



Date: 5 October 2011

**Before:**

**Registry**

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**Counsel for**  
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**Counsel for**  
Myriam F

## **Introduction**

1. By application filed with the United Nations Dispute Tribunal on 11 June 2010, the Applicant contests the decision not to select him for a P-4 post of Terminologist (Chinese).

2. As a remedy, the Applicant seeks compensation for loss of chance, damage to career prospects and moral injury.

## **Facts**

3. In 2001, the Applicant successfully passed the United Nations Examination for Chinese Translators, Editors and Verbatim Reporters. He joined the Organization in February 2001 on a short-term appointment as Translator, at the T-2 level, in the Conference Services Division, United Nations Office at Geneva (“UNOG”). In March 2003, he was granted a probationary appointment as Editor (Chinese) at the P-3 level. Effective 1 March 2005, he was granted a permanent appointment. He was promoted to the P-4 level as Reviser, Chinese Translation Section, Conference Services Division, UNOG, on 1 March 2008.

4. In September 2009, the Applicant applied for a post of Terminologist (Chinese), at the P-4 level, within the Chinese Translation Service, Department for General Assembly and Conference Management, at Headquarters, announced on 31 August 2009 under vacancy announcement No. 09-CON-DGACM-421774-R-New York.

5. On 24 September 2009, three 15-day candidates within the meaning of administrative instruction ST/AI/2006/3 (Staff selection system), including the Applicant, were invited to take a written test, which took place on 29 September 2009.

6. The two other 15-day candidates were interviewed on 1 October 2009, whereas the Applicant underwent an interview on 2 October 2009. On that same day, a member of the interview panel, a Training Officer in the Chinese Translation Service, and the Deputy Chief, Terminology and Reference Section,



13. By Order No. 83 (GVA/2010) dated 25 October 2010, the Tribunal instructed the Respondent to provide the above-mentioned documents and clarifications, which he did on 8 November 2010.

14. The Applicant submitted his observations on the Respondent's reply on 18 November 2010.

15. A hearing on the merits of the case took place on 2 September 2011, to which the Applicant and Counsel for the Respondent participated in person.

### **Parties' contentions**

16. The Applicant's principal contentions are:

a. The Applicant was not given full and fair consideration for the post. As a 15-day candidate, he should have been considered before any of the 30-day candidates. Instead, as recognized by MEU, "the Administration did not conclude its consideration of the 15-day candidates before it commenced consideration of the 30-day candidates ... [B]y scheduling the interviews and the written test for the 30-day candidates while interviews for the 15-days were ongoing, the Administration had already reviewed the 30-day candidates and had determined that some of them met all or most of the requirements of the post ...";

b. The above shows that full and fair consideration of the Applicant's candidacy could not have taken place and that there was a clear breach of section 7.1 of ST/AI/2006/3. MEU conclusion that such breach did not entail any damageable consequence fails to adequately take account of the potential effect that the review of the 30-day candidates had on the assessment of the Applicant's suitability for the post;

c. The facts submitted by the Respondent, despite several inconsistencies and contradictions, indicate that before evaluating the Applicant, a 15-day candidate, the programme manager invited 30-day candidates to a written test. This clearly establishes that the Applicant was considered unsuitable for the post before the evaluation was made;

d. The refutation by the Respondent that the Applicant's candidacy was not fully and fairly considered is not substantiated by facts. The Respondent's contention that the Applicant did not pass the written examination is of no material value, because the procedure for the evaluation of candidates for the post did not include a requirement of scoring certain marks in the written examination. In addition, comparison of scores given by the two examiners reveals that they had totally different concepts of right or wrong answers, which leads to the conclusion that the Applicant was evaluated arbitrarily and unfairly;

e. While holding that the Applicant's score for several competencies fell short by a significant margin of what was necessary to be considered suitable, the Respondent did not clarify the overall score requirement during the competency-based interview necessary to be deemed suitable. Hence, the programme manager used her discretion arbitrarily to define the "necessary score". It appears from the notes of the four interviewers that two evaluated the Applicant as "acceptable" while two others gave him grades close to "acceptable". Moreover, the scores of the other candidates, including the successful one, were not revealed. The selection procedure was biased, subjective and discriminatory.

17. The Respondent's principal contentions are:

a. The Administration has broad discretion in selection decisions and it is not for the Tribunal to substitute its own judgment for that of the decision-maker. The Applicant carries the burden of proving that his candidature had not been fully and fairly considered, which he failed to discharge; the records show that he did not meet the standards for two competencies, nor did he pass the written test;

b. Section 7.1 of administrative instruction ST/AI/2006/3 precludes the Administration from considering 30-day candidates in case there is a suitable 15-day candidate. Hence, there must be a conclusion regarding the suitability of the 15-day candidates before considering 30-day candidates. However, since ST/AI/2006/3 does not specify "which formal

requirements this conclusion has to fulfil”; as long as the Administration ensures the priority consideration of 15-day candidates and concludes on their suitability before considering the 30-day candidates, the requirements set forth in ST/AI/2006/3 are satisfied;

c. The programme manager simply received the list of 30-day candidates before the Applicant’s interview took place, but did not start assessing their suitability before 5 October 2009, that is, after the Applicant had been found unsuitable for the post. In fact, when the 30-day candidates underwent the test and the

20. It is undisputed that in the instant case 30-day candidates were invited to take a written test on 1 October 2009, that is, one day before the Applicant was interviewed. This fact alone, nevertheless, does not suffice to conclude that the priority consideration requirement was not observed.

21. Contrary to the view held by the Applicant as well as by MEU, consideration of 30-day candidates cannot be said to have started on 1 October 2009. On that date, the four candidates released at the 30-day mark were merely convened for a written test, whereas “consideration” of a candidate, for the purpose of ST/AI/2006/3, means assessing his or her qualifications and skills against the requirements and competencies set out in the relevant vacancy announcement with a view to determining his or her suitability to successfully perform the functions of the post.

22. Even if, as the Applicant contends, an invitation for the written test presupposes a minimal review of the 30-day candidates’ personal history profiles, such minimal review may not be equated to “consideration” within the meaning of ST/AI/2006/3. Indeed, any meaningful consideration cannot begin until the relevant assessment tools—in this case, a written test and an interview—have been administered to the candidates. As a matter of fact, the 30-day candidates took the written test on 5 October 2009 only, that is, three days after the Applicant had been found unsuitable.

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29. After careful examination of the file, the Tribunal finds no cogent reason to call into question the accuracy of this appraisal. The programme manager's assessment appears reasoned and properly documented. The evaluation methods used to assess the Applicant's qualifications are in conformity with the Organization's rules and practices; in fact, section 7.5 of the administrative instruction requires competency-based interviews to be carried in every selection procedure and cites written tests as an example of appropriate evaluation mechanism. Moreover, these appraisal tools have been applied to all candidates, whatever the pool they belonged.

30. While the Applicant alleges that the test ratings were biased and unfair, the Tribunal can only note that the tests were corrected by two different highly qualified persons and that the two co

33. Therefore, the Tribunal considers that the contested non-selection decision does not constitute a breach of the Applicant's terms of appointment.

**Conclusion**

34. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

*(Signed)*

Judge Thomas Laker

Dated this 5<sup>th</sup> day of October 2011

Entered in the Register on this 5<sup>th</sup> day of October 2011

*(Signed)*

Anne Coutin, Officer-in-Charge, Geneva Registry