



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

BATICHTCHEV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat
Alister Cumming, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, a Russian translator at the P-3 step 15 level in the Russian Translation Services (“RTS”) in the United Nations Department for General Assembly and Conference Management (“DGACM”), contests his non-selection for a P-4 level post with the RTS/DGACM in New York (“the Post”) with reference to the job opening number “13-LAN-DGACM-31928-R-NEW YORK (L)” (“the Job Opening”).

2. In essence, the Applicant contends that the written test for the Post was improperly conducted because he was required to type his response on a computer, a condition not specified in the job advertisement. As remedies, the Applicant seeks:

Considering irreparable damage to my career, a guaranteed lack of career development/promotion opportunities due to the vicious circle of long-lasting and system-wide practice on P4 Russian reviser posts humiliation, frustration, mental anguish and moral sufferings, I therefore respectfully request that, as a remedy, I am afforded the UN obligations of good faith and due process in the full and fair consideration of my case, viz.: any relief customarily awarded by the Tribunal in such instances.

3. The Respondent submits in reply that the Applicant’s candidacy for the Post was fully and fairly considered in accordance with ST/AI/2010/3 (Staff selection system) and that his score in the written test was below the passing mark, therefore his application is without merit and should be dismissed.

Facts

4. In their jointly signed submission dated 18 March 2016, the parties set out the agreed and contested facts as follows (footnotes omitted):

Facts agreed by both parties

... [The Job Opening] was advertised from 17 December 2013 to 15 February 2014. The Applicant, along with eight other job applicants, was screened in as eligible, and released to the Hiring Manager for review. Following a review of the documentation, the Hiring Manager placed the Applicant, along with five other job applicants, on a short list of the applicants who appeared to be the most qualified.

... [The Job Opening] required that a candidate demonstrate the competency of “Technological Awareness”. This competency requires that a candidate “actively seeks to apply technology to appropriate tasks; shows willingness to learn new technology”. The job opening also required “a minimum of five years of experience in translation, précis-writing, self-revision and use of relevant computer software, electronic tools and databases”.

... In accordance with Section 7.5 of ST/AI/2010/3, the short-listed candidates were administered a Technical Evaluation Test (TET) to determine whether they met the technical requirements of the job opening.

... The TET was of a one-page translation and a two-page revision administered through the testing website “ClassMarker” (www.classmarker.com). The TET was available from Tuesday, 29 April 2014 to Thursday, 1 May 2014.

... The first assignment of the TET was a text for translation. It contained 558 words (31 % of the standard daily workload of a self-revising translator). The second assignment of the TET was a text for revision. That assignment contained 744 words (19 % of the average daily workload of reviser). The TET allowed candidates twelve hours to complete the two assignments.

... A Technical Evaluation Committee (TEC) consisting of two RTS P5 Senior Revisers, including the RTS Training Officer evaluated the responses of the job Applicants. In order to ensure objectivity, the identities of the job applicants were replaced with numbers. Furthermore, applicants were required to submit their answers in a typewritten format. The use of handwritten or dictated answers would have compromised the anonymity of the of the job applicants.

... The TEC members scored the TET answers in accordance with the methodology detailed in the Technical Evaluation Report. The answers were scored for the following: Mistranslation, Serious Shift of Emphasis, Grammatical Error, Stylistic Error; Terminological Error,

and Editorial error. There were no deductions for typing/formatting errors or anything relating to typing skills. The same methodology is used at the Language Competitive Examinations administered by the OHRM's Testing Section as well as during the bidding exercise for UN contractual translations procurement. Candidates with an overall score of 75% or of more at the technical evaluation test pass the test and are convoked for the second phase of evaluation, a competency-based interview.

... The Applicant was labelled as candidate No.5. As noted in the Technical Evaluation Report, the TEC assigned the Applicant an overall score of 62.5%. This was a non-passing score.

... As the Applicant did not demonstrate the required technical skills for the position, he was not invited for a competency based interview, and was not recommended for selection. The job applicants who successfully completed the technical assessment were invited to participate in competency based interviews. Following these interviews, these 3 candidates were found to demonstrate the required competencies, and were recommended for selection.

... Since January 2012, the Applicant has been participating in the Long Term Telecommute Pilot Project. In order to participate in this pilot project he signed an Agreement on Work Away from the Office under the Flexible Working Arrangements. Paragraph IV of that agreement states: "Work to be undertaken away from the office: Specific outputs: Translation in the file form." This means an electronic computer file format. The Applicant has extended the Long Term Telecommute agreement multiple times and over more than three years. In his performance appraisal for 2013-2014, the Applicant commented that his "typing speed and skills are improved".

Facts submitted by the Applicant and not accepted by the Respondent

... The Applicant cannot type and cannot learn to type due to a health condition.

... [The Job Opening] did not contain a requirement that a candidate be able to type.

... Within the RTS, there is no requirement to type translations. Everyone is free either to type or to dictate. With regard to telecommuting, the Applicant provided all his translations by dictating them, saving them as audio files, then placing them in a Dictations folder on the Russian Text Processing Unit's shared drive. A typist typed then them. The Applicant then proof-read them before submission. The Applicant did not type his translations.

... The requirement to type during the written test, and not to dictate, has no legal grounds and violates the legal right of translators to dictate, and favors those who prefer to type. The requirement places those who cannot type, or who are not comfortable with full-time typing and prefer dictating in a disadvantaged position.

... The Applicant did type his written test answer with one finger. Due to the resulting stress and emotional suffering, and unequal and unfair treatment, he was not able to produce a test answer of the required quality.

... The Applicant is using any opportunity to learn new technology. He was interested in mastering Studio (a translation memory platform) and unsuccessfully sought his supervisor's assistance in this regard.

... Sixty-two percent of the Applicant's work outputs in the four months prior to the written test were in a typed form, because the Applicant had copied and pasted from previous documents. To varying degrees of between 20% to 95%, documents produced by the RTS contain parts of previous documents that are copied and pasted to preserve the full authenticity of the document.

Facts submitted by the Respondent and not accepted by the Applicant

... The RTS Translation Manual cited by the Applicant is obsolete. It is an unofficial document that was last drafted in 1987 when there were no computers in the translation workflow. The translation workflow has since changed to take advantage [of] technological advances. The document is now used only as an informal reference to assist in translating draft resolutions, procedural documents, proper names, monetary units, and the titles of Member States in correspondence.

... The ability to type and use a computer is a basic skill expected of all professionals in the United Nations. Such a basic skill, while not explicitly outlined in United Nations job openings, is incorporated into the more complex skills of job openings. For example, it would not be possible for a candidate to demonstrate the competency of "Technological Awareness" without the basic ability to use a computer. The use of a computer requires the ability to type and use a keyboard.

... Sixty-two percent of the Applicant's work outputs in the four months prior to the written test were in typed form.

... The Applicant could not meet the agreed requirements of the Long Term Telecommute Pilot Project unless he was able to submit translations in a computer file format. The Applicant could not create a computer file unless he knew how to type and use a computer. The Applicant has never stated that he could not submit his work in a computer file format, or that working from home on a computer resulted in additional stress.

... The test required approximately 4 hours of translation and revision work. Thus if the Applicant elected to hand-write or transcribe his drafts, he had an additional 8 hours to convert hand-written and/or transcribed answers into a typed form. A professional text processor can type text of the TET in 35 minutes. The standard output of a professional in a DGACM Text Processing Units is 20 words per minute. To type the 558 words required in the translation text would therefore take approximately 28 minutes. Typing of the 744 words in the revision text would take less time, as the document is already in Russian and only required incorporation of revision changes. A non-professional text processor, such as the Applicant, should be able to type the test in no more than 1.5 to 2 hours. A non-professional text-processor would then have had an additional 6 hours of time to finalise and upload a response to the test website.

Procedural history

5. On 22 February 2015, the Applicant filed the application and, on 23 March 2015, the Respondent duly filed his reply.
6. The matter was assigned to the undersigned Judge on 13 January 2016.
7. By Order No. 51 (NY/2016) dated 23 February 2016, the Tribunal ordered the parties to file, by 18 March 2016, a jointly signed statement setting forth: (a) a list of agreed facts in chronological order; (b) a list of agreed legal issues; (c) a list of any further documents, if any, which the parties request to be produced; (d) whether they agreed to have this case decided on the papers or request an oral hearing; and (e) whether they wished to make any additional oral or written submissions.

8. On 16 March 2016, the Applicant filed an eleven-page document consisting of: (a) one-page submission by the Applicant; (b) a seven-page *unsigned* document titled, “Joint submission pursuant to Order No. 51 (NY/2016)”; (c) a two-page message that appears to have been drafted by the Applicant as a communication to Counsel for the Respondent regarding the content of the parties’ jointly signed statement in response to Order No. 51 (NY/2016); and (d) a one-page signed statement by a third party, which appears to have been submitted by the Applicant as evidence.

9. On 18 March 2016, the parties submitted the jointly signed statement pursuant to Order No. 51 (NY/2016). The submission stated that neither party wished to adduce any additional documents and that both parties submit that the Tribunal could decide this case without an oral hearing. In addition, the Respondent moved for the Applicant’s filing of 16 March 2016 to be struck from the record because it “was not in fact a joint submission and was filed by the Applicant alone”.

10. By Order No. 87 (NY/2016) dated 8 April 2016, the Tribunal ordered the parties to appear in person at a Case Management Discussion (“CMD”) at the courtroom of the Dispute Tribunal in New York on 13 April 2016.

11. On 11 April 2016, the Tribunal received a submission from the Applicant stating that he was unavailable to attend the CMD in person. The CMD was rescheduled by the Tribunal and took place on 21 April 2016. The Applicant, who is self-represented, participated via telephone. The Respondent was represented by Mr. Gutman, who attended in person.

12. By Order No. 100 (NY/2016) dated 26 April 2016, the Tribunal ordered that a one-day hearing on the merits would be held in this case. The parties were ordered to file a jointly-signed statement providing a list of witnesses to be called and

a proposed mutually agreeable date range for the hearing. In addition, the Respondent was ordered to provide certain documentation by 6 May 2016.

13. On 5 May 2016, the Applicant filed his own separate statement consisting of a list of sixteen witnesses and a proposed date for the hearing. In his statement, the Applicant made additional submissions regarding this matter, also requesting protection for witnesses, and, since he had retired in or about April 2015, the restoration of his official United Nations email account for the last several years in order to produce emails as evidence.

14. On 6 May 2016, the Respondent filed the required information in compliance with Order No. 100 (NY/2016). The Respondent pointed out that the date proposed by the Applicant for a hearing, 6 July 2016, was an official United Nations holiday in New York, and proposed an alternative date range. The Respondent further proposed that the Chief of the RTS be called as a witness.

15. By Order No. 116 (NY/2016) dated 12 May 2016, the parties were ordered to appear in person at a CMD on 14 June 2016.

16. By email to the Registry dated 8 June 2016, the Applicant stated that it would be “extremely difficult” to attend the scheduled CMD in person because he did not reside in New York and for other personal reasons.

17. By email of 9 June 2016, with copy to the Respondent, the Applicant was informed by the Registry that the Tribunal had granted him leave to participate in the CMD via telephone. By email response sent on the same day, the Applicant requested that the CMD be rescheduled for any date after 28 June 2016, when he could attend in person as he had experienced audio/hearing difficulties at the last CMD via telephone.

18. By Order No. 138 (NY/2016) dated 9 June 2016, the Tribunal rescheduled the date of the CMD to 29 June 2016. The Tribunal denied the Applicant's request for restoration of his official email account and stated that it would discuss the Applicant's request to call sixteen witnesses for the one-day hearing on the merits at the rescheduled CMD. The Tribunal granted the Respondent's request to call the RTS Chief as a witness at the hearing on the merits.

19. On 29 June 2016, the CMD was held, at which the Applicant was self-represented (via telephone) and the Respondent was represented by Mr. Gutman, present in court. The Tribunal drew the parties' attention to two judgments issued by the Dispute Tribunal in Geneva, which could be of relevance to the present case—*Krioutchkov* UNDT/2016/041 and *Krioutchkov* UNDT/2016/042. Counsel for the Respondent also referred to a third judgment—*Krioutchkov* UNDT/2016/066—which he submitted was also relevant to the present case. The Tribunal agreed to suspend the proceedings for two weeks to allow the Applicant time to consider how he wished to proceed with this case.

20. By Order No. 159 (NY/2016) dated 30 June 2016, the Tribunal suspended the proceedings until 13 July 2016. The Tribunal further ordered the Applicant to inform the Tribunal by 14 July 2016: (a) whether he would remain self-represented in this matter or has instructed the Office of Staff Legal Assistance (“OSLA”) or other legal counsel to represent him; and (b) whether the Applicant wished to pursue his case on the merits and, if so, propose a date or date range during which he would be available to attend a hearing on the merits in person in New York.

21. On 15 July 2016, the Applicant filed his submission as per Order No. 159 (NY/2016) in which he informed the Tribunal that he had “instructed OSLA to represent me [and] currently we are in the process of exchanging information”. Furthermore, he stated that he wished to pursue the case on the merits and that he would be available for a possible hearing in January or February 2017. Regarding

“the *Krioutchkov* cases”, the Applicant submitted that, for a range of different reasons, these cases were distinguishable from the present case.

22. On 20 December 2016, the United Nations Appeals Tribunal published *Krioutchkov* UNAT-2016-707, the appellate ruling pertaining to and disposing of *Krioutchkov* UNDT/2016/041.

23. By Order No. 34 (NY/2017) in the instant case, dated 21 February 2017, the Dispute Tribunal noted that:

... the Dispute Tribunal’s judgments in *Krioutchkov* UNDT/2016/041, *Krioutchkov* UNDT/2016/042 and *Krioutchkov* UNDT/2016/066 have all been appealed to the Appeals Tribunal. While the Appeals Tribunal has already decided the appeal in *Krioutchkov* UNDT/2016/041 (see *Krioutchkov* UNAT-2016-707), the appeals in the matters of *Krioutchkov* UNDT/2016/042 and *Krioutchkov* UNDT/2016/066 are listed for the next session of the Appeals Tribunal, scheduled for 21 – 30 March 2017. However, the Tribunal notes that the decision in the already rendered *Krioutchkov* UNAT-2016-707 concerns the exact same Job Opening, notably “(JO) 13-LAN-DGACM-31928-R-NEW YORK-(L)”, the subject matter of the Applicant’s current case. In particular, the Appeals Tribunal dismissed Mr. Krioutchkov’s appeal and affirmed Judgment No. UNDT/2016/041. The Tribunal notes that the parties may wish to consider the impact of the pronouncements, if any, of the appellate decision in *Krioutchkov* UNAT-2016-707 to the case in hand, and will direct that the parties make submissions thereto. The Tribunal notes that the Applicant may wish to consider whether the pronouncements therein are applicable or binding in his case, how his case may be distinguished from the case disposed of in the Appeals Tribunal judgment referred to, and to advise the Tribunal whether he wishes to pursue this case on the merits.

24. Accordingly, by aforesaid Order No. 34 (NY/2017), the Tribunal ordered the parties as follows:

... **By 5:00 p.m. on Tuesday, 7 March 2017:**

- a. The Applicant is to inform the Tribunal whether OSLA, or any other counsel, is to represent him in the present case and, if so, submit the signed legal representative authorization

form (UNDT/F.12E, the template form can be found at <http://www.un.org/en/oaj/dispute/forms.shtml>).

b. The parties are to file a submission, if they so wish, on the impact of the pronouncements if any, of the appellate decision in *Krioutchkov* UNAT-2016-707, to the case in hand.

c. Without prejudice to the further conduct and outcome of this matter, the Applicant is also to advise whether he wishes to pursue his case on the merits and, if so, propose a date or date range during which he would be available to attend a hearing on the merits or on any submissions.

25. In accordance with Order No. 34 (NY/2017), the Respondent filed his submissions on 7 March 2017, contending that in light of the prevailing jurisprudence in a similar case disposed of by *Krioutchkov* UNAT-2016-707, the matter could be disposed of without any further oral or written submissions. The Applicant has not filed any response whatsoever, in particular he has failed to address the impact of the pronouncements if any, of the ruling in *Krioutchkov* UNAT-2016-707, a case concerning the exact same contested Job Opening, to the case at hand.

26. By Order No. 74 (NY/2017) dated 12 April 2017, considering the expiry of the deadline for submissions and the Applicant's lack of response to Order No. 34 (NY/2017), and upon the documents before it, including those submitted by the Respondent pursuant to Order No. 100 (NY/2016), the Tribunal ordered that it would proceed to determine the present case on the papers before it.

Consideration

27. At the outset, the Tribunal notes that, in the parties' jointly signed submission dated 18 March 2016, the Applicant stated that he "no longer insists on the arguments contained in paragraphs 12 to 15 of the [a]pplication". For all intents and purposes, the Applicant has therefore abandoned his initial claim that he had "a legitimate expectation of being promoted to a P4 post within a reasonable average time period on a par with all other rostered Russian Translators" because he had been "included in

the roster since 2011”. The Applicant has also orally confirmed that he was not pursuing any disability discrimination argument. The only remaining issue for the Tribunal to consider is therefore whether the written test for the Post was properly administered in that the candidates were required to type their responses on a computer.

28. In this regard, the Applicant essentially contends that the disputed decision “violated [his] contractual rights because the selection process did not provide [him] with full and fair consideration due to the fact that a related written test was based on a skill not provided for in the [the Job Opening] or P4 Reviser Generic Job Profile ... viz.: typing particularly in Russian”.

29. In the case of *Singh* UNDT/2015/114 dated 20 November 2015, at paras. 52 and 53, the Tribunal said:

... However, it is the contractual right of every staff member to receive full and fair consideration for job openings to which they apply. A staff member should be able to challenge criteria which are unlawful, where criteria may be directly or indirectly discriminatory, or would appear to be manifestly unreasonable or imposing unwarranted limitations on qualification or other requirements such as to constitute an unfair restriction on the eligibility of a group of staff members for appointment or promotion, especially if there is no proper basis in any promulgated issuance (see *Korotina* UNDT/2012/178). Where any exception is granted under the Staff Rules, the Respondent is to ensure that it is not prejudicial to the interests of any other staff member or group of staff members.

... Section 4.5 of ST/AI/2010/3 (Staff selection system) states that “[t]he job opening shall reflect the functions and the location of the position and include the qualifications, skills and competencies required ...

30. However, the Dispute Tribunal has also observed in *Wang* UNDT/2012/080, para. 23, that ST/AI/2010/3:

... does not impose any particular method to assess technical requirements and competencies, still less any specific conditions in which these evaluations should be performed. Moreover, the Applicant has not alleged that he had to perform the test under conditions which are different from those set for the other candidates.

31. The Applicant in the instant case maintains that the requirements listed as the evaluation criteria must be identical to those in the job opening as per para. 6.4.1 of the Manual for the Hiring Manager on the Staff Selection System, and an unlisted criterion may not be used to evaluate an applicant. Referring to the standard operating procedures for Russian translators and revisers, the Applicant further submits that translations are furthermore to be dictated on a “dictaphone” or directly to a typist, or if the text is short, they may be handwritten. The Applicant contends that, by failing to avail those candidates, who for many years dictated their translations, of appropriate technical means, and by requiring a criterion not mentioned in the job opening, the Respondent discriminated against them and effectively deprived them of the equal opportunity to compete.

32. Concerning the Dispute Tribunal’s judgment in *Krioutchkov* UNDT/2016/041 (upheld by the United Nations Appeals Tribunal in *Krioutchkov* UNAT-2016-707), *Krioutchkov* UNDT/2016/042 (appeal pending before the Appeals Tribunal) and *Krioutchkov* UNDT/2016/066 (appeal pending before the Appeals Tribunal), the Applicant avers that these cases should be distinguished from the present one in that, unlike the *Krioutchkov* cases, the Applicant does not claim bias against him personally, but alleges irregularity in the requirement of typing, and favoritism and conflict of interest in the selection process.

33. The Respondent contends that the Applicant was fully and fairly considered for the Post because, along with five other job applicants, he participated in a written assessment for the Post and the answers were scored anonymously against objective criteria by a panel of two experts. However, the Applicant scored below the passing score on the assessment and was therefore not further considered.

34. Regarding the typing requirement, the Respondent submits, in essence, that the ability to type and use a computer is a basic skill expected of all professionals in the United Nations and, while not explicitly outlined in United Nations job openings, such a basic skill is incorporated into the more complex skills of the job openings. Also, the Applicant had demonstrated at his work that he actually does possess basic computer and typing skills, and the twelve-hour time limit for completing the test was sufficient to accommodate the Applicant's preferred work methods. In any event, there were no deductions in the evaluations for typing/formatting errors or anything relating to typing skills, as the answers were scored for mistranslation, serious shift of emphasis, grammatical error, stylistic error, terminological error, and editorial error.

35. As for the Dispute Tribunal's judgment in *Krioutchkov* UNDT/2016/041, which the Appeals Tribunal upheld in *Krioutchkov* UNAT-2016-707, the Respondent submits that the contested administrative decision concerns the same issue as in the present case, notably the lawfulness of the requirement to submit answers in a typed format as part of the competitive selection for the Post. In the *Krioutchkov* cases, the Respondent contends that neither Tribunal found merit in the Applicant's claim that his contractual rights were violated because the technical assessment test required him to submit his answers in a typed format, and the Dispute Tribunal is required to follow the Appeal Tribunal's decision in *Krioutchkov* UNAT-2016-707.

36. The Tribunal notes that, in *Krioutchkov* UNAT-2016-707, paras. 19 to 27, the Appeals Tribunal made the following findings regarding the typing requirement in the selection process for the exact same Post, which the Applicant is also challenging in the present case (references to footnotes omitted):

... 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 [another job opening, "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”.

... 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”.

... 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.” “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.” “You don’t need any special equipment but naturally you need a computer with internet connection, a web browser and your favourite text editor.”

... 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.

... With respect to the provision that “[a]pplicants work on paper” stipulated in the Compendium of administrative policies, practices and procedures of conference services, 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”. This also explains why the test in the Bangkok Exam Centre also stated that it was “a paper based test”.

... 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.

... 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.

... 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 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.

... 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.

37. In the aforesaid case, the Appeals Tribunal rejected Mr. Krioutchkov's claims of discrimination. It also found that although keyboarding and typing were not explicitly mentioned in the Job Opening, it was a reasonable and normal conclusion to draw that the test would be so conducted from the emails he had received. While handwriting was allowed in a subsequent examination for another job opening, "JO 38908", handwriting had not been discussed or requested by Mr. Krioutchkov prior to the examination, although he had had the opportunity to request it.

38. The Job Opening in this case also required "a minimum of five years of experience in translation, précis-writing, self-revision and use of relevant computer software, electronic tools and databases". The Tribunal agrees with the Respondent's contention that it would not be possible to meet those requirements without the basic ability to type and use a keyboard. Unlike Mr. Krioutchkov, the Applicant in this case actually took the examination; and it remains unclear when he first protested, although it appears he only did so following his non-selection. The Applicant in this instance received similar emails regarding the conduct of the examination, consented to the procedure, and has not produced any evidence that he requested an alternative to typing prior to the examination, even if handwriting or dictation was forbidden of which there is no clear indication. Besides, the Respondent's contention that the evaluation did not include assessment of typing errors or skill remains uncontroverted.

39. Although the Applicant retired shortly after filing this case, he feels deeply aggrieved as he contends that had he been selected for the P-4 post, he would have fared better at opportunities of securing United Nations consultancies post retirement. Instead, he alleges, a newcomer to the United Nations system obtained the P-4 level post within 3 years when this normally takes some 10 to 15 years in the United Nations system. The Tribunal understands that the Applicant feels frustrated that after 25 years of dedicated, stellar and illustrious service in the RTS, including as personal translator to the President of the General Assembly and for the United States

President, George Bush Sr. , and as the compiler of glossaries such as “Conventional Arms” and “Women’s Issues”, he remained for 23 years at the P-3 level. However, the Tribunal’s decision must be based on the circumstances of the particular case and the prevailing jurisprudence.

40. Consequently, with regard to the specific selection process for the Post, the Appeals Tribunal in *Krioutchkov* UNAT-2016-707 held that, in the particular circumstances of the case, it was lawful to require all the candidates to type their written test on a computer. As the present case concerns precisely the same selection process, and nothing of significant relevance distinguishes the circumstances of the present case from those of *Krioutchkov* UNAT-2016-707, the Tribunal therefore finds that it was lawful for the Administration to require all candidates to type their responses to the written test on a computer.

Conclusion

41. The application is dismissed.

(Signed)

Judge Ebrahim-Carstens

Dated this 11th day of May 2017

Entered in the Register on this 11th day of May 2017

(Signed)

Hafida Lahiouel, Registrar, New York