
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/034

Judgment No.: UNDT/2020/086

Date: 11 June 2020

Original: English

Before:

Introduction

1. The Applicant, an Air Operations Officer, P-3 level, at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), filed an application on 27 February 2018 contesting the decision to deny him roster clearance for the generic job opening (“GJO”) 42182 for the position of Chief of Unit, Air Operations Officer, at the P-4 level.
2. The Respondent filed a reply to the application on 9 April 2018.
3. The Tribunal heard the case from 11 - 12 May 2020 during which oral evidence was received from the Applicant and from the Respondent’s witness, Mr. Marcelo Quellet, Chief, Air Transport Service, Logistics Division, Department of Operations.
4. For the reasons set out further below, the application is rejected.

Facts

5. GJO 42182 was advertised in *Inspira* on 30 April 2015.¹ On 25 May 2015, the Applicant applied for GJO 42182. The Applicant was one of the 135 job applicants

Considerations

13. It is an established principle of law that in reviewing administrative decisions regarding appointments and promotions, the Dispute Tribunal must examine:

- (i) Whether the procedure laid down in the staff regulations and rules was followed; and
- (ii) whether the staff member received full and fair consideration.⁷

The Tribunals' role is not to substitute their decision for that of the Administration.⁸

14. The Tribunal must therefore determine whether the procedures laid down in the Staff Regulations and Rules were followed during the selection process for GJO 42182 for the roster of Chief of Unit, Air Operations, P-4 level and whether the Applicant received full and fair consideration. The resolution of this issue will require the determination of the sub-issue of whether or not the assessment panel conducted the Applicant's interview in a fair and reasonable manner and evaluated his responses fairly and objectively.

15. The procedural aspects of the selection process during the CBI whose results the Applicant contests were testified about by *bydloe TETQq0.00000912 0 612 792 reW*nBT/F1 12 Tf1 0 0 1*

assessment that despite all the probing he could not give examples on Gender and maintains that he in fact gave an example on gender.

21. The Respondent maintains that the Applicant obviously had the same kind of interview form that they had and was answering questions before they were asked, following the order of questions on that form. He answered the question about professionalism with an example of lack of a radio in Bunia and, before the Panel acknowledged that he had finished, he abandoned the radio example and started to talk about meeting commitments, then gave the example of gender about which he had not been asked and proceeded to speak about managing stress. He gave four examples in about six minutes.

22. Since the Applicant answered the question on Gender before it was asked, the Panel decided that there was no need to put the question to him and did not ask any other follow up questions because they were satisfied (i.e., the Panel saw that all the key indicators were covered, either positively or negatively) with the answer the Applicant gave them. Follow-up questions were asked in the same manner to every interviewed candidate. If the Panel did not understand they asked clarifying questions and more probing questions.

23. The Respondent moreover asserts that the examples the Applicant gave on the professionalism competence, for example, that the Applicant made a request to the Information Technology department and the following day a radio was installed, was simplistic and superficial and not an example of the professionalism commensurate with a P-4 Chief of Aviation since there was no problem solved in that action. The example seemed to suggest that the Applicant had not been exposed to a higher level of responsibilities.

24. The Applicant's recruitment of female candidates at the lowest level possible was also a simplistic example of gender mainstreaming. A better example of gender mainstreaming could be areas of relationships with his supervisors if they are female. There was no in depth explanation of this incorporation of gender into the mainstream.

of Unit and he also used the terms “accountability” and “responsibility” alternatively.

30. On the “Judgment and Decision-making” competency, the example the Applicant gave of fire trucks which he did not allow to leave the airport was in accordance with a rule in the aviation industry that there had to be a commensurate level of fire trucks and aircraft and so there was no judgment or decision-making was no

