history

23. On 16 January 2012, the Applicant requested a management evaluation and, on 23 February 2012, the Applicant was informed that the contested decision had been upheld.

24. On 22 May 2012, the Applicant filed his application. The Respondent filed his reply on 21 June 2012.

25. On 1 April 2014, the case was assigned to the undersigned Judge.

26. A case management discussion (“CMD”) was held on 12 June 2014 and by Order No. 141 (NY/2014), dated 13 June 2014, the Tribunal scheduled an oral hearing to be held on 21 July 2014, and ordered the parties to submit further information. Due to the unavailability of a witness, the 21 July 2014 hearing was rescheduled to 4 August 2014.

27. The Applicant gave evidence at the hearing and was represented by Mr. Joseph Grinblat. His witnesses were: Captain Carl Di Marco, a retired staff member who worked with him for the last four years of his career before retiring, and served as his First Reporting Officer for the performance period 2009-2010, and Sergeant Frank Ranelli, who had worked with the Applicant for two and a half years. Mr. Bryan Black, the Chairperson of the interview panel, and Mr. Michael Browne, Deputy Chief of the Security and Safety Service, who was responsible for designing and executing the relevant promotion exercise, gave evidence for the Respondent.

28. By Order No. 230 (NY/2014), dated 8 August 2014, the Tribunal ordered the Respondent to disclose to the Tribunal, on an *ex parte* basis, unredacted copies of the individual panel member’s interview notes, as well as the evaluation forms relating to the 46 candidates whose names were forwarded to the Central Review Committee.

The Respondent was also ordered to provide the indicators against which each of the competencies was assessed, the individual panel members' handwritten notes in relation to the Applicant's interview, and the list of interview questions. An examination of these documents confirmed that there was a consistent approach on the part of the interview panel and the documents corroborated the oral evidence regarding the interview process. Given the narrow ambit of the Tribunal's task when carrying out a judicial review, it was not necessary to delve further into the confidential material disclosed.

29. By Order No. 38 (NY/2015), dated 6 March 2015, the Tribunal ordered the Respondent to provide written answers to further questions related to the promotion exercise. The Respondent filed a response to the Order on 10 March 2015.

Scope of review

30. The basic principles of judicial review were set out by the Appeals Tribunal in *Sanwidi* 2010-UNAT-084 (emphasis added):

40. When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, *rational*, procedurally correct, and proportionate. *The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse.* But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

...

42. ... As a result of judicial review, the Tribunal may find the impugned administrative decision to be *unreasonable*, unfair, illegal, *irrational*, procedurally incorrect, or *disproportionate*. During this process the Dispute Tribunal is not conducting a merit-based review, but a judicial review. *Judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision maker's decision.*

31. In *Rolland* 2011-UNAT-122, the Appeals Tribunal set out a more specific test for consideration of promotion decisions, stating (emphasis added):

21. 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.

32. The Tribunal considers that these two seminal cases are to be read together. Though the Respondent has attempted to narrow the scope of this case as much as possible, there is no reason why *Rolland* should be read as limiting the scope of judicial review set out in *Sanwidi*. Indeed, the Appeals Tribunal in *Rolland* explicitly referred to ignoring relevant material and also alluded to the fact that other valid grounds of review may exist, depending on the facts of each individual case.

33. The Tribunal will consider whether the hiring manager's failure to have regard to the Applicant's performance record prior to deciding whom to include in the list of recommended candidates for promotion, amounted to ignoring relevant material. In its considerations, the Tribunal will note that "performance record" was a factor to be taken into account during the promotion exercise. Performance records were looked at by the head of department before making a final selection decision. However, the question is whether the failure to take into account the Applicant's performance record *prior* to submitting a list of recommended candidates to the Central Review Committee amounted to ignoring relevant material, thereby committing procedural error and failing to accord full and fair consideration. The Tribunal will not examine the merits of the decision but the manner in which it was reached. Did the Administration act in conformity with the Organization's policy and properly promulgated administrative issuances or did they fetter their discretion by the very narrow approach taken and disproportionate weight given to the competency-based interview?

Consideration

Notice of scheduling for the interview

34. The Applicant submits that he was placed at a “considerable disadvantage” because of the short notice provided for the interview. He further submits that, had he received proper notification, he would have been better prepared to discuss the competencies and to address the interview panel. Section 10.2, para. 1 of the Manual for the Applicant on the Staff Selection System (Release 1, dated March 2011) states that candidates are “normally notified” at least five working days in advance of an interview. The Applicant was originally scheduled to be interviewed on 19 August 2011, roughly one and a half days after the notification email was sent. This was already a short notice period bearing in mind the Applicant’s submission that he did not see the invitation until he checked his email during his night shift, which began at midnight and ended at 8:00 a.m. on 18 August 2011, and the fact that he did not respond to the email until 6:10 a.m. that morning.

35. However, the Tribunal must also take into account the fact that the Applicant indicated, in his email response, a reluctance to participate in an interview on his day off (Friday, 19 August 2011, the day originally scheduled for the interview) unless he was remunerated for overtime, or during his scheduled annual leave the following week. He suggested that the interview be brought *forward*, which gave him even less time to prepare and resulted in him participating in the interview the morning after he worked a night shift.

36. The Tribunal accepts Mr. Browne’s testimony that SSS/DSS made every effort to give candidates as much notice as possible, taking into account the operational exigencies of SSS. He stated that if any candidate had a problem with the notice period for the interview, they were entitled to request that the interview be rescheduled, and that those overseeing the promotion exercise had granted such requests in a number of instances.

37. It is not difficult for the Tribunal to accept the Applicant's submission that he was disadvantaged by the timing of the interview. However, the evidence shows that he himself contributed to the lack of preparation time and he did not act diligently to protect his rights and ensure that he had adequate time to prepare properly for an important career advancement opportunity by, for example, requesting a postponement to a later date.

38. The quoted extract from the Manual for the Applicant on the Staff Selection System appears to establish a best practice rather than a mandatory rule. Staff members must be vigilant in preserving their own rights. Where a staff member has freely consented to take part in an interview despite alternative options being available, and has in fact requested that the interview be brought *forward*, the Tribunal will be slow to draw an adverse inference against the Administration. The Tribunal finds that the short notice period did not vitiate the interview process so as to render it unlawful but that it could explain why the Applicant was unable to provide a better quality answer to the question relating to the competency of Teamwork.

Did the Applicant receive full and fair consideration for promotion?

The relationship between performance assessment reports and the staff selection system

39. In this case, two core pillars of the Organization's human resources framework—the performance management and development system and the staff selection system—produced contradictory assessments of the Applicant's ability in the core competency of Teamwork.

40. Article 101.3 of the United Nations Charter and staff regulation 4.2 govern the principles on staff selection. They provide that the “paramount consideration” in the employment of staff, including appointment, transfer, and promotion, is “the necessity of securing the highest standards of efficiency, competence, and

integrity”. This overriding principle is given effect by the issuances of the Organization, in particular ST/AI/2010/3 (Staff selection system).

41. ST/AI/2010/3 is silent as to what role performance reports should play in assessing candidates for selection or promotion. The Organization’s performance management system, set out in ST/AI/2010/5 (Performance Management and Development System), also does not explicitly address the use of performance reports during the selection process. However, it states at sec. 9.4 that overall ratings of “exceeds performance expectations” or “successfully meets performance expectations” on a performance report “establish full satisfaction with the work performed and ... *shall be so viewed when staff members are considered for selection for a post at the same or higher level*” (emphasis added).

42. The General Assembly has recognized the importance of the Organization’s performance management and development system in that it should augment the staff selection system. In sec. VI, para. 6 of resolution 53/221 (Human resources management), adopted on 7 April 1999, the General Assembly,

Request[ed] the Secretary-General, in the further enhancement of the career development system of the Organization, *to implement a transparent promotion policy, augmented by the effective use of a simplified and appropriate performance appraisal system, adequate training and competitive examinations, in order to provide for the recognition of competence and outstanding performance and to facilitate the continuous professional growth of staff at all levels;*

43. In para. 19 of resolution 57/305 (Human resources management), adopted 15 April 2003, the General Assembly requested the Secretary-General to:

... ensure that relevant experience, knowledge and institutional memory acquired in the United Nations system are given due consideration *in evaluating applications for promotion*, consistent with *the need to select staff on the basis of merit, demonstrated competencies and performance;*

44. The Appeals Tribunal has also recognized that performance assessment reports play a role in staff selection and promotion. In *Simmons* 2012-UNAT-222, the Appeals Tribunal stated (emphasis added):

16. Importance of annual e-PAS reports cannot be underestimated. These reports are important for the staff member because they inform the staff member of how well or poorly she has performed and how her performance has been judged by her reporting officers. ... *The e-PAS reports also aid interview panels when the staff member is being considered for promotion or selection to a higher post or a fresh post.* Moreover, these reports inform the management of the strength and weaknesses of the staff member and help the management to *assess* the staff member while deploying the staff member or assigning duties to the staff member.

Were performance assessment reports relevant to this promotion exercise?

45. The SSS/DSS administrative bulletins dated 4 November and 7 December 2010 stated that “performance record” was one of the criteria upon which officers applying for promotion would be evaluated. The Applicant was therefore justified in his expectation that his performance record would be one of the factors to be given appropriate weight when considering his candidacy for promotion.

46. The Respondent submits that performance appraisals at one grade do not necessarily reflect a candidate’s capacity to demonstrate a competency at a higher grade. This line of reasoning appears fallacious, particularly when it is applied to the facts of this case. The competency-based interview was used to evaluate candidates in this promotion exercise by asking them to provide examples from their past experience performing duties at a lower grade than that of the post for which they were applying.

47. For example, the Applicant’s competency in Teamwork was assessed solely on the basis of the question “describe a situation where you were successful in getting people to work together effectively”. This question would necessarily require a candidate to give an actual example from his work at a lower grade unless he or she was applying for a lateral move. If the competency of Teamwork, for example, is so

different at the S-3 grade than the S-2 grade, it would be logical for the Administration to test that competency during an interview by asking candidates questions based on the differentiated, and presumably more complex, tasks, responsibilities and functions that are required at the higher grade. This is not what occurred during this promotion exercise. It appears illogical for the Organization to submit that the same competency has different characteristics at different grades, such that performance appraisals at a lower grade are to be accorded little or no weight or relevance, while also using competency-based interview questions, which ask for examples of past performance and experiences, to assess candidates for promotion. The Tribunal rejects this submission. Performance record were relevant for the reasons stated in paras. 41 to 44 of this Judgment.

Were performance assessment records considered during the promotion exercise?

48. In this promotion exercise, performance appraisal reports were not taken into account when the list of recommended candidates was compiled and sent to the Central Review Committee. They were considered only in relation to the 46 candidates who passed the competency-based interview in order to assess suitability for promotion to the 37 advertised Posts.

49. At the hearing, Mr. Browne stated:

The competency-based interview is the key component of any staff selection process. Performance appraisal can be taken into account by the programme manager, but it is not the overriding determinant as to whether a candidate is suitable for promotion or advancement. The staff selection system does not provide for that, *it only provides for the competency-based interview to be the primary determinant. ...* Performance is taken into consideration. However, performance at the interview is the determining factor as to whether you get promoted or not.

50. The Applicant was not recommended for further consideration for promotion for the sole reason that he received a score of 3.5 out of 7 for the interview question relating to the competency of Teamwork and he needed to receive a score of 4 to show that he had demonstrated the competency. However, in his two annual

performance reports prior to the promotion exercise, the Applicant was rated as “outstanding” for the competency of Teamwork. In 2009-2010, his First Reporting Officer described him as “the ultimate team player”. Each of the performance reports indicated that Teamwork was a particular strength, as it was one of only two competencies for which he received the highest rating.

51. It would appear from the oral evidence that the decision-makers involved in devising and implementing the procedures for this promotion exercise had an understanding that is inconsistent with ST/AI/2010/3. Their understanding regarding the primacy of competency-based interviews under the staff selection system is not supported by the provisions of ST/AI/2010/3. There is no provision in ST/AI/2010/3 stating that a competency-based interview is the determining factor in considering candidates for promotion, providing strict criteria as to how it is to be conducted or scored, or stating that a candidate must “succeed” at or “pass” the competency-based interview in order to be successful in a staff selection process. The Applicant was denied the opportunity to receive further consideration for promotion based on a flawed interpretation and understanding of the Organization’s staff selection system.

Conclusion

52. The Tribunal has considered a large number of documents and the testimony of all the witnesses that appeared at the hearing. At the heart of this case is the question: “What is the proper role of a competency-based interview in a promotion or selection exercise?” The Tribunal takes judicial notice of the fact that the competency-based interview model was designed to ensure that selection processes are, as far as humanly possible, free from bias, prejudice or favoritism. However, the competency-based interview is only one of several components of the United Nations staff selection system.

53. It is clear from the evidence that those responsible for designing and implementing the 2011 promotion exercise in SSS/DSS acted in good faith. A

number of steps were taken to ensure that staff members had access to information that would enable them to prepare for the promotion exercise. However, when the decision-makers accorded primacy to the competency-based interview results to the exclusion of other relevant considerations, including the Applicant's performance record, they acted on the basis of their understanding that this was in accordance with the Organization's policy. However, there is nothing in ST/AI/2010/3, or any properly promulgated administrative issuances, that were drawn to the attention of the Tribunal, to support this belief.

54. As recognized by the General Assembly and the Appeals Tribunal, performance record is a relevant consideration to be taken into account when assessing and evaluating candidates for promotion. The internal SSS/DSS administrative bulletins dated 4 November and 7 December 2010 correctly identified all the factors to be taken into account in assessing candidates. The intention to accord primacy to the competency-based interview was not mentioned. At some point, the hiring manager and others involved in the process decided that the competency-based interview is the "cornerstone of the staff selection system".

55. The Tribunal accepts that the Applicant's answer to the question on teamwork did not appear to satisfy the indicators. The Tribunal asked Mr. Black, the chairperson of the interview panel, whether he asked the Applicant any follow-up questions. Mr. Black stated that he generally did ask follow-up questions but that he could not remember whether he did so in this case. He noted that "sometimes we go as far as asking for another example". There is nothing in the handwritten notes of the interview panel members or the consolidated evaluation record to suggest that the standard follow-up questions were asked or that the Applicant was given an opportunity to provide an alternative example.

56. The evaluation record for the Applicant, signed by the interview panel members on 3 November 2011, stated that "the panel felt that the candidate's example did not accurately reflect his abilities in the area of teamwork". Since the panel members felt that the Applicant had not provided a satisfactory answer to

demonstrate his actual abilities, it is surprising that they do not appear to have asked him for a different example. This comment in the report also placed the hiring manager on notice that the Applicant's answer did not appear to be a true reflection of his actual ability and performance in the competency of Teamwork. In the circumstances, the hiring manager had the discretion to consider the Applicant's performance assessment reports to augment the answer given during the competency-based interview and determine whether, overall, the Applicant met the evaluation criteria.

57. The competency-based interview was intended to provide a fair and objective means of satisfying art. 101.3 of the UN Charter, which requires that in the employment of staff, paramount consideration be given to "the necessity of securing the highest standards of efficiency, competence, and integrity". The staff selection system was intended to assess actual competence and not whether an individual is a good interviewee. It was never in question that the Applicant is a good team player. The only concern was that he did not demonstrate this at the interview. This approach ignored the available evidence material to this competency as demonstrated in successive performance appraisal reports. The fact that all candidates were treated alike does not in and of itself render this omission to be procedurally correct. Indeed, this case is not testing the principle of equal treatment but procedural propriety, perversity and absurdity in a decision-making process as it affected the Applicant. The fact that other candidates may possibly have been similarly affected does not of itself render this procedural defect a nullity.

58. The hiring manager acted on the basis of a flawed understanding of the role of competency-based interviews under ST/AI/2010/3 when he fettered his discretion by declining to recommend the Applicant for promotion based solely on the result of his competency-based interview. Further, the hiring manager ignored relevant material when he did not take into account the Applicant's performance assessment reports, which would have provided a fuller picture of his ability to demonstrate

the competency of Teamwork in his day-to-day work. The Applicant was therefore denied the right to full and fair consideration of his candidacy for promotion.

Remedy

59. As a remedy, the Applicant requested priority consideration for the next promotion exercise. This is a matter for DSS. The Tribunal declines to make any such order.

60. The Applicant also requested that the Tribunal award him compensation for the “loss and anxiety” suffered since the decision not to recommend him. While the Applicant’s loss of a chance is evident, it is also evident in this case that the Tribunal cannot substitute its judgment for that of the Administration and determine whether the Applicant would have been selected for the Post. However, it is clear from the Applicant’s evidence and demeanor at the hearing that he is distressed by the experience and feels undervalued notwithstanding his excellent performance ratings. He is entitled to appropriate compensation for the consequences flowing directly from the procedural error and unfairness to which he was subjected. The Tribunal assesses the degree of moral damage as commensurate to awards in the lower third of the range of awards to date. Accordingly, the sum of USD3,000 is considered appropriate as compensation.

Judgment

61. The decision that the Applicant failed to meet the competency of Teamwork was based on a flawed understanding of the role of competency-based interviews in ST/AI/2010/3. The Applicant was and continues to be distressed by the decision and is entitled to appropriate compensation.

62. The Respondent is ordered to pay to the Applicant USD3,000. The amount shall be paid with interest at the United States prime rate with effect from the date that this Judgment becomes executable until payment of the said amount. An

additional five per cent shall be added to the United States prime rate 60 days from the date this Judgment becomes executable.

(Signed)

Judge Goolam Meeran

Dated this 6th day of August 2015

Entered in the Register on this 6th day of August 2015

(Signed)

Hafida Lahiouel, Registrar, New York