



JUDGE DEBORAH THOMAS -FELIX , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/093, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 21 September 2018, in the case of ~~Krioutchkov~~ ~~Secretary-General of the United Nations~~ . The Secretary-General filed the appeal on 16 November 2018, and Mr. Vladislav Krioutchkov filed his answer on 15 January 2019.

Facts and Procedure

2. Mr. Krioutchkov is a Russian Translator holding a permanent appointment at the P-3 level with the Economic and Social Commission for Asia and the Pacific (ESCAP) in Bangkok, Thailand.

3. On 21 May 2015, Mr. Krioutchkov applied for Job Opening No. 15-LAN-UNON-39481-F-NAIROBI (L) (JO 39481) for the P-3 Russian Translator position with the United Nations Office at Nairobi (UNON). The JO required a candidate to i) have a first-level degree from a university or institution of equivalent status; ii) have passed the relevant United Nations Competitive Examination for Russian Translators; iii) have a minimum of two years of experience in translation; and iv) have a “perfect command of Spanish, which must be the candidate’s primary language, ... as well as an excellent knowledge of English and at least one other official language of the United Nations”.¹

4. Also on 21 May 2015, Mr. Krioutchkov received an e-mail from the Office of Human Resources Management (OHRM) acknowledging receipt of his application for JO 39481, in both English and French. The e-mail reads, in part:

Dear Mr. Krioutchkov,

We are pleased to confirm receipt of your application for the position of TRANSLATOR, RUSSIAN, P3 (Job Opening 39481).

Your application will be given due consideration along with all other applications. You will be kept informed of the status of your application throughout the process. You may follow the status of your application in your inspira account under “Careers Home”/ “My Applications”. Should you move forward in the process, you may be contacted for further assessment. You will also be notified once the recruitment process is completed.

¹ The Secretary-General clarifies in the appeal that the requirement of a “perfect command of Spanish” in the JO was a “typographical error”. It should read a “perfect command of Russian”.

5. Approximately a year later, on 6 May 2016, Mr. Krioutchkov wrote to the Acting Chief, Translation and Editorial Section, Division of Conference Services, UNON, inquiring about the status of his application for JO 39481. After several reminder e-mails, the Acting Chief forwarded Mr. Krioutchkov's request to the Human Resources Management Service (HRMS), UNON. On 1 July 2016, the HRMS informed Mr. Krioutchkov by e-mail that his candidature was unsuccessful. The e-mail message is reproduced, in part, below:

Dear Vladislav,

This is to acknowledge and respond to your inquiry regarding your application to the subject JO 394481 [sic] of Russian Translator.

Please note that the Job Opening was only open to candidates available for placement from the existing Russian Language Exam Roster. All RfR (Recruit from Roster) JOs, including the subject JO, are only available to roster applicants who are already placed on pre-approved rosters, in this particular case Russian Language exam roster.

It is [noteworthy] that even applicants that are not on such rosters can apply without hindrance. However, during the screening process, the Inspira system automatically screens out applicants who don't meet the latter requirement of being on the roster, which was the case with you.

I hope the foregoing explanation clarifies the matter.

6. Mr. Krioutchkov requested management evaluation on 5 August 2016 and then filed an application with the Dispute Tribunal on 13 December 2016. In the impugned Judgment, the Dispute Tribunal concluded that the decision to exclude Mr. Krioutchkov's candidature from consideration for JO 39481 was vitiated by i) the unpublished eligibility requirement of "recruitment from roster" (RfR) or "entry-level recruitment" that was not specified in the JO, and ii) the erroneous requirement in the JO that a candidate have a "perfect command of Spanish". The UNDT found that Mr. Krioutchkov's eligibility had not been assessed in a transparent manner as his candidacy had been excluded by the unpublished requirement unknown to him and other candidates. The UNDT dismissed the Secretary-General's submission that the requirement of a "perfect command of Spanish" in the JO was a mere typographic error. In the view of the Dispute Tribunal, this error changed the real requirements for the JO and went beyond it being a mistake to vitiate the entire recruitment process. The Administration's failure to apply the necessary care and attention in formulating the eligibility and language requirements for the JO resulted in Mr. Krioutchkov's exclusion from the recruitment process. The UNDT ordered rescission of the contested decision and in-lieu compensation in the amount

of two months' net base salary for the loss of opportunity to be selected for the position and its ensuing negative impact on his reaching the mobility requirement and his career development. However, the Dispute Tribunal refused to award

Competitive Examination for Russian Translators” , thereubt

Considerations

17. The Secretary-General argues, on appeal, that

ST/AI/2010/3 that a staff member in the Professional category have lateral moves prior to promotion to the P-5 level. Section 6.3(d) of ST/AI/2010/3, however, expressly waives the requirement for lateral moves for “staff serving against language positions that are subject to the provisions of the administrative instruction setting out special conditions for recruitment or placement of candidates successful in a competitive examination for positions requiring special language skills when applying for another such language position”. Thus, Mr. Krioutchkov being on a language post governed by ST/AI/2000/1 did not have a lateral move requirement. The Secretary-General is correct in his assertion. However, we note that this is true only in so far as he applies to other “such language position[s]”. It is unclear whether the Administration would require Mr. Krioutchkov (or any staff member in a similar position) to have lateral moves prior to applying to a non-language P-5 position.

28. The need for the factual determination of all of the evidence related to the roster, placement, and removal of candidates requires that the instant case be remanded to the UNDT for a rehearing pursuant to the provisions of Article 2(3) of the Statute of the Appeals Tribunal.

Judgment

29. Judgment No. UNDT/2018/093 is vacated and the case is remanded to the Dispute Tribunal for a full consideration of its merits by another Judge.

Original and Authoritative Version: English

Dated this 28th day of June 2019 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Raikos

(Signed)

Judge Lussick

Entered in the Register on this 19th day of August 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar