



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

STEFANIZZI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Robbie Leighton, OSLA

Counsel for Respondent:
Alister Cumming, ALD/OHR, UN Secretariat

Introduction

1. The Applicant, Chief, Integrated Support Services at the P-5 level with the United Nations Stabilization Mission in Haiti (“MINUSTAH”) at the time of the application, contests the Administration’s decision that “the Applicant did not meet the minimum requirements for participating in the rostering exercise for the Generic Job Opening of Chief Service Delivery D-1 [Generic Job Opening #15-LOGFMADFS-45021-P-Field Locations (“GJO 45021”)] and being screened out of the rostering exercise for that post”.

Facts

2. In December 2014, guidance was circulated in a memo from the Under-Secretary-General for Field Support (“USG/DFS”) entitled “Guidance on Mission Support Structures” dated 4 December 2014 (“Guidance”) regarding the decision by the Department of Field Support (“DFS”) to revise Mission Support structures. DFS instructed larger peacekeeping missions to split the functions performed by Chief of Integrated Support Services, creating two pillars: Service Delivery and Supply Chain Management, with corresponding posts of Chief of Service Delivery and Chief of Supply Chain Management. Under this new structure, the Movement Control function, previously included in the Chief of Integrated Support Services role, was moved to the Supply Chain Management pillar. In smaller missions, one post combining functions of Chief of Service Delivery and Chief of Supply Chain would be used.

3. On 9 July 2015, the Applicant was laterally transferred from her position as P-5 Chief of Technical Services with the United Nations Assistance Mission for Iraq to the position of Chief, Integrated Support Services, in MINUSTAH at the P-5 level. Following the closure of MINUSTAH, she was laterally reassigned to the United Nations Interim Security Force for Abyei as a Chief of Supply Chain Management.

4. On 21 July 2015, Generic Job Openings (“GJO”) 45020 and 45021 were advertised. The purpose of the GJO 45020 was to generate a list of qualified candidates for inclusion in the Chief of Supply Chain Management (“CSCM”) roster at the D-1 level. The purpose of the GJO 45021 was to generate a list of qualified candidates for inclusion in the Chief of Service Delivery (“CSD”) roster at the D-1 level.

5. On 1 August 2015, the Applicant submitted her application for Chief of Service Delivery, GJO 45021. The Applicant also applied for Chief of Supply Chain Management, GJO 45020 and was called for a written test on 26 January 2016.

6. Of the 254 candidates who applied for GJO 45021, 90 were screened out during an automated screening process conducted by Inspira (the online United Nations jobsite), in accordance with sec. 7.1 of ST/AI/2010/3. The remaining 164 candidates, including the Applicant, were then released to the hiring manager for further consideration in accordance with sec. 7.2 of ST/AI/2010/3.

7. In January 2016, during a preliminary review of her application for Chief of Service Delivery, GJO 45021, the hiring manager determined that the Applicant did not meet the minimum of 15 years of required experience in the management of complex service delivery and/or diverse logistic operations, as required by the GJO. The Applicant was determined to be not suitable for the GJO and her candidacy was not considered further.

Procedural background

8. On 9 December 2016, the Applicant filed her application.

9. On 9 January 2017, the Respondent filed his reply.

10. On 1 January 2019, the present case was re-assigned to the undersigned Judge.

11. On 21 January 2019, the parties duly filed their respective closing submissions.

Consideration

Legal Framework

12. The Secretary-General has broad discretion in the selection and appointment of staff (see *Abbassi* 2011-UNAT-110; *Frohler* 2011 UNAT-141; *Charles* 2013-UNAT-286; Article 101(1) of the Charter of the United Nations and staff regulations 1.2(c) and 4.1).

13. In matters of staff selection, it is the role of the Dispute Tribunal to review the challenged selection process to determine whether the applicable regulations and rules have been applied and whether a candidate has received full and fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration (*Rolland* 2011-UNAT-122; *Aliko* 2015-UNAT-540). The Tribunals' role is not to substitute their decision for that of the Administration.

14. The official acts of the Respondent enjoy a presumption of regularity (*Rolland* 2011-UNAT-122). If the management is able to even minimally show that the applicant's candidature was given a full and fair consideration, then the presumption of law stands satisfied (*Finniss* UNDT/2012/200 (affirmed by 2014-UNAT-397)).

15. Thereafter, the burden of proof shifts to the applicant who can rebut the presumption of regularity by showing through clear and convincing evidence that he or she was denied a fair chance of selection (*Rolland* 2011-UNAT-122; *Niedermayr* 2015-UNAT-603; *Ngokeng* 2017-UNAT-747).

Was the Applicant given full and fair consideration for Chief of Service Delivery GJO 45021?

16. In the present case, the Applicant submits that the recruitment process for Chief of Service Delivery GJO 45021 was not carried out in a lawful manner. In particular, the Applicant states that the hiring manager unlawfully applied minimum work experience requirements absent from the vacancy announcement and, in any case, did not have the right to review the Applicant's application to determine eligibility. The Applicant further submits that contrary to the hiring manager's evaluation, she did meet the minimum requirements for Chief of Service Delivery at the D-1 level.

17. The Respondents responds that the recruitment process followed the correct procedures, that the Applicant received full and fair consideration, and that the Applicant did not meet the minimum requirements for Chief of Service Delivery at the D-1 level.

Did the hiring manager erroneously apply minimum work experience requirements that were absent from the vacancy announcement?

18. The Job Opening for Chief, Service Delivery, GJO 45021 stated the following work experience requirements for the position:

A minimum of fifteen years of progressively responsible experience managing complex service delivery and/or diverse logistics operations in military, commercial or international organisations. Management experience and technical leadership skills in a complex environment is required. Experience in technical project management and/or managing highly complex operations in a conflict or post-conflict environment is highly desirable. Experience in planning, deployment and sustaining peacekeeping missions, including military and police components, is desirable.

19. Section 1(f) of ST/AI/2010/3 states that 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”. It follows that the criteria to be used in evaluating candidates must be clearly stated in the vacancy announcement (*Neault* UNDT/2012/123).

20. In providing full and fair consideration to staff members, this Tribunal has held that the Administration is bound by the terms of the vacancy announcement that regulates the selection exercise (*Neault; Korotina* UNDT/2012/178). It is a matter of fairness and transparency that the vacancy announcement should inform potential candidates clearly and fully of the requirements of an advertised post. As the Tribunal emphasized in *Neault*, a clear and full statement is all the more imperative with respect to evaluation criteria which will be decisive in the assessment of the candidates’ suitability for the post.

21. However, the criteria used by the hiring manager in evaluating candidates in the present case is different to the one stated in the vacancy announcement. In the management evaluation letter to the Applicant dated 15 November 2016, the Under-Secretary-General for Management (“USG/DM”) stated that the requirements for Chief, Service Delivery, GJO 45021 were defined to capture the functions in the new Mission Support Pillars as outlined in the USG/DFS Guidance. The USG/DM stated further that given the complexity and seniority of the position of Chief, Service Delivery, it was decided that, when determining whether candidates met the requirement of “managing complex service delivery and/or diverse logistics operations in military, commercial or international organizations”, the Personal History Profiles (“PHPs”) of candidates would be reviewed to ascertain if they had a minimum of 15 years of experience in at least three of the twelve service areas outlined in such Guidance. The twelve service areas were: (1) Engineering; (2) Facilities Management; (3) Mail and Pouch; (4) Camp Maintenance Services; (5) Life Supply Services; (6) Rations; (7) Fuel; (8) General Supply; (9) Mobility; (10) Aviation; (11) Transport (vehicle maintenance, dispatch, etc.); and (12) Medical.

22. The Tribunal finds that a minimum of fifteen years of “progressively responsible experience managing complex service delivery and/or diverse logistics operations in military, commercial or international organisations” is significantly different than a minimum of 15 years of “experience in at least three of the twelve service areas outlined in the USG/DFS”. The Tribunal recalls that it is not the function of the Tribunal to prescribe to management what their selection criteria should be for a particular post (*Charles* UNDT/2011/159). However, where the Administration decides to use specific criteria to evaluate candidates, the criteria should be clearly reflected in the vacancy announcement.

23. The Tribunal finds that the Organization did not clearly state the criteria to be used in evaluating candidates in the vacancy announcement. Not having included in the vacancy announcement the requirement that the candidates must have a minimum of 15 years of experience in at least three of the twelve service areas outlined in the USG/DFS Guidance, and having solicited applications on that basis, the Respondent was bound by the terms of the vacancy announcement, which did not include any such requirement. The Tribunal finds that the Organization’s failure to state fully the selection criteria in the GJO constitutes a procedural error in violation of ST/AI/2010/3.

The hiring manager’s consideration of the Applicant’s work experience

24. The Applicant contends a further procedural irregularity on the basis that the hiring manager erroneously reviewed the Applicant’s work experience following the initial pre-screening by Inspira in order to determine whether the Applicant met the minimum requirements for the GJO.

25. Section 7 on “Prescreening and assessment” of ST/AI/2010/3 provides that the then-Office of Human Resources Management (“OHRM”) pre-screens applicants applying for job openings to determine whether they meet the minimum requirements of the job opening. OHRM then electronically releases the list of pre-screened candidates to the hiring manager.

26. In the present case, it is a matter of fact that OHRM pre-screened the Applicant and released her job application to the hiring manager.

27. There is no basis to the Applicant's argument that a procedural error was committed because the hiring manager further evaluated her work experience and found her to not meet the minimum requirements for the GJO.

28. Section 7.4 of ST/AI/2010/3 provides that the hiring manager "shall further evaluate all applicants released to him/her and shall prepare a shortlist of those who appear most qualified for the job opening based on a review of their documentation". Section 7.4 vests the hiring manager with the authority to "further" evaluate all pre-screened applicants. It does not confer an obligation on the hiring manager to accept all pre-screened applicants as being eligible for the GJO, as the Applicant appears to be arguing. Furthermore, the "Manual for the Hiring Manager on the Staff Selection System", which provides guidance to the hiring manager on the staff selection process, states that, once applications that have successfully passed the pre-screening process and are released to the hiring manager, the hiring manager will review and rate each applicant in the three areas of academics, language and experience (see Chapter 9 of the said Manual on "Conducting Assessment"). It is quite clear that an initial pre-screening into a recruitment process does not confer a legal entitlement to a job applicant if the candidate is found later to be lacking the particular requirements necessary for selection.

Did the procedural error impact the Applicant's right for full and fair consideration?

29. Having determined the selection processes was affected by a procedural error, the Tribunal will next address whether the error impacted the Applicant's right for full and fair consideration.

30. It is the jurisprudence of the Appeals Tribunal that an irregularity in a selection process has no impact on the status of a staff member when he or she had no foreseeable chance of promotion or being included in the roster. However, in a case

where a staff member had a significant chance of promotion, the irregularity has a direct impact on the status of that staff member resulting in the rescission of the impugned decision (see *Pinto* 2018-UNAT-878; *Krioutchkov*, 2016-UNAT-691; *Vangelova* 2011-UNAT-172; *Dualeh* 2011-UNAT-175; *Bofill* 2011-UNAT-174 and *Sina* 2010-UNAT-094).

31. It follows that there must be a link between the irregularity in the procedure and the failure to short-list the Applicant. The Applicant states that she met the minimum requirements of fifteen years of relevant work experience. The Respondent maintains that she did not fully meet the requirements, as the hiring manager determined that the Applicant did not have the minimum of 15 years of required experience in the management of complex service delivery and/or diverse logistic operations, as required by the vacancy announcement.

32. The Respondent states that only three of the Applicant's twelve jobs listed in the "Employment" section of her PHP were deemed relevant for the purposes of the Chief of Service Delivery, GJO 45021. Eight jobs were deemed not relevant for the purposes of Chief of Service Delivery, GJO 45021, but were relevant for the position of Chief of Supply Chain Management, GJO 45020. One of the Applicant's jobs was deemed not relevant for either position. In total, the hiring manager determined that the Applicant had relevant experience amounting to only approximately 18 months, which falls significantly short of the 15-year minimum relevant work experience requirement for GJO 45021. It appears that the hiring manager's assessment concluded at this point and the Applicant's PHP was not evaluated with reference to the erroneous criteria of "experience in at least three of the twelve service areas outlined in the USG/DFS".

33. The Tribunal notes that the majority of the Applicant's experience was found to be in movement control related functions. The hiring manager found that the Applicant's experience as a P-4 Chief Movement Control Officer with the United Nations Operation in Côte d'Ivoire from 16 April 2004 to 14 June 2014 was not

relevant for the purposes of Chief of Service Delivery, GJO 45021, but was relevant for Chief of Supply Chain Management, GJO 45020. In the management evaluation letter addressed to the Applicant dated 15 November 2016, the USG/DM explained that experience gained through movement control functions at the United Nations Headquarters or field missions includes providing support, planning, coordinating and executing movement of cargo and passengers within, to, and from the mission through all modes of transportation. The USG/DM further explained that such experience is an integral part of the supply chain process and falls under the Supply Chain Management Pillar, and not under the Service Delivery Pillar to which GJO 45021 relates. The Tribunal further notes that the Applicant was indeed deemed to have the minimum work experience for the position of Chief of Supply Chain Management GJO 45020, which falls under the Chain Management Pillar, and progressed in that recruitment exercise.

34. At this juncture, the Tribunal recalls that its scope of review is limited. In *Charles* UNDT/2012/021 (upheld in *Charles* 2013-UNAT-284), the Dispute Tribunal stated (emphasis added):

29. The Applicant clearly does not accept that his work experience is insufficient to meet the post requirement. He wishes the Tribunal to assess his previous experience and rule on whether that is sufficient to meet the criteria required for this post. *The Tribunal has neither the power nor the ability to make such an assessment and substitute its assessment for that of the Respondent.* As stated in the United Nations Appeals Tribunal's judgment in *Rolland* 2011-UNAT-122, the role of the Tribunal is limited to determine whether an applicant received full and fair consideration of her/his candidature and not to enter into a substantive analysis of her/his application ...

35. It is therefore not for the Tribunal to substitute its own views as to a hiring manager's assessment, as long as the assessment itself was not based on obviously wrong facts that could be objectively verified (*Dhanjee* UNDT/2014/029 (upheld in *Dhanjee* 2015-UNAT-527)).

36. The Applicant's submission on this issue is that the hiring manager's evaluation contradicts the Applicant's current employment status. She states that she does have the requisite 15 years of relevant work experience as she has been rostered as a P-5 Chief of Integrated Support Services since 2011, and so since 2011 she has been deemed suitable to carry out all the functions now appearing under the Service Delivery Pillar at the P-5 level. She further submits that, even after the restructuring process, she is deemed suitable to perform the Service Delivery functions at the P-5 level in smaller missions.

37. The Tribunal finds that the Applicant fails to submit which of her work experiences met the minimum requirements for the position of Chief Service Delivery at the D-1 level. In particular, the Applicant does not address why her experience in movement control related functions, such as her over 10 years of experience as a P-4 Chief Movement Control Officer, was also relevant for the Chief of Service Delivery position. In the absence of such submissions, the Tribunal draws the inference that the hiring manager's assessment was based on facts which could be objectively verified. Furthermore, the Tribunal does not find any evidence in the record before it that the hiring manager's decision in this regard was unreasonable or tainted by extraneous motives, bias or discrimination towards the Applicant.

38. Moreover, it should be quite clear to job candidates that the mere fact of being selected for one roster or position does not create an expectancy or entitlement to selection for another roster or position. Additionally, the requirements for a D-1 level position would be rather different than those of a P-5 level position.

39. Based on the above, the Tribunal finds that the procedural error in the recruitment process did not impact the Applicant's right to be fully and fairly considered. Her application was fully and fairly reviewed by the hiring manager and it was within the reasonable discretion of the Organization to find that the Applicant's experience fell short of the minimum criteria.

Conclusion

40. The Tribunal finds that there was a breach of procedure in the failure of the Respondent to clearly state the criteria to be used in evaluating candidates in the vacancy announcement for GJO 45021. However, as the Applicant was lawfully found not to be eligible for the position of Chief of Service Delivery, GJO 45021, she was not denied a fair chance of being included in the roster as a result of this breach.

41. All other claims and allegations by the Applicant are rejected.

42. The application is dismissed.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 20th day of March 2019

Entered in the Register on this 20th day of March 2019

(Signed)

Nerea Suero Fontecha, Registrar, New York