
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/003/R1

Judgment No.: UNDT/2020/110

Date: 3 July 2020

Original: English

Before: Judge Eleanor Donaldson-Honeywell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

AMINEDDINE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nusrat Chagtai, AAS/ALD/OHR, UN Secretariat

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Introduction and Procedural History

1. At the time of filing the application, the Applicant served as a Field Language Assistant with the United Nations Truce Supervision Organization (“UNTSO”). He holds a fixed-term appointment at the G-4 level. He challenges certain decisions made in the selection exercise for United Interim Force in Lebanon (UNIFIL) Job Opening (“JO”) 87864 (Information Technology Assistant – G5) and the fact that he was not selected.

2. Initially, the Applicant had applied for UNIFIL (JO) 2016/38 and 2016/026. In October 2017, the Applicant applied for the aforementioned JO 87684 which remains the sole subject matter currently before the Tribunal. His applications for all three job openings were unsuccessful. The non-

application is not receivable in respect of the 2016 JOs because the Applicant did not request management evaluation in good time. He was late.

7. In respect of JO 87684, the Appeals Tribunal found that the Applicant's request for management evaluation was timely. The Dispute Tribunal should have

the interview panel prior to his interview. The Applicant instead focused on issues of discrimination that were not germane to the initial concerns raised in the application.

10. The issues to be determined were therefore identified by the Tribunal in accordance with the Appeals Tribunal's consistent jurisprudence that the Dispute

protesting the participation of a Mr. Williams, against whom the Applicant had a pending case?

c. Whether the Applicant received full and fair consideration for the position? In particular, the Tribunal will inquire into whether there is basis for considering that the Applicant ought not to have been interviewed by Mr. Williams?

d. Whether the Applicant suffered harm as a result of the contested decision?

13. The parties were directed to file closing submissions on these issues. In response to the Order directing the filing of submissions, the Applicant filed only documentary evidence on 5 June 2020. It was in the form of extracts of articles from the internet on the subject matter of discrimination on sectarian grounds against certain locals in the hiring process at UNIFIL. He also submitted medical reports.

14. On 18 June 2020, the Applicant was to have filed a final submission. However, at that time a document including motions seeking extensions of time, permission to file translations and an oral hearing of witnesses was filed in Arabic. Additional supporting documents, including photographs alleged to depict a member of the interview committee with a successful candidate at some time prior to interview were attached to the 18 June 2020 filing.

15. The Respondent filed closing submissions on 12 June 2020. As the Tribunal found that the closing submissions failed to sufficiently address the identified issues, the Respondent was directed, on 16 June 2020, to file supplemental submissions on the following:

b. Paragraphs 11(a) and (b) of Order No. 098 (NBI/2020) dated 26 May 2020.

Facts

16. On 26 October 2017, the UNIFIL Regional Information and Communications Technology Section (“RICTS”) issued a JO for a G-5 Information Technology (“IT”) Assistant (“JO 87684”/“the position”). The Applicant applied for the position. The Applicant was shortlisted for a written assessment, which he passed, and was invited for a competency-based interview.

17. The Applicant had written

the Applicant as partially meeting the requirements for the competency of Client Orientation.

22. On 28 March 2018, the Chief/RICTS informed the UNIFIL Chief Human Resources Officer (“CHRO”) that the Panel recommended eight candidates to the Mission Review Panel for selection for the position. The Applicant was not recommended.

23. On 10 April 2018, the Mission Review Panel endorsed the recommendation. On 23 April 2018, the Head of Mission approved the selection of two of the recommended candidates and approved the rostering of the remaining six recommended candidates. On 27 April 2018, UNIFIL HR informed the Applicant of his non-selection for the position (“contested decision”).

24. The Applicant was eventually promoted to the G-5 level on 1 November 2019.

Submissions

25. Although the Applicant did not file closing submissions, he had made certain submissions in his application. Specific concern was raised by the Applicant regarding the role of Mr. Williams not just as an assessor but as the Chair of the Panel. He contends that Mr. Williams ought not to have interviewed him because he was at that time due to defend his position in a pending UNDT case filed by the Applicant concerning an earlier job posting, JO 2016/024. Mr. Williams also features prominently in the Applicant’s fight, including written complaints, against perceived discrimination in hiring.

26. The Applicant alleges that Mr. Williams prevented him from ventilating his concerns on the day of the interview. He says he was also prevented from speaking about other panel members who he said aired unfavourable views about him publicly in relation to a Staff Union election campaign he had launched.

31. UNAT upheld the UNDT's finding that the communications in that case

show that although the Applicant drew the Administration's attention to the fact that she did not wish to be interviewed by the same panel members who had interviewed her previously for the same post, the names of the panel members were never formally communicated to her, as such depriving her of the possibility to contest the composition of the panel.

32.

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First, Asariotis confirmed that there is no obligation to inform job applicants of the names of assessment panel members prior to an interview, and the failure to do so does not constitute a procedural irregularity. Second, Asariotis turned on whether it was reasonable for the Dispute Tribunal to find that the selection process was unfair where Ms. Asariotis had expressly objected to the participation of the hiring manager on the assessment panel after she had received a judgment in her favour regarding a prior selection exercise for the same position involving the same hiring manager, and at least two of the same panel members who would serve on the panel for the selection exercise in question. None of those facts exist here. Case No. UNDT/NBI/2017/013 concerned a different position, the Hiring Manager in this case was not an assessment panel member for that selection exercise or for the one that is the subject of these proceedings. Finally, no judgment was issued in Case No. UNDT/NBI/2017/013 until 24 February 2020. The Dispute Tribunal dismissed the case.

The Applicant has not met his burden to produce clear and convincing evidence of any irregularity, bias, or ill-motive. Mr. David Williams's participation on two assessment panels for two different positions for which the Applicant and many others applied, does not rebut the presumption of regularity.

Consideration

The Motions

37. There has been no submission by the Applicant denying that his two motions filed in March 2019 related only to JOs 2016/026 and 2016/038 that no longer form part of the subject matter of this case. Accordingly, it is determined that the two motions are no longer relevant and they are hereby dismissed.

The Selection Process

38. Online blogs on discrimination in hiring practices at UNIFIL put into evidence by the Applicant indicate that there may have been cause for concern generally over the period 2006 to 2014 and up to the time of the 2018 interview. He also referd1 2072 0 612 792 reW*nB-59(up e)7(h)-9(e)4(re859 e)7(r)-66BTETQ EM0912portW*nBT/F5 1

41. Had proper attention been paid to the Applicant's request, the implications of the alleged promise and any issue of potential bias of concern to the Applicant could have been aired and addressed. The Applicant, as a self-represented non-native English speaker, may not have expressed his concerns as fully or as well as the applicant in *Asariotis* did in requesting the names of assessors. It is clear though, that his concerns were based on similar issues of potential bias. If anything, his belief in his entitlement to receive the names was based on a stronger basis than that of Ms. Asariotis. He said he had been promised the names.

42. The Applicant contends that this promise gave him legitimate expectation that he could properly wait to receive the names before raising concerns of prejudice and bias on the part of Mr. Williams and other members of the Panel.

43. If the Applicant had received the assessors' names, he would have had the opportunity to raise his concerns as to potential bias before the day of the interview. These concerns primarily related to the involvement of Mr. Williams in a prior recruitment process for JO 2016/024 and a case arising from it, UNDT/NBI/2017/013, then pending before UNDT. The fact that the said case was dismissed on grounds of receivability in February 2020 does not mean that the Applicant may not have had sound basis for his concerns at the time of his interview for JO 87684 in 2018. Mr. Williams's involvement in the selection exercise for JO 2016/024 did not mean that Mr. Williams did not have a sound basis for his concerns at the time of his interview for JO 87684 in 2018.

candidates and that the assessors expressed negative views regarding the Applicant's UNIFIL Staff Union election campaign; these could have been properly addressed had the Respondent dealt appropriately with the Applicant's pre-interview requests.

45. There is a dispute between the parties as to whether the Applicant tried to raise his concerns about bias on the day of the interview. It is fair to say that this dispute would not have arisen if the Respondent had responded to the Applicant's first email. Providing him with the assessors' names, as had been promised, would have resulted in the Applicant's concerns being properly aired and addressed. It is also fair to say that the Applicant would not have had to write the second email had his first email been acknowledged and a response given. The Tribunal finds that the circumstances as described on the record lends itself to the reasonable inference that he would not have written the second email had he been allowed to raise his concerns at the time of interview.

46. The Tribunal finds that the Applicant cannot be said to have been fully and fairly considered for the position. The impugned decision cannot therefore be upheld.

Remedies

47. Resc Gn799.IT/F1 12ein2[(full)-10(y)20()-119(a.)] TJETQq0.00000912 0 612 792 reW*BT/F1 1

submitted with the June 2020 filing by the Applicant pursuant to permission granted by the Tribunal in Order No. 098 issued on 26 May 2020.

52. In a medical report dated 3 June 2020, Dr. Chahine Ghossaini certified that she had been attending to the Applicant in June 2018. This would have been a few months after the challenged interview and decision. The Doctor indicated that medical tests confirmed his diagnoses of vitiligo, weight fluctuation, sudden pains, cracking joints and gum inflammation were caused by shock and stress. Her report recorded that the Applicant had informed her that the stress he suffered was psychological due to discrimination and curtailment of professional advancement at UNIFIL. Dr. Ghossaini certified that the Applicant was following parallel dental and ophthalmological treatment at the same time. Dr Bassam El-Hassanieh's Oral and Dental Surgery report of 3 June 2020 confirmed that the Applicant suffered inflamed gums due to stress. Dr Fadia K. Mahmoud, Ophthalmologist certified that the Applicant had been afflicted with short-sightedness since March 2018. This supported the position, as had been reported to Dr. Ghossaini, that the Applicant sustained sudden visual impairment because of his continuous studying of legal texts and judicial rulings during the period in question. The Respondent has not disputed the validity of the medical evidence submitted by the Applicant.

53. It is my finding that with the medical report of Dr. Ghossaini, supported by the reports of the other two doctors, the Applicant has proven his claim that he suffered stress and resulting medical ailments due to the challenged decision.

Conclusion

54. The Application succeeds.

55. The Applicant is to be paid compensation *in lieu* of rescission of the challenged decision in the amount of 13 months of 22% of the difference between his net base salary at the time of ne-1Tn3 the

56. The Applicant is to be further compensated for harm in the amount of one