



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/006

Judgment No.: UNDT/2020/075

Date: 28 May 2020

Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

RUSSO-GOT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Jameel Baasit, UNOPS

Introduction

1. On 5 February 2019, the Applicant, a former Project Manager at the United Nations Office of Project Services, filed this application in which he challenges the decisions not to select him for the positions of Business Development Specialist at the P-3 level and Process Design Advisor at the P-4 level.
2. On 7 March 2019, the Respondent duly filed his reply in which he claims that the application is without merit.
3. On 1 April 2020, the case was assigned to the undersigned Judge.
4. By Order No. 61 (NY/2020) dated 3 April 2020, the Tribunal ordered:
 - a. The Respondent to file, by 27 April 2020, the UNOPS rules according to which the relevant selection exercises were conducted, and all relevant documentation as to how the respective written tests were conducted and graded in reference to the Applicant;
 - b. The parties to file, by 27 April 2020, a jointly-signed statement providing consolidated lists of the agreed and disputed facts; and
 - c. The parties to file their closing statements in the following sequence: the Applicant (11 May 2020), the Respondent (18 May 2020), and the Applicant (25 May 2020).
5. The Tribunal further instructed the parties that, unless otherwise ordered, on receipt

case, it is not renewed. In line herewith, the Tribunal refers to the Appeals Tribunal in *Nouinou* 2019-UNAT-902, paras. 31 and 32.

12. In line with Order No. 61 (NY/2020), the issues in the present case may therefore be defined as:

15. In line herewith, the Appeals Tribunal stated in *Verma* 2018-UNAT-829 (affirmed in *Kinyanjui* 2019-UNAT-932) that, In terms of the discretion vested in the Administration, under Article 101(1) of the United Nations Charter and Staff Regulations 1.2(c) and 4.1, the Secretary-General has broad discretion in matters of staff selection. The jurisprudence of the Appeals Tribunal has clarified that, in reviewing such decisions, it is the role of the Tribunals to assess whether the applicable regulations and rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. (dis)7(c)4(r)-6(e)4(ti)-3(on)20()-109(in)18()-109(m

System dated 13 April 2020. UNOPS failed to assign the Applicant to a suitable position similar to other UNOPS colleagues [names redacted] (double standard, s) ;

b. The Applicant had filed a case with

f. For both positions, it is a very reasonable supposition that only the Applicant [held] all mandatory requested education and certifications/diplomas as per the Vacancy Announcement requirements

21. The Tribunal notes that the Applicant has not challenged that the test scores on which the graders' comments were noted were indeed his scores. While the Respondent has provided no documentation that the Applicant was, in fact, Candidate A, the negative narrative comments made by the graders on this test response convinces the Tribunal that the Respondent has credibly established that Candidate A did correspond to the Applicant because the grades given to him appropriately reflect these comments.

22. Albeit the evidence is sparse, the Tribunal therefore finds that the Respondent has produced adequate contemporaneous written documentation to minimally show that the Applicant received a full and fair consideration pursuant to *Lemonnier* and *Verma*.

23. Under *Lemonnier*, the onus is therefore on the Applicant to rebut this finding with clear and convincing evidence. Considering that the written test was properly conducted and had no appearance of being manifestly unreasonable, the Tribunal finds that Applicant has failed to do so, also noting that the contested non-selection decision was solely based on him failing this written test and that no evidence on record points to any ulterior motives. Furthermore, the Tribunal notes that unlike what the Applicant submits, sec. 7.3.14 of the Process & Quality Management System, which he does not challenge as the applicable legal framework, does not confer him any right to be recruited to the post even if he is a rostered candidate.

The Process Design Advisor post

24. The Respondent has submitted the following documents in evidence to minimally show that the Applicant received a full and fair consideration for the post:

- a. The Applicant's test response;
- b. An email of 20 November 2018 from the UNOPS Human Resources Officer to the two graders in which is indicated that the passing threshold is 65 out of 100 points;

