

UNDT/2014/036, Zhao, Zhuang and

Xie

UNAT Held or UNDT Pronouncements

The Tribunal ruled that the selection procedure was flawed on grounds that: (a) first and foremost, the evaluations of the candidates as agreed to by the panel had been substantially modified prior to their transmission to the Director-General, UNOG, for the final decision, without the approval of the panel members; (b) the panel gave the Applicants misleading instructions during the interview that impacted negatively on their ratings; (c) the Director-General, UNOG, was not demonstrably provided with a documented record enabling him to make an informed selection decision; (d) no written analysis was attached to the final proposal for selection on the reasons why a male candidate was proposed rather than the female candidate, who had been found to be suitable. The Tribunal pointed out the failure to inform the Applicants upon invitation to the interview of the panel members' names and the rating system to be used in evaluating them; however, this breach had no concrete consequences. On the other hand, the Tribunal considered it proper for the hiring officer to advertise the post 11 months before it became effectively vacant, to restrictively define the experience to be taken into account as relevant for the post, and to propose a specific candidate among those endorsed by the CRB. Regarding gender equality measures, female candidates must be given priority consideration only if the female candidate demonstrated herself to be at least substantially equally qualified, in light of the entire evaluation. Allegations of bias and unbalanced composition of the panel were not proven. The irregularities were substantial and had an impact on the final selection decision. With this in mind, the selection decision was rescinded, with the award of alternative compensation (under art. 10.5 of the Statute) corresponding to material damages for two Applicants, who were deemed to have lost reasonable chances of promotion; all three Applicants were awarded compensation for moral damages.

Decision Contested or Judgment/Order Appealed

The three Applicants appealed the decision to select another candidate for the post of Senior Interpreter (Chinese) (P-5), UNOG.

Legal Principle(s)

Joining of a party: Since the Applicants requested the rescission to select the successful candidate, the latter had a legitimate interest in the outcome of the proceedings. It is therefore appropriate to join the selected candidate as a party to the proceedings under art. 11 of the Rules of Procedure.

Information upon invitation to interview: The Administration shall inform candidates of the names of the panel members upon invitation to a competency-based interview. The purpose of this rule is to allow them to raise potential conflicts of interest or other anomalies, hence giving the Administration the possibility to change one or more panel members. Candidates must also be informed of the rating system to be used in their interview evaluations. While the Administration is bound to follow its own rules, only a breach that has an impact on the outcome of the selection procedure for the Applicant may entail the rescission of the selection decision.

Qualifications assessment: Given that it is not for the Tribunal to substitute its own judgment of the candidates to that of the Administration, its control will be limited to factual errors and manifestly unreasonable conclusions.

Changes in evaluations: To be valid, any modification made to the candidates' ratings as agreed by the panel must be submitted to all panel members and approved by them.

Required qualifications: The Administration has a large discretionary power in defining the qualifications required for a specific post. However, he must apply the stipulated criteria consistently to all candidates. In determining the qualifications required for a given post, the vacancy announcement prevails over internal guidelines.

Proposal of one candidate amongst those endorsements by CRB: Para. 2.1.12 of the Manual for the Hiring Manager on the Staff Selection System (Inspira) provides that, after the CRB has fulfilled its task, the hiring manager recommends one of the CRB endorsed candidates for selection to the head of department or office, and supports such recommendation by a record. Although the Manual is not a legally binding set of rules, this paragraph is to be applied, inasmuch as it is not contradictory with ST/AI/2010/3.

Documented record to be transmitted to decision-maker for final selection: Sec. 9.3 of instruction administrative ST/AI/2010/3. In order to put the head of department or office in a position to make an informed decision under sec. 9.3 of ST/AI/2012/3, s/he must be provided with a record reflecting the qualifications of all candidates.

Gender Equality

Measures: Priority consideration of female candidates, as prescribed by sec. 1.8(a) of ST/AI/1999/9, should not be construed as a promise or guarantee of selection. It applies only to candidates having « substantially equal » or superior qualifications. In determining whether a candidate's qualifications are substantially equal the entire assessment should be taken into account, not only her global rating. Sec. 1.8(d) of ST/AI/1999/9 requires that a written analysis be submitted whenever a male candidate is recommended for selection when there is a female candidate who meets the qualifications required for the post. Within the staff selection system currently in place, this requirement makes sense only if such written analysis is submitted at the stage where the hiring officer recommends a particular candidate among those recommended to the head of department or office immediately before the final selection decision. Alternative compensation: The compensation to be paid as an alternative to effective rescission of a non-promotion decision corresponds to the salary difference since the date of implementation of the decision and the date at which the staff member could potentially be promoted, modulated according to the chances of selection he or she had in the challenged selection procedure. The period to be taken into account for this purpose, except in very compelling cases, should not exceed two years (Hastings 2011-UNAT-109).

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Both financial compensation and specific performance

Full judgment

[Full judgment](#)

Applicants/Appellants

Zhao, Zhuang and Xie

Entity

UNOG

Case Number(s)

UNDT/GVA/2013/70

UNDT/GVA/2013/71

UNDT/GVA/2013/73

Tribunal

UNDT

Registry

Geneva

Date of Judgement

28 Mar 2014

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Compensation

Loss of chance

Non-pecuniary (moral) damages

Pecuniary (material) damages

Staff selection (non-selection/non-promotion)

Central Review Body

Full and fair consideration

Interview
Selection decision

Applicable Law

Administrative Instructions

- ST/AI/1999/9
- ST/AI/2010/3

Secretary-General's bulletins

- ST/SGB/2011/7

UNDT RoP

- Article 11

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2010/113
UNDT/2012/168
UNDT/2012/178
UNDT/2013/144
2010-UNAT-088
2011-UNAT-109
2011-UNAT-110
2011-UNAT-172
2012-UNAT-259
2012-UNAT-220
2013-UNAT-347
2013-UNAT-309
2013-UNAT-346