



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/106
Judgment No.: UNDT/2016/196
Date: 26 October 2016
Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

HUMACKIC

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON LIABILITY AND
RELIEF**

Counsel for the Applicant:
Edwin Nhliziyo

Counsel for the Respondent:
Alister Cumming, ALS/OHRM

Introduction

1. The Applicant serves as an Administrative Assistant at the United Nations Interim Force in Lebanon (UNIFIL) at the FS-5 level. On 8 November 2014, she filed an Application contesting a decision made on 25 April 2014 not to select her for the Temporary Job Opening (TJO) of Contracts Management Assistant at the FS-5 level advertised as TJO/2014/011.
2. The Respondent filed a Reply on 26 December 2014 in which he asserted that the Application is without merit and is not receivable *rationae temporae*.
3. On 1 April 2014, the Tribunal issued Judgment No. UNDT/2015/030 in which it found that the Application was receivable.
4. The Tribunal held an oral hearing on 26 July 2016.

Facts

5. On 21 March 2014, the temporary position of Contracts Management Assistant was advertised under TJO/2014/011 with a closing date of 28 March 2014.
6. The Applicant applied for the position on 28 March 2014.
7. A two-member interview panel was convened to assess the candidates comprising of the Hiring Manager, a female staff member external to the work unit where the job opening was located and a staff member from Human Resources who served as an *ex officio* member of the panel.
8. The Applicant and seven other staff members who applied for the position took written tests and undertook competency based interviews.
9. On 28 April 2014, the Hiring Manager transmitted the selection memorandum to the Chief Human Resources Officer recommending that the staff member who scored the highest on the written test be selected for the position.

10. On 27 June 2014, the selected candidate declined the position. Another candidate was offered the position but, on 18 July 2014, also declined the offer.

11. Following the second candidate's decision to decline the position, UNIFIL management decided that the position would be filled from the roster by a staff member appointed on a longer basis and that the recruitment would take place from January 2015. The Applicant was not offered the position.

12. By letters dated 26 and 28 May 2014, 12 June 2014 and 25 June 2014, the Applicant requested management evaluation of the decision concerning her non-selection for the position of Contracts Management Assistant (FS-5), TJO/2014/011, to assess the transparency of the selection process and to assess if events she had described in her request for management evaluation had affected her opportunity for career development.

13. On 27 June 2014, the Applicant received an email from the Management Evaluation Unit (MEU) with a letter attached in reference to her management evaluation request (MER). The letter advised the Applicant on the applicable deadlines for submission of her case to the Dispute Tribunal.

Applicant's case

14. The Applicant's case may be summarized as follows:

a. Section 1 of ST/AI/2010/3 (staff selection system) requires that a selection panel should normally have three members and that the third member be from the work unit from which the job opening is located. She was interviewed in April 2014 by a panel of only two people and even though she passed both the written test and the interview, she was not placed on the roster.

b. It is a requirement that the process be reviewed by the Central Review Board (CRB) to be valid. The Applicant does not know whether this was done. As far as she knows she is currently not on the roster despite going through the process.

c. In the United Nations, it is expected that all candidates appearing before an interview panel be accorded full and fair consideration. The existence of unexplained irregularities in dealing with her application for the temporary position demonstrates that the Applicant was not treated fairly. Two lower ranked staff (FS-4) staff members were selected for the post ahead of her yet she had good performance reports and had experience performing similar functions.

d. The Applicant was informed that she has not been placed on the roster for her occupation group which should have happened when she was not initially selected for the post.

15. The Applicant seeks the following remedies.

a. That the Mission should complete all the required formalities related to her selection.

b. That the necessary “P-5 action should be completed and she should be copied in accordance with the rules”.

c. That the Mission should submit all the paperwork related to her selection to a CRB for its review in accordance with the rules.

d. That the Applicant should be placed on a roster in accordance with the rules governing recruitment.

e. That she be awarded damages and compensation for the emotional toll this has taken on her. When this started she was already going through a difficult pregnancy and she was subsequently hospitalized a number of times due to emotional pressure which she continues to experience to date.

Respondent’s case

16. The Respondent’s case is summarized below.

a. The Secretary-General is vested with a wide discretion to select staff members for positions.

b. In accordance with staff regulation 4.3, selection is a competitive process. Staff members have a right to full and fair consideration, however, regardless of qualifications and experience, a staff member has no right to selection ahead of other candidates.

c. Only in extreme circumstances will the Dispute Tribunal rescind a selection exercise. There is a presumption that official acts have been regularly performed. Following a minimal showing by the Administration that the candidacy of a staff member was given full and fair consideration, the burden of proof shifts to the staff member who must be able to show through clear and convincing evidence that he or she was denied a fair chance of appointment.

e. The selection process complied with the procedures set out in ST/AI/2010/4/Rev. 1 (Administration of temporary appointments).

f. The Applicant argued that under section 1(c) of ST/AI/2010/3 the interview panel is normally comprised of at least three staff members. ST/AI/2010/3 does not apply to this selection exercise. It applies to the selection and appointment of staff members for positions established for one year or longer.

g. There is no minimum composition for interview panels for temporary appointments specified in ST/AI/2010/4/Rev. 1. It is within the discretion of the Administration to decide how the interview panel for a temporary position is constituted.

h. Paragraph 4.2.1 of the Standard Operating Procedures (SOPs) on staff selection in United Nations peacekeeping operations states that interviews shall be conducted by a panel of at least two persons for posts up to the P-3/FS-6 level and by a panel of at least three persons for posts at the P-4/FS-7 level and above. Therefore the composition of the interview panel in this case met with both the requirements of ST/AI/2010/4/Rev.1 and the applicable SOPs.

i. Moreover, since the selection exercise was for a temporary position and not a position for 12 months or longer, the exercise was regulated by ST/AI/2010/4/Rev.1 which has no requirement that a selection exercise be reviewed by a CRB or that candidates be placed on a roster.

k. There is no basis for the Applicant's claims that she was discriminated against in the recruitment process. The record in this case demonstrates that her skills and qualifications were fully reviewed and considered by the Organization.

Considerations

17. The Applicant's case is premised on her belief that the applicable law governing her selection for the temporary job opening is ST/AI/2010/3. Annex 1 of the Reply is a document titled "selection under temporary job opening" which indicates that the duration for the temporary job opening was from 1 May 2014 to 31 October 2014, a period of five months. The Tribunal agrees with the Respondent's submission that the relevant and applicable law in this case is ST/AI/2010/4/Rev.1 which regulates the selection and appointment of staff members for positions established for less than one year.

18. Section 1.1 of ST/AI/2010/4/Rev.1 provides:

The purpose of the temporary appointment is to enable the Organization to effectively and expeditiously manage its short-term staffing needs. As stated in General Assembly resolution 63/250, "temporary appointments are to be used to appoint staff for seasonal or peak workloads and specific short-term requirements for less than one year but could be renewed for up to one additional year when warranted by surge requirements and operational needs related to field operations and special projects with finite mandates".

19. In accordance with ST/AI/2010/Rev. 1, the Applicant's case fails for the following reasons as submitted by the Respondent.

a. There is no minimum composition for interview panels for temporary appointments specified in ST/AI/2010/4/Rev. 1. It is within the

discretion of the Administration as to how the interview panel for a temporary position is constituted.

b. The composition of the interview panel in this case was consistent with the requirements of ST/AI/2010/4/Rev. 1 and the SOPs of the Organization for the appointment of staff to temporary positions at the FS-5 level.

c. There is no legal requirement that the selection exercise in the present case be reviewed by a CRB or that candidates be placed on a roster.

20. In the circumstances of this case, the Applicant has not proven that she was discriminated against in the selection exercise.

JUDGMENT

21. In view of the foregoing, the Tribunal finds and holds that this Application is without merit and it is accordingly refused.

(Signed)

Judge Nkemdilim Izuako

Dated this 26th day of October 2016

Entered in the Register on this 26th day of October 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi