



Case No.: UNDT/NY/2013/006

Judgment No.: UNDT/2013/041

Date: 28 February 2013

Introduction

1. The Applicant, a staff member in the Procurement Division, Office of Central Support Service, Department of Management of the United Nations in New York, contests the decision not to select him for the post of Procurement Officer (Operations) at the P-4 level (Job Opening No. 12-PRO-DMOCSS-24920-R-New York).

2. The key issue in this case is whether the Administration acted lawfully and in accordance with the principles and requirements of applicable issuances when they selected a roster candidate without considering the applications of non-roster candidates of whom the Applicant was one.

3. The Applicant submits that his candidature was not given proper consideration. He disputes the lawfulness of ST/AI/2010/3 (Staff selection system), as amended by ST/AI/2010/3/Amend.1. The Applicant also claims that the late response to his request for management evaluation caused him harm.

4. The Respondent denies the Applicant's claims. The Respondent submits that the application has no merit and that the decision to select a candidate for the job opening from the roster of pre-approved candidates was lawful and in accordance with ST/AI/2010/3, which allows the head of a department to select a roster candidate for a job opening without considering other applicants whose names are not on the roster.

Background

5. The contested job opening was advertised on 24 August 2012. In or about September 2012, OHRM released to the hiring manager in the Procurement Division a list of candidates for the job opening. The list contained 128 candidates, of which, it appears, three were on the roster of pre-approved candidates. The Director of the Procurement Division did not review any non-roster candidates and instead

recommended to the Assistant Secretary-General, Office of Central Support Services, by memorandum of 28 September 2012 the selection of one of the three candidates from the pre-approved roster. The recommended candidate was subsequently selected. The Office of Human Resources Management (“OHRM”) subsequently notified the Applicant of the decision to select a candidate from a roster of candidates pre-approved for similar functions at the level of the job opening.

6. By Order No. 51 (NY/2013), dated 22 February 2013, the Tribunal directed the Respondent to produce “[d]ocumentary evidence as to whether and how the non-rostered candidates who applied for the job opening were considered for it”. In response, the Respondent transmitted a confirmation from Mr. Philipp Mayrhofer-Grunbuhel, Team Leader, General Administration Team, Procurement Division, that the Procurement Division “did not review non-rostered candidates”.

Considerations

7. The parties’ submissions in this case in large part repeat their submissions in Case No. UNDT/NY/2013/005, which was disposed of by the Tribunal by Judgment No. UNDT/2013/040. The two cases are also similar with respect to the legal and factual issues.

8. As in *Charles* UNDT/2013/040, the Tribunal finds that the Respondent’s interpretation of ST/AI/2010/3 is mistaken for reasons stated in that Judgment. It is not necessary to repeat them.

9. The Tribunal finds that by not giving any consideration to the Applicant’s candidacy for the job opening as a result of consideration of roster candidates only, the Respondent breached the Applicant’s rights.

10. For reasons stated in *Charles* UNDT/2013/040, the Tribunal dismisses the Applicant’s claims with regard to the delayed response to his management evaluation request.

11. The Applicant was one of the 128 candidates whose names were released to the hiring manager. In the circumstances, it would be highly speculative for the Tribunal to even attempt to estimate the Applicant's chances of success. It is clear that he was deprived of his right to full and fair consideration, and suffered some harm as a result. The Tribunal finds that, in the circumstances, the sum of USD1,000 is sufficient to compensate him for loss of chance and consequential harm suffered.

Conclusion

12. The Tribunal awards the Applicant USD1,000 as compensation for the breach of his rights and resultant harm.

13. This amount is to be paid within 60 days from the date the Judgment becomes executable, during which period interest at the US Prime Rate applicable as at that date shall apply. If the sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

(Signed)

Judge Goolam Meeran

Dated this 28th day of February 2013

Entered in the Register on this 28th day of February 2013

(Signed)

Hafida Lahiouel, Registrar, New York