

12. By email dated 11 July 2007, the Secretary of the CRB informed the DH, that the case had been reviewed by the CRB on 11 July 2007 and that:

“Having examined the information available in the Galaxy system, the Board was not in a position to approve the list of recommended candidates for the following reasons: The Board found that, according to the PCO’s evaluation as it is recorded in the Galaxy system, [the applicant], recommended candidate, does not fully meet the communication and leadership competencies. In addition to that his awareness of the inter-linkages between the trading system and commodities needs to be strengthened. Therefore he does not fully meet the work experience requirement as it was defined under the evaluation criteria. On the basis of the above considerations the Board requested that either the name of [the applicant] be removed from the recommended list or the PCO provides the clarifications as to why he is considered as meeting all established evaluation criteria.”

13. The case was returned to the PCO, who, after verbal consultation with the two other interview panel members, opted for removing the name of the applicant from the list of recommended candidates. The new list, which thus only contained the name of the candidate who was finally selected, was resubmitted to the CRB.

14. The CRB reviewed the case on 13 July 2007 and concluded that the recommended candidate, i.e. the candidate who was finally selected, had been evaluated on the basis of the pre-approved evaluation criteria and that the applicable procedures had been followed. The DH selected the only recommended candidate on 19 July 2007.

15. The applicant was informed orally and by memorandum dated 30 July 2007 from the Director, DITC, that another candidate had been selected for the post. One day later, UNCTAD staff was informed through an all-staff email of the appointment of the new Head of the Commodities Branch, DITC, effective 1 August 2007.

16. By email dated 2 August 2007, the applicant asked the O-i-C, Human Resources Management Service (HRMS), UNCTAD, to confirm that he had been recommended hence rostered for the post, as per information received from the PCO.

17. The O-i-C, HRMS, UNCTAD, sent an email to the applicant, dated 15 August 2007, stressing that the applicant's name had been removed from the recommended list, because the CRB "felt that [he] did not meet the experience requirement as it was defined under the evaluation criteria".

18.

version on 20 May 2009. The respondent submitted his answer thereto on 4 December 2009. The application was transferred to the United Nations Dispute Tribunal (UNDT) on 1 January 2010 and the applicant submitted his observations on the respondent's answer on 25 March 2010.

23. A directions hearing on this and two other applications submitted by the applicant was held on 4 May 2010 and a full hearing on this and on one of the two other applications pending with the Tribunal was held on 23 June 2010.

Parties' contentions

24. The applicant's principal contentions are:

- a. The evaluation undertaken by the PCO in the framework of the selection process was factually incorrect: his experience was misrepresented and the record shows that he was "thoroughly familiar with the international trading system as it affects commodity trade";
- b. The interview panel's evaluation of his competencies, namely communication and leadership, is in direct contradiction with the rating "fully competent" he obtained for both these competencies in his last three performance evaluations. In addition, his performance evaluations were done since 2002 by the PCO for the post under review;
- c. In its evaluation of the applicant's leadership skills, the interview panel found, inter alia: "The means he uses to motivate his staff does not always reach the performance objectives sought. He can be impatient if staff performance is not up to his expectations." This evaluation is in direct contradiction with the ratings the applicant had received in his e-PAS, i.e. "outstanding" both for "Empowering others" and for "Management of Performance" in two of the last three e-PAS and "Fully competent" in the third; more specifically, in the 2004/2005 evaluation it was stated that "[the applicant] has been outstanding in managing a Section with

- f. The respondent's assertion that what is questioned is his "effective communication with staff" based on his performance as O-i-C, which also raises questions about his leadership skills" is not supported by any evidence and appears as "an attempt to come up with an explanation after the fact"; also, the argument that the evaluation was based on the applicant's Personal History Profile (PHP) and his interview is false, since he obviously did not provide such a negative evaluation of himself in his PHP and during the interview, these competencies were only touched upon once and the respondent did not provide any example of specific replies given by the applicant which would support such a negative evaluation, simply because there were none;
- g. The qualifications of the successful candidate were misrepresented by the PCO and the evaluation was based on mere assertions unsupported by any evidence; even more, the PCO had been cautious not to appoint the successful candidate as O-i-C of the Branch he had been

of the leadership qualities of the selected candidate “in direct contradiction with her own direct experience”;

- j. The difference between the available information and the actual evaluation communicated to the CRB proves that the evaluation constituted an abuse of discretion; he was not given the opportunity to rebut any of the negative comments made about him and notes that this is in contradiction with the jurisprudence of the former UNAT (judgement No. 1209, El-Ansary, (2005)).

25. The applicant requests the Tribunal to order:

- “a. That [he] be awarded compensation equivalent to the difference between [his] emoluments at the P-5 [step 13] and D-1 levels for the period between the appointment of the successful candidate and [his] scheduled retirement date, that is, two years and three months;
- b. That [he] be further awarded compensation for the loss of pension rights, resulting in lower future pension; and
- c. That, finally, [he] bívOrSíiYH--vOeSrciHvrkip-kíivOvOvOvOvOvOvOvOvOpdrízip-dT-k

- c. The sequence of events shows that all candidates were fully and thoroughly considered: the applicant was short-listed, interviewed

damages, nor the causal link between the alleged damages and any

29. In the case at hand, the record leaves no doubt that the applicant was suitable for the post of Head, Commodities Branch,

considered as meeting all established evaluation criteria”. On that basis, the PCO chose the first option and removed the applicant from the list of recommended candidates. This constitutes a clear breach of the applicable procedures, which had an immediate impact on and violated the applicant’s right to full and fair consideration.

33. The foregoing notwithstanding, the Tribunal finds the applicant’s argument that the selected candidate was not qualified for the post under review without any merit. As already stated above, in the absence of patent errors, it is not the role of the Tribunal to substitute its judgement to that of the Secretary-General in the assessment of a candidate’s suitability for a given post. In the present case, there is nothing on file which would allow concluding that the successful candidate was not suitable and that the applicant was the only qualified candidate and that, had the procedural flaw not occurred, he would have been selected.

34. The Tribunal already held that non-compliance with legal provisions, specified in article 2.1 of the UNDT statute, leads to the illegality of the contested decision, regardless of the seriousness of the non-compliance (UNDT/2010/009, Allen). It further stated that under article 10.5 (a) of the statute and as a general rule, it is necessary to rescind the contested decision once the Tribunal has established its illegality (cf. UNDT/2010/009, Allen; UNDT/2010/070, Farraj). There is no reason in the present case to make an exception to that rule. Since the present application concerns a promotion, the Tribunal is obliged, under article 10.5 (a) of its statute, to set an amount of compensation that the respondent may

Tribunal's request, the UNOG Payroll Unit provided the Tribunal with the relevant figure. Taking into account that the applicant was one out of two suitable candidates that difference in salary has to be divided by two, which amounts to approximately USD4,900.

36.

Conclusion

39.