



1. By application, registered on 5 November 2008 by the Geneva Joint Appeals Board (JAB) and transferred to this Tribunal as of 1 July 2009 under UNDT/GVA/2009/12, the Applicant contests the administrative decision not to select him for the post of Chinese Reviser at the P-4 level (Vacancy Announcement (VA) No. 08-CON-UNOG-CSD-415954-R-GENEVA) within the Chinese Translation Section, Language Services Division, United Nations Office at Geneva (UNOG).

2.

6.



17. In judgement UNDT/2009/022 Kasyanov issued on 23 September 2009 the Tribunal held that in selecting a 30-day mark candidate while a suitable 15-day mark candidate was among the pool of candidates, the Administration violated Section 7.1 of ST/AI/2006/3. In the course of the consideration of the case Kasyanov, on 11 September 2009, the Assistant Secretary-General for Human Resources Management issued a memorandum to all Heads of Departments/Offices stating “effective immediately and for all current vacancies where 15-day candidates have

considering candidates, programme managers must give first priority to lateral moves of candidates eligible to be considered at the 15-day mark (...). If no suitable candidates can be identified at this stage, candidates eligible at the 30-day mark (...) shall be considered". Therefore, the Applicant asserts that, according to this provision, he - a 15-day candidate already hol









fully meet the requirements specified in the vacancy announcement, and in particular, the working knowledge of French, as per their evaluation records. The Respondent explains that the former selected candidate studied in a French-speaking university and passed the LPE in French in 1996, whereas the latter selected candidate did not. In

the Staff Selection System. The Evaluation and selection Guidelines for

25. The language of Section 7.1 of ST/AI/2006/3 and in particular of its second sentence (“if no suitable candidate...”) does not leave room for interpretation: Indeed, the literal meaning of this Section is that once eligible staff members to be considered at the 15-day mark have been identified their suitability for the post has to be assessed. In case there is a suitable candidate among these 15-day mark candidates the Administration is precluded from considering 30-day mark candidates. As such, the administrative instruction establishes a “stair-system” in which 30-day mark candidates can only be considered if no suitable candidate can be identified among the 15-day mark candidates.
26. The temporal argument raised by the Respondent according to which priority is given in consideration but not in selection and that 30-day mark candidates can be selected if the PCO has not yet assessed the 15-day mark candidates is not reflected in the rules. Section 7.1 of ST/AI/2006/3 exclusively relies on the eligibility status of candidates at the 15- or 30-day mark, as defined in Section 5 of ST/AI/2006/3, which is independent from the moment at which each candidature is assessed. Any other interpretation would be against the clear and unambiguous terms of Section 7.1 of ST/AI/2006/3.
27. This analysis is in conformity with the overall structure, context and purpose of ST/AI/2006/3: particularly, Section 2.2 – which is placed in the General provisions part of ST/AI/2006/3 - refers, through a footnote, to Section 7.1 as such demonstrating the importance and priority which shall be given to lateral moves. Section 4.5 and Section 6.2 of ST/AI/2006/3 also support this analysis.
28. The foregoing notwithstanding, the Tribunal notes that this understanding of ST/AI/2006/3 does not entail an opinion as to the adequacy - or inadequacy - of the staff selection system: the Secretary-General has broad discretionary power to take policy decisions on staff management matters. However, once such decisions are incorporated into administrative instructions, the Administration, in its practice, is obliged to strictly adhere to them. It cannot through mere guidelines adopt a practice which is

contrary to the clear, existing rule of an administrative instruction just because it suits the Administration better. If the Administration finds that an administrative instruction is difficult to be put into practice, it is free to change the provision by a legal text of the same value – i.e. another administrative instruction, provided that superior norms are not in contradiction with the desired changes.

29. In the present case the Applicant, together with one other 15-day mark candidate, had been found suitable for the post under review. Since there were two posts to be filled by the same VA and in accordance with Section 7.1 of ST/AI/2003/6, the Applicant should have been selected for one of the two posts. As such the decision not to select the Applicant for one of the posts advertised under vacancy announcement No. 08-CON-UNOG-CSD-415954-R-GENEVA was tainted by procedural flaws.
30. With regard to the outcome of the selection procedure, the Tribunal finds that the Applicant's argument that the two candidates who had been selected to the two posts did not meet the criteria of working knowledge of French cannot stand: the Administration has discretionary power to determine - reasonable - standards to assess someone's working knowledge in a certain language and there is no element on file which allows to conclude that this discretion has been abused in the present case.
31. Indeed, the Organisation is – within reasonable limits - free to define the professional criteria to be fulfilled for each vacancy announcement. Therefore, it was not indispensable to require 'working knowledge' of a language to be proven by an UN Language Proficiency Exam. In this respect and without prejudice to the conclusion reached under paragraph 29 above, the appointment of the candidates, who had not passed such an exam, is not a breach of law.
32. The Tribunal notes that at the hearing the Applicant clarified that above all, he was seeking monetary redress for his injured rights rather than the quashing of the decision not to select him.

33. According to 10.5 of the statute of the United Nations Dispute Tribunal (UNDT Statute), the Dispute Tribunal may order one or both of the following: “(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ord







net-base salary, in reference to similar previous cases (Geneva JAB case n° 578). In this case, the JAB and the Secretary-General had concluded that the decision not to select the Appellant had been based on an inquiry into moral standards undertaken within the Unit, as such damaging the Appellant's reputation and causing her moral injury.

41. In another case decided by the Secretary-General upon recommendation by the JAB, twelve-months were granted to the Appellant for the violation of his due process rights and his right to full and fair consideration for promotion (Geneva JAB case n° 629). The Secretary-General's decision

For the reasons stated above and in application of Article 10.5 (b) of the UNDT Statute

It is DECIDED that

The Applicant be paid two months net base salary ca