



Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

AHMED

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Steven Dietrich, AAS/ALD/OHR

Nusrat Chagtai, AAS/ALD/OHR

Introduction

1. At the time of the application, the Applicant served as a Fuel Officer at the United Nations Operations in Côte d'Ivoire (ONUCI). He held a fixed term appointment at the P-3 level and was based in Abidjan.
2. On 23 May 2017, the Applicant filed an application to challenge the Respondent's decision to not select him for a Supply Officer position (Job Opening 55336) at the United Nations Mission in South Sudan (UNMISS).
3. The Respondent replied to the application on 23 June 2017.

Facts and Submissions

4. The position in question was advertised on Inspira. The Applicant applied for it on 25 February 2016.
5. The Applicant, as a rostered candidate, was among the seven candidates invited for an informal interview for the position on 9 November 2016. Four candidates accepted the invitation, and were interviewed on 15 November 2016. On 20 December 2016, the Applicant was told that he was not selected for the position.
6. The Applicant sought management evaluation on 31 January 2017 to challenge the selection decision.
7. The Applicant contends that the selection process was unlawful. He claims that as a staff member holding a fixed-term appointment, with three decades of work experience including nine years as a supply officer – which position he was competitively cleared and rostered for – he was “the most suitable candidate for the subject vacancy.” The Applicant further submits that his candidature should have been

prioritized given the imminent downsizing of ONUCI. He also claims that he was promised the position of ‘Chief Acquisition and Requisitions Unit’ at UNMISS.

8. The Respondent takes the position that the Applicant was given full and fair consideration for the position. Although rostered for a supply officer’s position within the system, the Hiring Manager found that the Applicant did not meet the requirements for JO 55336. The roster candidate recommended for the post following the informal interview was found to have exceeded the requirements of the vacancy.

Considerations

9. The question before the Tribunal is whether the Respondent acted lawfully when he declined to recommend the Applicant for JO 55336.

10. The Secretary-General is vested with wide discretion to select staff members for positions within the Organization. It is within the discretionary authority of the Secretary-General to evaluate job applicants’ qualifications for positions.¹ Selection for a position is a competitive process.²

11. In matters of selection of staff, the role of the Dispute Tribunal is to review the challenged selection process to determine whether a candidate has received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration³. The Dispute Tribunal will not substitute its own judgment for that of the Secretary-General.⁴

12. The United Nations Appeals Tribunal (Appeals Tribunal) has held that:

There is always a presumption that official acts have been regularly performed. But this presumption is a rebuttable one. If management is

¹ See *Safwat* UNDT/2010/066, paragraph 39 (holding that it was within the discretionary authority of the Respondent to evaluate an applicant's qualifications for the post); *Dumornay* UNDT/2010/004 (dismissing the application of a staff member that was not selected to a position when the panel found that the Applicant lacked the required skills or competencies). See also *Sicat* UNDT/2013/018, paragraph 25 and *Simmons* UNDT/2011/084, paragraph 79.

² Staff regulation 4.3.

³ *Rolland* 2011-UNAT-122; *Aliko* 2015-UNAT-540.

⁴ *Sanwidi* UNAT-2011-104 and *Krioutchkov* UNDT/2010/065.

able to even minimally show that the Appellant's candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter, the burden of proof shifts to the Appellant who must show through clear and convincing evidence that she was denied a fair chance of promotion.⁵

13. The presumption of regularity is rebutted by evidence of a failure to follow applicable procedures, bias in the decision-making process, and consideration of irrelevant material or extraneous factors.

14. Following careful review of the facts as they appear in the pleadings, and the accompanying documentary evidence, the Tribunal is unable to conclude that the presumption of regularity in the selection process has been or should be rebutted. There is nothing to suggest that the Respondent acted improperly in selecting the recommended candidate, or that he was motivated by any extraneous factors in not selecting the Applicant.

15. The Tribunal cannot, without more, believe the Applicant's assertion that he was promised the position of 'Chief Acquisition and Requisitions Unit' at UNMISS. The Applicant's submission in this regard particularly lacks credibility given that the Hiring Manager who is supposed to have made that promise is himself the Chief of Acquisition and Requisitions in UNMISS!

Judgment

16. On the evidence before it, the Tribunal can only conclude that the Applicant was given full and fair consideration by the hiring manager and that the selection decision was both proper and lawful.

17. The application is dismissed in its entirety.

⁵ *Niedermayr* 2015-UNAT-603; *Survo* 2015-UNAT-595 (both quoting *Rolland* 2011-UNAT-122). See also *Simmons* 2014-UNAT-425; *Zhuang, Zhao and Xie* 2015-UNAT-536; *Tintukasiri* 2015-UNAT-526, *Landgraf* 2014-UNAT-471.

(Signed)

Judge Margaret Tibulya

Dated this 25th day of October 2019

Entered in the Register on this 25th day of October 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi