

Introduction

1. The applicant, a P-3 level Radio Producer in the French Language Unit of the Department of Public Information (DPI), applied for the P-4 post of the Chief of her Unit. She was not selected. It later transpired that the applicant had initially received the highest score at the interview, but her supervisors, who participated in the selection panel, increased the successful candidate's score, and ranked the successful candidate higher than the applicant. Upon review, the Joint Appeals Board (JAB) recommended that the applicant receive compensation in the amount of three months' salary for the violation of her rights during the selection process and the Secretary-General accepted the recommendation. The applicant, however, was not satisfied with the amount of compensation and, on 29 June 2009, filed an appeal with the former United Nations Administrative Tribunal, requesting it to order that she be selected for the next available P-4 post in her field of competence and that she be compensated in the amount of USD148,000 for the loss of salary and pension benefits resulting from her improper non-selection.

2. The case was transferred to the Dispute Tribunal on 1 January 2010. Following my orders for further submissions from the parties, both parties consented to this case being decided on the papers. Therefore, the application and the reply filed with the UN Administrative Tribunal, as well as the additional submissions filed pursuant to my orders, constitute the pleadings in this case.

Facts

3. The applicant joined the Organisation on 1 August 2000 as a Radio Producer at the P-3 level in the French Language Unit, Radio Section, Radio and Television Service, News and Media Division, DPI.

4. On 23 March 2007, she applied for the post of the Chief of her Unit. Six candidates were invited for interviews. The interview panel consisted of three

members: the Chief of the Radio Section, who at the time was the applicant's immediate supervisor; the Chief of the Radio and Television Service, who at the time was the applicant's second supervisor; and the Chief of the Meetings Coverage Section. The applicant was interviewed on 30 May 2007. Initially, the scores assigned to the six candidates by the interview panel were as follows:

Candidate A (the applicant)—95 points

Candidate B (the successful candidate)—93 points

Candidate C—90

Candidate D—90

Candidate E—90

Candidate F—85

5. The top five candidates, including the applicant, were found to be qualified for the post. The applicant was the only recommended female candidate and one of only two candidates (along with the successful candidate) with experience of serving as Officer-in-Charge of the Unit.

6. On 25 and 26 June 2007, prior to the transmission of the records of the

43 in the area of “years of experience”. This would give her a total of 93. The scores of the other candidates are as follows: [Candidate F] total 85: 45 for years of experience; [Candidate B—the successful candidate] total 93: 46 for years of experience; [Candidate C] total 90:43 for years of experience; [Candidate D] total 90: 45 for years for experience; [Candidate E] total 90: 45 for years of experience. [The applicant] ends up with the same score as [the successful candidate]. What do we do?

[Email from the second supervisor to the first supervisor, dated 26 June 2007:] Let’s give [the successful candidate] 2 extra points for his supervisory experience.

7. In the end, the applicant’s supervisors did not change the applicant’s score, but added two points to the score of the successful candidate (which prior to that was 93) to match that of the applicant (which was 95). After the score was manipulated by the applicant’s supervisors, the records of the selection process were transmitted to the CRB (which was unaware of the supervisors’ actions), and following its approval the final list of recommended candidates, along with the panel’s final evaluations, was transmitted for consideration and approval to the Under-Secretary-General of the DPI. The recommendation note stated (emphasis in the original note):

[The successful candidate] (interviewed on 7 May 2007): In his work in the French Radio Unit, the staff member has demonstrated sound political awareness and judgment. [The successful candidate] has the ability to develop goals as well as identify priority activities. He has practical experience in radio broadcast journalism with written and on-air presentation skills. The staff member also has hands-on experience in digital desk-top editing. Having served as Officer-in-Charge of the Unit on a number of occasions, [the successful candidate] has demonstrated a high level of professionalism and leadership.

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General accepts the conclusion of the JAB that your rights were violated. Accordingly, the Secretary-General has decided to accept the JAB's recommendation that you be granted three months net base salary at the rate in effect as of the date of this decision letter as compensation for the violation of your rights. Further, the Secretary-General has taken note of the JAB's recommendation that you should be fully and fairly considered for all available positions in the future and would like to point out that any applications you submit in the future for positions with the Organization will be considered in accordance with the provisions of ST/AI/2006/3, which relates to the staff selection process.

Applicant's submissions

12. The applicant submits that, if not for the improper actions of the supervisors which violated her rights, she would have been selected for the post. The applicant's supervisors manipulated the scores in order to avoid recommending her as the best qualified candidate instead of their favoured candidate, who came second in the actual evaluation.

13. The applicant avers that the compensation of three months' salary may have been adequate to compensate her for moral damages (ie emotional distress and anxiety), but it did not address the financial loss to her for the rest of her active life due to the non-promotion. Even if the applicant were to be promoted soon, for the rest of her career with the United Nations and in her retirement she would receive a salary and a pension at two steps lower than if she had been promoted on 24 July 2007. The applicant calculated this economic loss to be USD148,000. In response to the Tribunal's further orders, the applicant provided alternative assessments of her economic loss, estimating it between USD150,363 and USD570,000, depending on the method of calculation and different factors being taken into account.

14. Since August 2007, the applicant has applied for seven P-4 posts in her field, but has not been selected for any of them. She requests the Tribunal to order that she be selected for the next available P-4 post in her field as part of her relief.

Respondent's submissions

15. The respondent accepts that the applicant was not treated fairly and that her rights were violated in the selection process, contending that the only issue before the Tribunal is the adequacy of the compensation granted and paid to the applicant. The respondent submits that compensation in the amount of three months' salary paid to the applicant constitutes adequate compensation for the violation of her due process rights, and since there is no causal nexus between the violation of her rights and her non-selection for the post, the applicant is not entitled to any additional damages.

16. The respondent argues that the applicant does not have the right to be automatically selected for the next available P-4 post for which she is eligible and qualified. The applicant's future applications for vacancies in the Organisation (including at the P-4 level) will be fully and fairly considered in accordance with the applicable rules and procedures.

Consideration and findings

17. Liability in this case is not in dispute.

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UNDT/2010/006, UN Administrative Tribunal Judgment No. 362, *Williamson* (1986)). The respondent has not proffered or sought to proffer any evidence as to what factors could have led to the non-selection of the applicant had she remained the highest scoring and ranking candidate, and I therefore conclude that the only relevant factors were the evaluation narrative, scoring, ranking and the order of recommendation.

22.

ranking, to achieve their desired result. Had the scoring not been

Charge of the Unit, and the only female. Although it is not absolutely certain that the applicant would have been selected had the scores not been manipulated, in the absence of any other explanation, I find that the probability of her selection as the top candidate on the panel's list would have been so high as to fully warrant the conclusion that she would have been selected and appointed. (See *Koh* UNDT/2010/040, *Hastings* UNDT/2010/071 and *Beaudry*, Order No. 101

meaningless. Therefore, the only relief received by the applicant thus far is the compensation in the amount of three months' net base salary. The applicant contends this is insufficient.

29. Each case must be adjudicated on the basis of its own facts and surrounding circumstances. In my view, the correct starting point for the award of compensation in the current case is the type and length of contract that would have been offered to the applicant had she been selected for the post.

30. I find that the applicant's submission that there is near-certainty that she will continue to work for the UN until her retirement age verges on the highly speculative. It does not take into account the normal contingencies and uncertainties which may and frequently do intervene in the averag

result of the actions of her supervisors, the applicant did suffer some emotional distress, the applicant's submission lacks specificity in this respect and in regard to any further damages she may be claiming and requires further particulars. As the UN Appeals Tribunal stated in

that there was a causal connection between this violation and the applicant's non-selection, for which she must be properly compensated.

35. By Monday, 12 July 2010, the parties are ordered to file a joint submission stating whether they have reached an agreement on compensation in light of this judgment. If the parties are unable to reach an agreement, they will be ordered to file further submissions.

(Signed)

Judge Memooda Ebrahim-Carstens

Dated this 25th day of June 2010

Entered in the Register on this 25th day of June 2010

(Signed)

Hafida Lahiouel, Registrar, New York