

UNITED NATIONS DISPUTE TRIBUNAL

order: the Applicant (26 November 2019), the Respondent (3 December 2019) and the Applicant (10 December 2019). The Tribunal also noted that the closing statements were solely to be based on previously filed pleadings and evidence, and that no new pleadings or evidence were allowed at this stage. The parties filed their closing statement in compliance

Applicant for the position, but that his candidature was eventually rejected, particularly with reference to his performance at the interview, at which the panel considered that he did not demonstrate the required team work and emotional intelligence skills:

[The Applicant] was one of 4 candidates selected for interview and testing. He has experience of work with UNHCR at Headquarters and in Africa and has experience of work in Europe prior to joining UNHCR. His work experience with UNHCR has included the provision of legal advice demonstrating transferrable skills. The interview conducted focused on the relevance of professional experience and academic background for the post, knowledge, and skills (legal analysis, networking and team-working skills). At interview, he responded to the questions put to him in a broadly satisfactory manner, showing an overall understanding of the challenges and issues facing UNHCR in Europe. For some questions though, he often required more prompting. In terms of the required skills, in relation to team-working, his answers were very []self-focused[] and he didn[] demonstrate the emotional intelligence or experience required for the post. A written test was conducted. The text of two short EU laws was provided two days in advance in order to test legal analysis skills rather than knowledge. On the day of the test, the candidate had one hour to read a short scenario and respond to a question by applying the laws shared earlier. [The Applicant] was able to identify the key legal issues in a very brief way, however, he did not provide any legal analysis reasoning for his conclusions. His written test was the weakest of the 4 candidates tested. In light of the above, the interview panel decided that [the Applicant] should not be recommended for the post.

10. The Department of Human Resources Management (DHRM) in its Final Recommendation Meeting Minutes endorsed the panel s findings:

[The Applicant], P4, holds a Master of International Law. He has been serving as Senior Protection Officer in Morocco since July 2015. Prior to this he served as Legal Officer in Nairobi, Kenya from 2013-2015; Senior Protection Officer in Sudan from 2010-2012; and joined UNHCR as Legal Officer (Human Resources) with LAS [unknown abbreviation] in Geneva where he served from 2008-2010. He was promoted to the P4 level in 2015. It was noted that he is an ex-staff member and is eligible to apply to internally advertised positions. Following review of his factsheet and motivation letter, the manager

invited him to sit the written test on which he scored 17/30, and was invited for an interview. In light of the test and interview results, the panel did not find him suitable for this position.

11. From the Final Recommendation Meeting Minutes , it further follows that among the two job candidates who were ultimately recommended for the Post, one candidate, although not the successful one, was already serving at the P-4 level.

12. The Joint Review Board (JRB) subsequently endorsed DHRM s final recommendation regarding the selected candidate as per its final minutes of 19 to 30 June 2016.

Consideration

Issues of the present case

13. The Appeals Tribunal has held that the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review . When defining the issues of a case, the Appeals Tribunal has further held that the Dispute Tribunal may consider the application as a whole (see *Fasanella* 2017-UNAT-765, para. 20, as affirmed in *Cardwell* 2018-UNAT-876, para. 23).

14. Based on the parties submissions and the evidence on record, the substantive issues of the present case are defined as follows:

a. To assess the job candidates suitability for the position, was UNHCR s administration of the interviews and a written test proper?

b. With reference to the assessment matrix as quoted above and the judgment of the Appeals Tribunal in para. 48 of *Ross* 2019-UNAT-926, were any of the alleged irregularities in the assessment process of such a nature that, had [they] not occurred, [the Applicant] would have had a foreseeable and significant chance for [selection] , including with regard to alleged procedural flaws and extraneous motives?

counterparts. Two different supervisors, respectively, stated in their performance appraisals on Values, Core Competencies, and Managerial Competencies , *inter alia*, that the Applicant built excellent relationships with counterparts in the government despite the complex political environment in Eastern Sudan and demonstrated high professionalism in his work and integrity during interactions with supervisees, colleagues, government, operational and implementing partners . The Applicant has also been promoted to the P-4 level only one year before as one of the few candidates with only the minimum amount of seniority at the P-3 level. This could not have occurred had the Respondent had any doubts with regard to the optional intelligence, which the Applicant possesses without doubt.

23. The Applicant submits that should the Tribunal find that the written test was lawful, then it was not conducted fairly. English native speakers had a significant advantage due to the complexity and length of the written test and, along with job applicants working in the Brussels office with experience in the subject matter, they were easily identifiable the written test was therefore not appropriately blind-marked.

24. The Applicant contends that the panel failed to mention that French was to be tested and that it was a desirable qualification. During the interview, one question was asked in French, as the Applicant also confirmed under oath during his testimony at the hearing. As the successful candidate probably only possesses limited French skills, which could have showed during the interview, the manager and the panel omitted to mention that one question was asked in French in their report to DHRM. This should have been reflected therein and indicates that the hiring manager and the panel were biased in favor of the successful candidate from the outset. The successful candidate also did not possess the required working knowledge of another United Nations language and has not passed the United Nations proficiency test in other languages than English. If he had passed the proficiency test in a second United Nations language, he would have been entitled to a language increment and his grade would have been listed as P3A in U

25. The Respondent, in essence, submits that whereas the Respondent has minimally showed that the decision to reject the Applicant's candidature was correct, the Applicant has failed to show by clear and convincing evidence that he was not given full and fair consideration.

26. The Tribunal notes that under art. 101.3 of the United Nations Charter, the paramount consideration in the employment of the staff shall be the necessity of securing the highest standards of efficiency, competence, and integrity (see similarly staff regulation 4.3). In line herewith, in order to assess a job candidate's suitability for a position, the Appeals Tribunal has held that the Administration has a certain degree of latitude in

stipulations about whether skills, competencies and qualifications of job candidates can be tested through interviews and written tests does not mean that such methods cannot be used to assess their suitability for a specific post. This is the only logical conclusion with reference to art. 101.3 of the United Nations Charter and staff regulation 4.3 and the requirement that the highest standards of efficiency, competence, and integrity should be secured indeed it would appear very difficult, if not impossible to assess skills such as teamwork and emotional intelligence only on the basis of a job application. Or, as stated in the Policy, sec. 79A, The operational context related to the particular position should be taken into account. The managers specific position profile requirements shall be given due consideration .

30. In this regard, the Tribunal notes that as the Applicant submits, under the sec. 79 A of the Policy, which outlines the Matching Criteria and Annotation of Assignments , candidates at the same level as the position are indeed to receive preference compared to those at a level below as, Preference w

From the Shortlisting Matrix and the JRB s final minutes , however, follows, as submitted by the Respondent, that, The manager was not the decision maker. She made her recommendation, which was reviewed and endorsed by DHRM and the JRB . The Tribunal adds that it follows from the comments of the manager and DHRM in the Shortlisting Matrix that a panel, and not just the manager, found that he was not suitable for the Post. The Tribunal therefore finds that the Respondent has minimally showed that the decision-mak

- b. the information regarding the Applicant included in the Shortlisting Matrix and the fact sheet;
- c. the Applicant's competencies, skills and qualifications and job experience; and
- d. applied the Policy to the Applicant's job application for the Post.

33. Under the principle of regularity, it is therefore for the Applicant to demonstrate with clear and convincing evidence that he was denied a fair chance of being selected for the Post. In this regard, the Tribunal observes that according to *Ibrahim* 2017-UNAT-776, [c]lear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt it means that the truth of the facts asserted is highly probable (para. 44).

34. In the present case, as follows from the above, the Tribunal finds that the evidence on record does not demonstrate that it is highly probable that he was improperly denied a fair chance for selection; rather, it shows that his candidature was fully and fairly considered. The Tribunal further finds that in accordance with the Policy and the jurisprudence of the Appeals Tribunal (for instance, *Nikolarakis*, *Kucherov* and *Riecan*), none of the other circumstances, which the Applicant otherwise submits would render the selection process unlawful, changes this finding. This includes: the simultaneous testing of candidates at the P-3 and P-4 levels, how the interviews were conducted, the testing and records of the job candidates language skills, and the content and difficulty of the written test.

35. Accordingly, the Tribunal finds that the Applicant's candidature for the Post was properly given a full and fair consideration.

Did the Applicant have a foresee

Remedies

41. In light of the above, no remedies would be available to him.

Conclusion

42. In light of the above, the application is rejected on the merits.

(Signed)

Judge Francis Belle

Dated this 18th day of December 2019

Entered in the Register on this 18th day of December 2019

(Signed)

For Nerea Suero