



## **Introduction**

1. By application filed on 12 April 2016, the Applicant, a staff member of the Office of the High Commissioner for Human Rights (“OHCHR”), contests her non-selection for the position of Programme Management Officer (P-4), OHCHR, advertised under job opening 14-PGM-OHCHR-37020-R-Geneva (X) (“Job opening”).

2. The application was served on the Respondent, who filed his reply on 17 May 2016.

## **Procedural background**

3. By Order No.

## **Facts**

6. The Job opening for the position of Programme Officer, OHCHR, was advertised from 21 October to 20 December 2014. The Applicant applied for the position, and on 30 January 2015, she was invited to take a competency-based interview scheduled for 4 February 2015.

7. The assessment panel comprised three members, namely the Director, Human Rights Treaties Division (“HRTD”) (“the hiring manager”), the Special Assistant to the Director, Human Rights Council and Special Procedures Division, and the Chief, Civil, Political, Economic, Social and Cultural Rights Section (“CPESCR”), HRTD. The panel interviewed six out of the nine shortlisted candidates.

8. Due to the unavailability of the Chief, CPESCR, HRTD, another staff member, namely the Chief, Groups in Focus Section, HRTD, was taken as a replacement and sat in the remaining three interviews by a *second* assessment panel.

9. By “Final Transmittal Memo to the Central Review Body” dated 23 March 2015, the hiring manager transmitted to the Central Review Committee (“CRC”), among other documents, a report of the interview panel and recommended four candidates. In that memorandum, the hiring manager *inter alia* indicated that “the panel assessed the competency of professionalism through a review of the [Personal History Profile] PHP as well as those aspects of answers to other competencies that related to professionalism”.

10. It transpired that when the final assessment report was completed and a list of recommended candidates created, one of the panel members had neither seen the final panel report, nor had she been consulted as to the list of recommended candidates. Consequently, on 30 March 2015, ~~the~~ namely

11. At its meeting on 16 April 2015, the CRC issued comments to the panel assessment report, which it sent to the hiring manager. The CRC considered that it was not in a position to endorse the list of recommended candidates because of the way the assessment of the candidates on the competency of professionalism had been done.

12. The hiring manager responded to the CRC's comments about how the professionalism competency had been assessed and reissued his memorandum on 22 April 2015, which was considered by the CRC at its 7 May 2015 meeting. However, the CRC was not satisfied with the explanations and its position remained the same, i.e. that it could not endorse the process. The CRC noted that each competency needed to be assessed independently through explicit questions based on the evaluation criteria, and also recommended to the hiring manager to consider assessing the competency of professionalism in a follow-up interview.

13. Therefore, the candidates, including the Applicant, were called to take a written test on 19 May 2015.

14. On 22 May 2015, the hiring manager submitted a

17. On 18On

- d. *The Manual for the Hiring Manager on Staff Selection System (Inspira),*

f. Not every violation leads to an award of compensation, such award should be granted only if the staff member actually suffered damages; the Organization should only be ordered to pay compensation to a staff member if he or she has suffered direct and certain injury; the Applicant is not entitled to moral damages since she did not present any specific evidence.

### **Issues**

22. Considering that the Respondent concedes that there was an irregularity

25. Section 2.6 of ST/AI/2010/3 (Staff selection system), which was applicable at the time of the recruitment for the job opening, provided that:

This instruction sets out the procedures applicable from the





appropriate corrective measures, the hiring manager merely replaced the panel member in question, thus establishing a third panel.

31. The Respondent submitted that though it is ideal to have all the candidates assessed by the same panel, this is not a mandatory requirement and that regard should be given to whether there is an objective and reasonable justification for the change of the panel composition (*Diatta* UNDT/20155/054). The justification provided for the replacements of panel members in the case at hand is that one of the panel members was busy and could not attend the interviews, and that another panel member recused herself.

32. Additionally, the Respondent argued that the change in the composition of the panel, which was constituted solely to conduct the assessment of the professionalism competency, did not impact the Applicant, since she had already been unsuccessful in two other competencies in the previous interview.

33. The Tribunal does not agree with the base assertion of the Respondent in this regard as it is unable to find any justification or authorisation for the replacement of panel members of the first panel. Further, the reference to the case of *Diatta* (supra) is misleading. That case does not provide the justification for the reconstitution of an assessment panel considering, rather, that para. 84 of that Judgment noted the following:

Further, the Tribunal considers that all member(s) of an assessment panel have a legal obligation and the correlative right to withdraw, on their own initiative, from an assessment panel if they made a prior assessment regarding one or more candidates and/or if the panel member's impartiality could be open to question on reasonable grounds.

34. The case of *Diatta* (supra) actually involved the establishment of a number of assessment panels for different job openings, although they were for the same post, in circumstances where there appeared to be constructive cancellations of the job openings. It did not involve the reconstitution of a panel during the process of assessing candidates in respect of one job opening, as appears to be asserted by the Respondent.

35. The definition of an “assessment panel” was set out in sec. 1 of ST/AI/2010/3 as follows:

(c) *Assessment panel*: a panel normally comprised of at least three members,



each candidate meets the competencies required for a job opening. To some extent, such assessments are also subjectively comparative between the candidates, as the panel seeks to identify the best candidate. Thus, the



candidates were missing from the

candidates in the PHP should have been corroborated in the interview and/or written assessment, by relevant questions related to the competency Professionalism. The CRC also noted that no written assessment was used to evaluate the substantive knowledge/abilities of the candidates, although the CRC understands that the written assessment is optional.

In addition, the write—up for the competency Professionalism is not convincing as the examples provided by the candidates for the other competencies are not elaborated to show what aspects of the candidates' responses were taken into account for the competency Professionalism.

Therefore, the CRC is not in a position to endorse the recommendation at this stage and would like to recommend to the HM to consider assessing the competency Professionalism by asking explicit questions to the candidates in a follow up interview.

52. Consequently, the hiring manager called all the candidates to undertake a written test and a competency based interview on the professionalism competency only. By memorandum dated 22 May 2015, the hiring manager wrote to the CRC, including the report of the analysis of the written assessment of the competency of professionalism that took place on 19 May 2015. That memorandum shows that one of the candidates who was on the recommended list in the 23 March and 22 April 2015 memoranda, was found unsuccessful after the 19 May 2015 written assessment. The hiring manager concluded by stating, “[t]hose candidates who were found to meet



53. In an email of 5 June 2015, a Human Resources Officer, UNOG, informed the hiring manager, through a Human Resources Assistant at OHCHR, that the CRC was not in a position to endorse the recruitment process because:

[T]hey believe that the process was not properly followed and their request to re-interview the candidates regarding the competency

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Those ultimately overseeing this recruitment exercise should have stopped it at this point, as the irregularities were too great for it to be continued.

56. On 11 June 2015, all the

Lack of hiring manager's training

58. According to sec. 9.3.3.d. of the Manual, before serving on an interview panel, staff members should undergo a training on competency-based selection and interviewing skills.

59. The Respondent admits that the hiring manger had not received the required training before conducting the recruitment exercise in this matter. However, he argues that the lack of training is not enough to vitiate the selection exercise. The Respondent relies on *Charles* UNDT/2012/024 where the Tribunal found that there was no requirement to have expert panel members undergo training in competency based interviewing.

60. The credibility of the entire recruitment process falls at the feet of the hiring manager, who ought to have known the processes expected of him and professionally

63. It seems clear that had the hiring manager received the required training and had appraised himself of the recruitment processes, the credibility and conduct of the selection exercise for the job opening would have been according to the required process. It is unfortunate that the hiring manager, in his senior capacity as a Director did not have the appreciation of the Organization's proper recruitment processes. The handling of the recruitment process was fundamentally unprofessional.

64. The Tribunal notes that the Manual, though an inferior norm in the hierarchy of United Nations norms, serves a purpose, which is to provide guidance in executing some of the responsibilities set out in Secretary-General Bulletins and Administrative Instructions. This is because without the manuals, guidelines and information circulars, managers will not be in a position to

67. The Respondent's reliance on the case of *Charles* UNDT/2012/024 where one of the expert panel member had not received training before conducting the interview is inapt. The case of *Charles* concerned recruitment in a peacekeeping mission, the lack of training was not attributed to the hiring manager and furthermore the then Standard Operating Procedures of the United Nations Peacekeeping operations provided *inter alia* that it was preferable that at least one panel member had received interview training. Finally, the selection process in *Charles* was not tainted by any irregularity unlike the case at hand.

68. The Tribunal finds for the reasons expressed above that the flaws in the recruitment process were so fundamental as to render it illegal. Consequently, the selection decision must be rescinded.

*Bias and discrimination*

69. The Tribunal will

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, hoPb92 0 T53

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staff member in the position he or she would have been in had the breach not occurred (see *Mmata* 2010-UNAT-092).

80. It is established



- d. That parts of the file referring to mediation of settlement between the parties in this matter shall be expunged from the case file before the Tribunal; and
- e. That all other claims are rejected.

*(Signed)*

Judge Rowan Downing

Dated this 25<sup>th</sup> day of May 2018

Entered in the Register on this 25<sup>th</sup> day of May 2018

*(Signed)*

René M. Vargas M., Registrar, Geneva