



**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Hafida Lahiouel

ROIG

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON RECEIVABILITY**

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**Counsel for Applicant:**

Joseph Grinblat, OSLA

**Counsel for Respondent:**

Alan Gutman, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant contests the selection of a staff member other than her on the grounds that the successful candidate did not meet the post eligibility requirements in connection with the P-4 level vacancy announcement 09-421575-R-New York (“the Post”), Migration Section, Population Division, Department of Economic and Social Affairs (“DESA”).

## **Facts**

2. On 1 July 2009, the Applicant submitted an application for the Post. As part of the selection process, the Applicant was interviewed for the Post between 11 February 2010 and 10 March 2010.

3. On 29 October 2010, the Applicant received a letter from the Executive Officer of DESA informing her that the Under-Secretary-General of DESA had completed the selection for the Post and that she had not been selected. This letter also informed the Applicant that, as a result of the Central Review Board’s (“CRB”) endorsement of her application as a recommended candidate for this position and her ensuing non-selection, she was being placed on a roster of candidates that may be considered for future vacancies at the same level and with similar functions.

4. On 17 December 2010, the Applicant became aware of the identity of the candidate that had been selected for the Post.

5. On 11 February 2011, the Applicant requested management evaluation of the

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6. On 23 March 2011, the Under-Secretary-General for Management (“USG”)

to her non-selection as the violation of her due process rights were a direct result of the selection of an unqualified candidate.

12. On 27 July 2012 and 29 July 2012, the Applicant and the Respondent, in response to Order No. 145 (NY/2012) dated 19 July 2012, provided the Tribunal with separate submissions in which they stated that they did not object to the Tribunal disposing of this case on the papers.

### **Applicant's submissions**

13. The Applicant's principal contentions may be summarized as follows:

a. The decision being contested is the selection of a candidate other than her who did not meet the minimum qualifications required by the vacancy announcement. The non-selection of the Applicant is not being contested as it was originally assumed to have been the result of the legitimate selection of a more qualified candidate;

b. There was no public announcement of who the selected candidate was, resulting in the Applicant only becoming aware of the identity of the selected candidate on 17 December 2010. Prior to becoming aware of who the selected candidate was, there was no ground for the Applicant to contest the selection decision. The selection of a candidate who turned out to be unqualified resulted in a breach of her due process rights because, but for this selection, she would have probably been selected for the Post;

c. Most staff members in the Population Division were aware that the successful candidate did not have the required experience. Therefore, the selection decision was based on favoritism and constituted a clear violation of the United Nations staff rules as well as the Applicant's rights to due process in the consideration of her own application;

d. By stating that the selected candidate's "combined experience" in the applicable field was satisfactory, the MEU disregarded the terminology of the vacancy announcement which required the selected candidate to have experience that "focused on" the applicable subject matter;

e. The MEU accepted the Administration's arguments regarding the suitability of the successful candidate without providing the Applicant, or a neutral party, the opportunity to counter their line of reasoning. The Tribunal may therefore want to consult with a neutral specialist that will be able to establish that the selected candidate did not possess the required

have the authority to waive the applicable time limits to request management evaluation;

c. The application is not receivable under art. 2.1 of the Statute of the Dispute Tribunal and should also be dismissed pursuant to art 2.6 of the Statute of the Dispute Tribunal and arts. 19 and 36 of the Rules of Procedure of the Dispute Tribunal as the Applicant concedes in her filings that she is not contesting the decision not to select her but rather the selection of the successful candidate;

d. When reviewing a staff member's claim that his or her rights have been breached during a post selection exercise, the Tribunal limits its review to questions of whether the non-selected candidate was fairly and adequately considered (*Abbassi2011-UNAT-110*). The Applicant does not identify how the selection of a candidate other than her breached her terms of appointment which, under art 2.1 of the Statute of the Tribunal, results in the Applicant abandoning her only claim with regard to her candidacy and, more importantly, her application being not receivable;

e. The Tribunal in *Liarski UNDT/2010/134* held that it may review whether a post selection process was carried out in a proper manner and whether the selection decision was tainted by undue considerations or was manifestly unreasonable. However, the Tribunal limited its authority in *Krioutchkov UNDT/2010/065* by stating that the Secretary-General enjoys broad discretionary authority when it comes to making selection decisions and the Tribunal may not substitute its judgment for that of the Secretary-General or attempt to replicate the work conducted by the interview panel;

f. The Applicant was fully and fairly considered for the Post in accordance with *ST/AI/2006/3* (Staff selection system). All the rules and regulations of the Organization were respected and the Applicant was subsequently recommended for the Post with the selected candidate who met

all of the applicable requirements. A review of the successful candidate's qualifications shows that she had the required experience in the relevant fields and met the criteria from the vacancy announcement;

g. The Applicant fails to show how this selection process was tainted by any favoritism nor does she show through clear and convincing evidence that she was denied a fair chance of promotion. Consequently, considering that the decision under review enjoys the presumption of regularity (Rolland2011-UNAT-122), this application should be dismissed;

h. With regard to the specific allegations regarding the successful candidate's qualifications, they are illogical and have no basis in fact. The internet searches conducted by the Applicant, as well as her own personal knowledge, are not "an exhaustive or reliable source of information, particularly on matters of professional qualifications".

## **Consideration**

### Receivability as a preliminary issue

15. The first issue the Tribunal has to consider is the Respondent's argument that the Applicant's application is not receivable due to the fact that she did not submit her request for management evaluation within the statutory time limit.

### Applicable law

16. Staff rule 11.2(c) (Management Evaluation) states that:

A request for management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

17. ST/AI/2010/3 (Staff selection system) states, in relevant parts:

**Selection Decision**

9.4 Candidates for position-specific job openings ... other than the candidate selected for the specific position shall be placed on a roster of candidates pre-approved for similar functions at the level of the job opening, which shall be drawn from all duty stations for job openings in the Professional and above categories. ...

**Notification and implementation of the decision**

10.1 The executive office at Headquarters, the local human resources offices or the Division of Field Personnel of the Department of Field Support shall inform the selected candidate of the selection decision within 14 days after the decision is made. Candidates endorsed by the central review body and placed on a roster shall be informed of such placement within 14 days after the decision is made by the hiring manager or occupational group manager and be advised that they may be selected from the roster for similar positions that may become available within the stipulated time frame as described in sections 9.3 and 9.4. Other candidates convoked for assessments but not selected or placed on a roster shall be so informed by the hiring manager or the occupational group manager within 14 days after the selection decision is made in writing. Applicants eliminated prior to the assessment exercises shall be informed.

**Administrative decision**

18. The parties both contend that the Applicant was informed of her non-selection on 29 October 2010 upon receiving the letter from the Executive Officer, DESA, which advised her that the:

Under-Secretary-General for Economic and Social Affairs, made the selection decision for the above-mentioned vacancy, and placed you on a roster of candidates.

The roster includes candidates who have been endorsed by a central review body for a particular vacancy but not selected for it, and who have indicated an interest in being considered for a future vacancy with similar functions at the same level.

19. In her application, and in her subsequent submissions, the Applicant stated that she had no basis for contesting her non-selection prior to discovering the identity



of the selected candidate who “not only was clearly less qualified than she is, but did not even meet the minimum qualification required by the vacancy announcement” thereby resulting in a breach of her due process rights. Furthermore, the Applicant submits that had the successful candidate not been selected, “she would have been probably selected herself”.

20. When identifying the administrative decision that she is contesting, namely the selection of an unqualified candidate, the Applicant stated that she only became aware of the identity of the selected candidate on 17 December 2010. The Applicant submits that seeing that she “had no basis for disputing her non-selection until she knew who was selected”, the time limit identified in staff rule 11.2(c) had not yet started to run. Consequently, her request for management evaluation, which was filed on 11 February 2011, was filed with the MEU prior to the expiry of the 60-day time limit prescribed in the Staff Rules.

21. The question the Tribunal has to resolve for the purpose of determining the applicable time limits in this case is when was the contested administrative decision taken, namely on either 29 October 2010 or 17 December 2010.

### Non-selection

22. While the Applicant does not contest the date of her non-selection, it serves this Tribunal to identify when and how the Applicant was informed of this decision for the purpose of these considerations.

23. As previously stated, the 29 October 2010 letter from DESA informed the Applicant that (a) a selection had been made for the Post; (b) she had been placed on the roster; and (c) the roster included candidates that had been endorsed but not

24. In *Thiam* UNDT/2010/131 and in *Schook* 2010-UNAT-013, both the Dispute Tribunal and the Appeals Tribunal held that the time limit within which a management evaluation has to be requested starts to run upon receiving the written notification of the contested decision. In this matter, the Applicant was clearly informed that a selection decision had been made and she had not been selected on 29 October 2010 resulting in the 60-day time limit for submitting a request for management evaluation of that decision to expire on 28 December 2010.

25. However, in this case the Applicant contends that she is not contesting her

28. Phrased differently, sec. 10 of ST/AI/2010/3 states that the successful candidate needs to be informed in writing of the administrative decision to select him or her within 14 days of that decision being made and the non-successful candidate also needs to be informed within 14 days after the completion of the selection decision is made in writing.

29.

may have tolled the running of the time limits or that an additional and separate administrative decision regarding the Post was taken on 17 December 2010.

33. Seeing that the Applicant only has the right to be informed of her non-selection rather than any inherent right to be informed of the identity of the successful candidate, it cannot be said that her becoming aware on 17 December 2010 of the identity of the successful candidate could have potentially served as the notification of the administrative decision to select the successful candidate that was initially referred to in the 29 October 2010 letter from DESA.

34. Another way that this question can be analyzed is whether any administrative decision was taken regarding the Post after 29 October 2010. The facts of the case clearly show that the only event that occurred after that date was that of the Applicant learning of the identity of the selected candidate. The Applicant does not identify an actual administrative decision as having been taken on that day but rather states that she only became actively notified of who was selected for the Post on 17 December 2010.

35. The Appeals Tribunal clearly stated in *Schook*2010-UNAT-013 that, for the purpose of enabling the parties and the Tribunals to identify and correctly calculate from when the applicable time limits are to start to run, an administrative decision, in this case the Applicant's non-selection as well as the selection of another candidate, has to be in writing.

36. In addition to not identifying a right to be informed of the identity of the selected candidate, the Applicant does not identify a written decision, other than that of 29 October 2010, that the Tribunal could or should consider as a potential firm date from which time is to start to run.







- (b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;
- (c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and
- (d) The application is filed within the following deadlines:
  - (i) In cases where a management evaluation of the contested decision is required:
    - a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or
    - b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;
  - (ii) In cases where a management evaluation of the contested decision is not required, within 90 calendar days of the applicant's receipt of the administrative decision;
  - (iv) Where the parties have sought mediation of their dispute within the deadlines for the filing of an application under subparagraph (d) of the present paragraph, but did not reach an agreement, the application is filed within 90 calendar days after the mediation has broken down in accordance with the procedures laid down in the terms of reference of the Mediation Division.

Consequently, if one of the above conditions is not met, the application will not be receivable.

51. The Respondent stated in his 13 May 2011 submission that the Applicant's request for management evaluation was time-barred because the Applicant had not submitted her request within the statutory limit.

52. The MEU does not appear to have taken note of the issue of receivability. Instead, it appears that the MEU proceeded to review the case on the merits of the facts resulting in the contested decision being upheld. The MEU determined that



the selection process was conducted in accordance with the applicable rules and the selected candidate met the post-selection criteria.

53. It is a general principle of law that no one can be heard to invoke his own turpitude (*nemo auditur propriam turpitudinem*). However, as long as the Tribunal verifies whether the request is receivable, an error made by the MEU regarding a question of receivability cannot be interpreted in favor of the applicant.

54. An application before the Tribunal will only be receivable if an applicant has, where applicable, previously submitted a receivable request for management evaluation of the contested administrative decision, namely within 60 days from the date on which the administrative decision was notified to the staff member.

55. In this case, the Applicant is a permanent staff member who contested the selection decision of a candidate other than her, as well as her non-selection, for the Post. The application before the Tribunal was filed on 8 April 2012 which is within 90 days following her receipt of the MEU's 23 March 2012 decision. However, seeing that the initial request for management evaluation was time-barred it has no legal effect and the application before the Tribunal is therefore not receivable.

