



Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

ANDREEV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Aleksandra Jurkiewicz, OSLA

Counsel for Respondent:

Elizabeth Gall, ALD/OHR, UN Secretariat

Introduction

1. On 8 February 2018, the Applicant, a Population Affairs Officer at the P-4 level in the Population Division, Department of Economics and Social Affairs (“DESA”) filed an application contesting the decision not to select him for the position of Statistician, at the P-4 level, in the Demographic Statistics Section, Statistics Division, DESA (advertised as Job Opening 68059 (“Job Opening”)).

2. The case was initially assigned to Judge Greceanu. Following the end of Judge Greceanu’s tenure with the Dispute Tribunal, this case was re-assigned to the undersigned Judge on 1 July 2019.

Facts

3. The Job Opening for the position of Statistician, at the P-4 level, in the Demographic Statistics Section, Statistics Division was advertised on Inspira (the online United Nations jobsite) on 14 October 2016.

4. The Applicant applied for the position on 12 December 2016, by submitting his Personal History Profile (“PHP”).

5. The Applicant was one of the 143 job applicants released to the hiring manager after the pre-screening process for further evaluation. The hiring manager evaluated whether each job applicant demonstrated in their PHP that they met the education, work experience and language criteria set out in the Job Opening. Upon review of the Applicant’s PHP, the hiring manager determined that the Applicant did not meet the work experience requirements for the position.

6. On 10 August 2017, the Applicant was notified that his application had not been successful.

Consideration

The issues of the present case

7. There are two issues to be determined in the present case:
 - a. Did the Applicant meet the minimum requirements for the position?
 - b. Was the selection exercise process arbitrary and tainted by extraneous factors?

Did the Applicant meet the minimum requirements for the position?

8. In the present case, the Applicant submits that he was not given full and fair consideration for the position. He contends that the hiring manager incorrectly evaluated the Applicant's work experience as not meeting the requirements for the position. The Applicant further argues that the selection exercise process was arbitrary and tainted by extraneous factors.

9. The Respondent submits that the Applicant's claims have no merit. The Respondent states that the Applicant was not shortlisted for the position because he did not demonstrate in his PHP that he met the two required fields of work experience.

10. The Tribunal notes that the Job Opening for the position of Statistician, at the P-4 level, in the Demographic Statistics Section contained the following work experience requirements (emphasis added):

[1] A minimum of seven years of progressively responsible experience in the collection, compilation, analysis and dissemination of statistical data is required. [2] A progressively responsible experience in methodological work in the field of population and housing censuses, civil registration and vital statistics at national or international level is required. [3] Experience in supporting the development of international statistical standards in the field of demographic statistics

is desirable. [4] Experience in developing training curricula for demographic statistics is desirable.

11. At this juncture, the Tribunal recalls that its scope of review is limited. In *Sanwidi* 2010-UNAT-084, the Appeals Tribunal stated that “the role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate”.

12. 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 Tribunal’s role is not to substitute its decision for that of the Administration.

13. 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. 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 (*Lemonnier* 2017-UNAT-762).

14. As in the present case, in *Charles* UNDT/2012/021 (upheld in *Charles* 2013-UNAT-284), the applicant challenged the assessment of his work experience. The Tribunal held that it has neither the power nor the ability to make such an assessment and substitute its assessment for that of the Respondent. 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)).

15. On review of the record, the Tribunal finds that the hiring manager did conduct a full and fair assessment of the Applicant's candidacy and finds the hiring manager's assessment that he did not meet the first two work requirements to be reasonable for the following reasons.

16. First, the hiring manager found that the Applicant did not meet the requirement of "seven years of progressively responsible experience in the collection, compilation, analysis and dissemination of statistical data". The Respondent explained as background that the Demographic Statistics Section dispatches seven questionnaires annually, and its work includes designing the questionnaires, dispatching the questionnaires, validating and processing replies, collating and disseminating statistics. The Respondent explains that experience in this field is usually acquired in a statistical office (national or international), and that the Applicant does not have experience of working in a statistical office. The Respondent further explains that work in this field entails developing statistical questionnaires or using administrative records; designing data collection methods; developing and managing the collection of information; designing and implementing specifications for assessing the plausibility of data through editing and imputation; processing the cleaned records into statistical tables and databases; applying analytical tools to outline the major findings; and developing appropriate dissemination methods. The Respondent submits that the hiring manager correctly found that the Applicant does not have experience in developing statistical data collection tools (for example, responsibility for a regular survey programme or conducting a population and housing census), distribution and collection of filled questionnaires, or managing the logistics for statistical data collection. Further, the Respondent submits that the Applicant's PHP provides no indication of progressively responsible experience or complexity of such assignments.

17. Second, the hiring manager found that the Applicant did not meet the requirement of "progressively responsible experience in methodological work in the field of population and housing censuses, civil registration and vital statistics at

national or international level”. The Respondent explains that this experience is acquired through the production of handbooks, guides, instructions and manuals related to conducting population and housing censuses; directly working on a specific population and housing censuses; and direct experience with developing methodology for producing vital statistics. The hiring manager found that the Applicant’s PHP did not reveal any experience in the relevant methodological work. The Respondent states that although the Applicant’s PHP reveals that he has experience in methodology for deriving estimates based on statistics, statistics and estimates are different disciplines. Statistics are the result of an organized data collection exercise that produce comprehensive statistics as a reflection of the existing situation. Estimates are a product of modelling based on statistics, and the methodology for each discipline is different. The Respondent further states that Applicant’s work on establishing databases do not entail experience in population census or vital statistics methodology and the Applicant’s work on the producing reports do not refer to either the methodology for conducting population and housing censuses, or the methods for producing vital statistics from civil registration.

18. The Applicant, on the other hand, maintains that hiring manager’s evaluation was incorrect and provides detailed submissions in support of why he met the two mandatory work requirements of the Job Opening. In respect of the first requirement, of “seven years of progressively responsible experience in the collection, compilation, analysis and dissemination of statistical data”, the Applicant points to the following key evidence: (a) his cover letter states that he developed a website for dissemination of the World Fertility Data 2015; (b) his PHP further exemplifies that his experience in collection and compiling data started in fact in 1993, when the Applicant established Kannisto-Thatcher database on old age mortality; (c) the Applicant’s experience in dissemination of data started in 1997, when he was the coauthor of a monograph “Population Data at Glance”; (d) his PHP further shows that he has relevant experience in collection, compilation, analysis and dissemination of virtually all demographic statistical data: population, censuses, mortality, fertility, urbanization, and migration on old age mortality; and (e) that his supervisor

confirmed the Applicant's relevant extensive experience in the field in the Applicant's 2015-2016 performance document which was attached to his PHP.

19. With respect to the second requirement of "a progressively responsible experience in methodological work in the field of population and housing censuses, civil registration and vital statistics at national or international level", the Applicant points to the following key evidence: (a) his cover letter states that he has contributed to reports of the Secretary-General to the Commission of Population and Development and contributed to several reports and journals relating to population and mortality issues; (b) his experience in methodological work in the field of population and housing censuses, civil registration and vital statistics at national or international level started in 1993 when he established the Kannisto-Thatcher database on old age mortality; (c) two major methodological innovations introduced by the Applicant for estimating population at advanced ages, the "Survivor Ratio Method" and the "Estimating Size of Population Aged 90+ Method" are still used actively today.

20. The Tribunal finds that although the Applicant essentially disagrees with the hiring manager's evaluation of the relevance of his experience, he fails to establish that the hiring manager's assessment was unreasonable. Upon review of the record, the Tribunal finds that while the Applicant is clearly an experienced statistician and has published a wide range of articles and reports in his field, there is indeed no mention of the experience of regularly dispatching questionnaires or launching a survey (which are the main deliverables of the Demographic Statistics Section) in his PHP. The Tribunal further notes that a hiring manager's review is based on the information provided by a candidate in their PHP, and it is therefore the responsibility of each job candidate to clearly specify relevant information in their PHP.

Was the selection exercise process arbitrary and tainted by extraneous factors?

21. Having found that the hiring manager reasonably determined that the Applicant did not demonstrate that he met the two required fields of work experience,

the Tribunal will next address whether the selection exercise process was arbitrary or tainted by extraneous factors.

22. The Applicant states that the hiring manager manipulated the exercise in favor of the internal candidates serving at the United Nations Statistics Division by defining the work experience requirements for the position in an unduly restrictive manner, deciding not to administer a written assessment; and conducting an inconsistent assessment of the job candidates. The Tribunal will consider each of these claims in turn.

Was the minimum work experience requirement an unlawful deviation from the generic job profile or unduly restrictive?

23. The Applicant contends that the hiring manager applied excessively narrow description of required experience. First, he states that the criteria on the Job Opening unlawfully deviated from the generic job profile for a P-4 Statistician position. Second, he argues that the criteria used to determine eligibility for the position was not in fact necessary for the duties of a P-4 Statistician.

24. In respect of the first issue, the Tribunal notes the Manual for the Hiring Manager on the Staff Selection System (Inspira) dated 10 October 2012 states at page 220 that evaluation criteria must be objective and related to the functions of the position as reflected in the generic job profile and must include the key competencies that will be assessed.

25. The Tribunal further notes that the generic job profile for a P-4 Statistician position dated July 2007 requires “[a] minimum of seven years of progressively responsible experience in the collection, compilation, analysis and dissemination of statistical data or related area”. The Job Opening in the present case required “[1] A minimum of seven years of progressively responsible experience in the collection, compilation, analysis and dissemination of statistical data is required. [2] A progressively responsible experience in methodological work in the field of

population and housing censuses, civil registration and vital statistics at national or international level is required”.

26. The Tribunal finds that progressively responsible experience in the Job Opening in question reflects the relevant generic job profile. The Tribunal finds it is reasonable for the hiring manager to set additional work requirements which ensure that the selected candidate has the required skills and expertise for the position in question. The Appeals Tribunal has recognized the Secretary-General’s broad discretion to establish minimum work experience requirements, including in determining the pertinent job criteria for a given post (*Nikolarakis* 2016-UNAT-652).

27. In respect of the second issue, the Applicant states that some of the experience to which the Respondent refers to is not needed in order to successfully perform the duties of a P-4 Statistician in the United Nations Statistics Division and was not listed as one of the required criteria. The Applicant contends that the hiring manager erred in evaluating the first criterion with a focus on “experience in a statistical office, national or international”, which was not mentioned as a requirement in the vacancy announcement and that some of required work experience, such as collection of individual data in population censuses or sample surveys, is conducted by national statistical offices and not by United Nations Statistics Division.

28. In terms of the selection criteria, 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 position (*Charles* UNDT/2011/159). However, as noted in *Smith* 2017-UNAT-785, “[T]he discretion to introduce criteria in the interests of operational requirements or efficiency is not unfettered and must be exercised lawfully, reasonably and fairly. The choice of eligibility criteria and their application must be reasonable, or at least rationally based, in the sense, inter alia, of not being arbitrary, capricious, improperly motivated or based on irrelevant considerations”.

29. The Tribunal finds that the hiring manager did not introduce additional criteria to evaluate the job candidates. Contrary to the Applicant’s claim, the Tribunal

finds no indication that experience in the first mandatory field was required exclusively through working in a statistical office, but rather, the hiring manager, as the subject expert, reasonably referred to some assessment indicators. This is supported by the fact that the hiring manager continued to evaluate the Applicant's PHP for experience relevant for the first criterion (as set out in paragraph 16 above).

30. Based on the above, the Tribunal finds that the minimum work experience requirements for the position were not an unlawful deviation from the generic job profile for the position or unduly restrictive.

Was there a requirement to administer a written test?

31. The Applicant submits that the hiring manager's decision not to administer a written assessment for the Job Opening indicates that the recruitment exercise was not objective. The Respondent explains that the hiring manager decided to assess the shortlisted candidates through competency-based interviews as the number of shortlisted candidates (four) was manageable. The Respondent further submits that the hiring manager's decision did not affect the Applicant as he was not shortlisted. His right to full and fair consideration was therefore not affected by the decision not to administer a written assessment.

32. The Tribunal notes that the hiring manager has the discretion to choose the method of assessment and there is no mandatory requirement in section 7.5 of ST/AI/2010/3 for the hiring manager to administer a written assessment. Therefore, the hiring manager's decision to not administer a written test was within his reasonable discretion.

Was the hiring manager's assessment consistent for all candidates?

33. Finally, the Applicant claims that the hiring manager failed to apply a consistent assessment standard for all candidates when evaluating their work experience. In support of his claim, the Applicant points to a number of discrepancies within the comparative analysis table as prepared by the hiring manager, such as

another job candidate's interview performance being taken into consideration at the preliminary evaluation stage.

34. The Respondent maintains that the hiring manager evaluated the job applicants' work experience requirements in a thorough and consistent manner. The Respondent addresses the discrepancies within the comparative analysis table stating that the summary evaluation of a candidate who was shortlisted contains a transposition error and that the comments regarding the candidate's interview performance ought to have been recorded in another "window" in Inspira. The Respondent further states that the Applicant correctly points out two minor errors in the comparative analysis table. Two job applicants ought to have been evaluated as "Not Suitable" rather than "Long List". However, the Respondent submits that this minor error had no impact on the Applicant's chances of selection.

35. Having reviewed the numerous irregularities raised by the Applicant, the Tribunal finds that they are minor procedural flaws which did not impact the Applicant's right to be fully and fairly considered. It is the consistent 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 selection (*Bofill* 2011-UNAT-174; *Ross* 2019-UNAT-926). It follows that it is not sufficient for an applicant to point out irregularities in the selection procedure, but the applicant must be able to establish a link between the irregularities and the failure to recommend the Applicant. The Applicant has failed to do so in this case.

36. Based on the above, the Tribunal finds that the Applicant's 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 required for the post.

Conclusion

37. In light of the foregoing, the application is dismissed.

(Signed)

Judge Joelle Adda

Dated this 12th day of November 2019

Entered in the Register on this 12th day of November 2019

(Signed)

Nerea Suero Fontecha, Registrar, New York