



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/034

Judgment No.: UNDT/2020/086

Date: 11 June 2020

Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

COMPAORE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Elizabeth Gall, AAS/ALD/OHR

Introduction

1. The Applicant, an Air Operations Officer, P-3 level, at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), filed an application on 27 February 2018 contesting the decision to deny him roster clearance for the generic job opening (“GJO”) 42182 for the position of Chief of Unit, Air Operations Officer, at the P-4 level.
2. The Respondent filed a reply to the application on 9 April 2018.
3. The Tribunal heard the case from 11 - 12 May 2020 during which oral evidence was received from the Applicant and from the Respondent’s witness, Mr. Marcelo Quellet, Chief, Air Transport Service, Logistics Division, Department of Operations.
4. For the reasons set out further below, the application is rejected.

Facts

5. GJO 42182 was advertised in *Inspira* on 30 April 2015.¹ On 25 May 2015, the Applicant applied for GJO 42182. The Applicant was one of the 135 job applicants released to the Occupational Group Manager after the pre-screening process. The Occupational Group Manager determined that 50 job applicants, including the Applicant, met the education, work experience and language criteria set out in the GJO.²
6. On 20 January 2017, the Applicant underwent a knowledge-based assessment administered to the applicants who had been screened eligible. This written assessment comprised of essay questions. The candidates who passed the written assessment were invited for a competency-based interview. The Applicant passed the assessment.

¹ Reply, annex 1.

² Reply, annex 2.

7. An expert panel (“the Panel”) was convened in Brindisi to conduct the competency-based interviews (“CBI”) from 12 to 16 June 2017. The Panel had three members. On 12 June 2017, the Applicant underwent a competency-based interview. The Panel evaluated the shortlisted candidates’ answers against indicators for each of the five competencies required by the GJO.

8. The Panel prepared a Comparative Analysis Report which recorded their evaluation of each shortlisted candidate. In its Report dated 15 August 2017, the Panel did not recommend the Applicant. The candidates who successfully met the five required competencies and the other evaluation criteria were recommended for inclusion on the roster.

9. On 25 August 2017, the Occupational Group Manager submitted the proposal for placing qualified candidates on the roster to the Field Central Review Body (“FCRB”). The FCRB reviewed the proposal. The FCRB was satisfied that the job applicants were evaluated based on the evaluation criteria and that the applicable procedures were followed, and endorsed the proposal on 7 September 2017.³

10. On the same day, the Applicant was informed of his non-selection for the GJO.⁴

11. On 31 October 2017, he requested management evaluation of the decision not to be rostered.⁵

12. On 13 December 2017, the Management Evaluation Unit (“MEU”) recommended to the Secretary-General that the Applicant had received full and fair consideration for the GJO and that there were no procedural irregularities or bias in the selection exercise. The Secretary-General accepted the MEU’s recommendation and upheld the contested decision.⁶

³ Reply, annex 4.

⁴ Application, annex 2.

⁵ Application, annex 3.

⁶ Application, annex 4.

Considerations

13. It is an established principle of law that in reviewing administrative decisions regarding appointments and promotions, the Dispute Tribunal must examine:

- (i) Whether the procedure laid down in the staff regulations and rules was followed; and
- (ii) whether the staff member received full and fair consideration.⁷

The Tribunals' role is not to substitute their decision for that of the Administration.⁸

14. The Tribunal must therefore determine whether the procedures laid down in the Staff Regulations and Rules were followed during the selection process for GJO 42182 for the roster of Chief of Unit, Air Operations, P-4 level and whether the Applicant received full and fair consideration. The resolution of this issue will require the determination of the sub-issue of whether or not the assessment panel conducted the Applicant's interview in a fair and reasonable manner and evaluated his responses fairly and objectively.

15. The procedural aspects of the selection process during the CBI whose results the Applicant contests were testified about by Mr. Quellet who chaired the Panel.

16. Mr. Quellet testified that other than himself, the other Panel members were Mr. Juan Fajardo, a P-4 Aviation Specialist, Ms. Christina Human, a Human Resources Specialist and a Human Resources Assistant, an *ex officio* member from the Field Personnel Division ("FPD") whose role was to guide the Panel and ensure that the CBI was transparent and fair.

17. His evidence that the composition of the Panel was in line with the requirements

⁷ See for example in *Verma* 2018-UNAT-829, para. 13 citing to *Riecan* 2017-UNAT-802, para. 13; *Al-Mussader* 2017-UNAT-771, para. 15; *Kucherov* 2016-UNAT-669, para. 27, citing *Niedermayr* 2015-UNAT-603, para. 21 and citations therein; *Ljungdell* 2012-UNAT-265, para. 30 and citations therein.

⁸ *Rolland* 2011-UNAT-122, paras. 20-21 and 26; see also *Niedermayr* 2015-UNAT-603, para. 23, and *Staedtler* 2015-UNAT-547, para. 27.

of the Hiring Manual was not contested. This included evidence that the Panel members had all trained in CBI and are certified, a pre-requirement to attend one of these panels. The Panel members even shared with FPD their certificates beforehand and when they met in preparation for the interview, they held a refresher session with the *ex officio* member of the Panel who went through the process of the CBI and the most important aspects of the training. On the basis of this uncontested evidence the Tribunal finds that the interview panel was duly constituted.

18. Turning to the conduct of the interview, Mr. Quellet's evidence was that the purpose of the CBI was to determine if the candidate had the necessary skills and experience to be appointed to the new position or to be incorporated into the roster. Further, that the questions which were administered were given to them by FPD and are standard and generic questions which are asked for that type of interview. The questions were aimed at allowing the candidates to expound on their answers.

19. The results of the interview were that the Applicant;
- a. successfully met the academic, experience and language requirements;
 - b. partially met the Judgment/Decision-making requirement;
 - c. partially met the Managing Performance requirement;
 - d. partially met the Accountability requirement;
 - e. partially met the Planning and Organizing requirement; and
 - f. partially met the Professionalism requirement, and was therefore not recommended for inclusion on the roster.

20. The Applicant contests the results for all the competencies he was assessed as "partially met the requirement" and maintains that he responded to the questions correctly and answered in accordance with the core competency indicators but he was under evaluated. On the "Professionalism" competency, he disputes the Panel's

assessment that despite all the probing he could not give examples on Gender and maintains that he in fact gave an example on gender.

21. The Respondent maintains that the Applicant obviously had the same kind of interview form that they had and was answering questions before they were asked, following the order of questions on that form. He answered the question about professionalism with an example of lack of a radio in Bunia and, before the Panel acknowledged that he had finished, he abandoned the radio example and started to talk about meeting commitments, then gave the example of gender about which he had not been asked and proceeded to speak about managing stress. He gave four examples in about six minutes.

22. Since the Applicant answered the question on Gender before it was asked, the Panel decided that there was no need to put the question to him and did not ask any other follow up questions because they were satisfied (i.e., the Panel saw that all the key indicators were covered, either positively or negatively) with the answer the Applicant gave them. Follow-up questions were asked in the same manner to every interviewed candidate. If the Panel did not understand they asked clarifying questions and more probing questions.

23. The Respondent moreover asserts that the examples the Applicant gave on the professionalism competence, for example, that the Applicant made a request to the Information Technology department and the following day a radio was installed, was simplistic and superficial and not an example of the professionalism commensurate with a P-4 Chief of Aviation since there was no problem solved in that action. The example seemed to suggest that the Applicant had not been exposed to a higher level of responsibilities.

24. The Applicant's recruitment of female candidates at the lowest level possible was also a simplistic example of gender mainstreaming. A better example of gender mainstreaming could be areas of relationships with his supervisors if they are female. There was no in depth explanation of this incorporation of gender into the mainstream.

It was rather an example of an isolated act where women candidates were involved.

25. The Panel agreed that despite further probing, the candidate failed to meet the relevant indicators, accurately and correctly. The Panel needed to hear what the candidate did, but he spoke theoretically using the term “should”.

26. Information in the interview Comparative Analysis Report⁹ reveals that on Gender, the Applicant was also unable to provide a relevant example of when he incorporated gender mainstreaming in his work, a fact which is reiterated in paragraph 17 of the reply.

27. The Applicant’s assertion that the Panel said that he did not give an example on gender is not borne out on the record. There is a difference between not giving an example and giving a wrong example and/or giving an unsolicited example, which the Respondent asserts was the reason the Applicant was unsuccessful in meeting the gender mainstreaming requirement. Mr. Quellet’s evidence is that an example on gender was given, but it was unsolicited, it having come before a question on gender was put to the Applicant, and it was the wrong example as far as the Panel was concerned.

28. According to Mr. Quellet, the examples which the Applicant gave on the rest on the contested competences were simplistic and for the most part irrelevant in the Panel’s opinion. On the “Planning and Organizing” competency it was determined that the Refugees’ crisis example which the Applicant gave was not relevant for the competency, since he was “executing the RFS and not planning it”. And in the “Planning” questions, the Applicant spoke about “us” rather than his own personal experience and so it was a collective achievement.

29. On the “Accountability” competency, the Applicant used a very simplistic and low level and irrelevant example not commensurate with the responsibilities of a Chief

⁹ Reply, annex 3.

of Unit and he also used the terms “accountability” and “responsibility” alternatively.

30. On the “Judgment and Decision-making” competency, the example the Applicant gave of fire trucks which he did not allow to leave the airport was in accordance with a rule in the aviation industry that there had to be a commensurate level of fire trucks and aircraft and so there was no judgment or decision-making involved since he merely followed the written rule.

31. The Appeals Tribunal in *Verma* 2018-UNAT-829 clarified that in reviewing decisions such as the one in issue, the Tribunal’s role is to assess whether the applicable regulations and rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunal is not to substitute its decision for that of the Administration. The main issue in this case is one of fact and it arises out of a misunderstanding of the Panel’s findings. While the Panel found that the Applicant did not give a relevant example of gender mainstreaming, the Applicant took it that they said that he did not give an example of gender mainstreaming at all. The Tribunal has already made the clarification about what the Panel found and based on to assess the Applicant.

32. The other issue relates to how the Panel evaluated the answers which the Applicant gave. The Panel gave reasons for rejecting the answers or examples which the Applicant gave. The Tribunal has no basis for assailing their decision and cannot substitute its own decision for theirs. The Applicant contests the methodology of the interview and points out that no probing was done as required by the interview guidelines. He maintains that interviewers have to dig in if they feel the candidate has not given a good example and that the guidelines require that a candidate’s story be explored by asking good quality questions. If a candidate responds and the Panel needs elaboration it is up to the interviewer to ask follow up questions, otherwise it means that all is well.

33. The Respondent maintained that the requirement for probing is not that questions are repeatedly put to the candidate until he gets the right answer but rather,

until the Panel is satisfied that all the key indicators have been covered, either positively or negatively, and that in this case probing was done where necessary.

34. The Tribunal noted the uncontroverted evidence that the Applicant gave unsolicited responses in line with the Panel's questioning format which he seems to have been privy to. The Panel had no opportunity to ask him questions in areas such as gender since he gave successive examples in different aspects of the interview areas in a short time span. This evidence supports the view and finding that the Applicant's conduct did not facilitate his meaningful engagement with the Panel beyond what took place. He cannot be heard therefore to argue that he was not probed or that the Panel did not dig in to elicit more appropriate examples from him. Even then, the Tribunal fully agrees with the Respondent that the requirement for probing does not extend to continuously asking the candidate questions until he gets the answer right. Had it been so then no one would ever fail an interview. The argument that probing questions were not put to the Applicant fails for want of merit.

35. The Applicant argues that he did not see any interview report and that he was only shown draft notes indicating that he took part in the interview, yet it is in the report where he would have found what was written about him. On this, the Tribunal will only say that the report is available as annex R3 to the reply.

36. The Tribunal cannot legally delve into issues relating to the evaluation of the quality of responses or answers the Applicant gave. As the Respondent submitted, the conscientious opinion of the members of the Panel was an essential element of the selection process. The Tribunal's role is to determine if the Panel made factual errors or any manifest errors of judgment and there is no evidence that they did.

37. Conclusively, upon a thorough evaluation of the evidence and perusal of the documents which were adduced by both parties, the Tribunal finds that the proper procedures were followed and all relevant material was taken into consideration in the interview by the Panel. There is no evidence that the Applicant did not receive full and fair consideration or that he was discriminated against.

Conclusion

38. The application is dismissed.

(Signed)

Judge Margaret Tibulya

Dated this 11th day of June 2020

Entered in the Register 11th day of June 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi