



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

AWAD

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Duke Danquah, OSLA

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, a Security Officer with the Security and Safety Service (“SSS”) of the Department of Safety and Security (“DSS”) in New York, contests the decision not to select him for an S-4 level position. He seeks financial compensation as well as placement on the roster for S-4 positions and placement on a special post allowance at the S-4

“communication”, “teamwork”, “leadership”, and “judgement/decision-making”.

The job opening also stated:

Assessment Method

A written assessment test will be administered to eligible applicants and a competency-based interview conducted [with] short-listed candidates.

10. By an internal SSS administrative bulletin circulated on 4 November 2010, the staff members of SSS were informed that candidates “[would] be evaluated based upon a completed application (including meeting the required education and work experience), performance record, a written assessment test, and a competency-based interview”. The bulletin further listed a number of mandatory requirements, including various training courses, licences and permits. The Applicant testified that, at the time of the events, he was aware of and received the internal administrative bulletins issued by SSS.

11. Thirty-six staff members applied for the vacancy announcement. The SSS management conducted a preliminary evaluation of all candidates, including the Applicant, which included review of applications, personal history profiles, and performance evaluation reports. Thirty staff members, including the Applicant, were determined to be eligible for further consideration.

12. On 19 March 2011, SSS management advised all eligible candidates, through another SSS bulletin, to avail themselves of a copy of the Written Assessment Guidelines and the Assessment Workbook that could be used to assist candidates in preparing for the written assessment. These materials contained detailed descriptions of all the elements and steps of the promotion exercise, as well as the Standard Operation Procedures for answering questions on the written test.

13. Six of the thirty-six candidates did not meet qualification criteria and were found ineligible. A written assessment was held for 30 eligible candidates, including the Applicant, on 16 April 2011. Twenty-three candidates, including the Applicant,

passed the test and seven failed. The Applicant was notified on 20 May 2011 that he had successfully taken the test, having scored 77.5 per cent.

14. Mr. CS testified that, following extensive discussions during the preparation for the promotion exercise, management of SSS decided that all 30 candidates who took the written test, including those who failed it, would be invited for interviews. The interviews were held in June and July 2011.

15. On 15 June 2011, the Applicant was invited to participate in a competency-based interview to be held the following day. The email invitation requested the Applicant to “confirm [his] attendance by replying to this email”. The Applicant confirmed his attendance and was interviewed on 16 June 2011. The Applicant’s witness, Mr. KG, confirmed that he received more than one day’s notice, and from the general tenor of all the evidence, it is clear that no set notice period was applied consistently, and not all interviewees received the same notice period. The Applicant testified that he did not ask for a change in date or time as he was not aware at the time that normally a five-day notice was to be given for interviews.

16. Upon completion of the interview process, the interview panel prepared a report, which was signed by all members of the panel on 10 October 2011 and in which the panel included its scores and comments regarding the suitability of the Applicant. The Applicant was marked as “meets the competency” (4 points) with respect to the competencies of “professionalism” and “leadership”. He was marked as “fully meets the competency” (5 points) with respect to the competency of “judgment/decision-making”. However, he received the mark of “does not meet the competency” (3 points) with respect to the competencies of “teamwork” and “communication”. In relation to these last two competencies, the panel made the following comments in its report:

testified that, although the interview was supposed to commence at 10:00 a.m. and end at 10:45 a.m., it started at 10:30 a.m. and ended at 11:00 a.m., thus he was denied full and fair consideration.

30. Mr. MB testified that during the

36. The Tribunal finds that the information published and circulated since November 2010 (more than seven months prior to the interview), including the job opening announcement and various SSS administrative bulletins (which the Applicant acknowledged he received at the time), was available well ahead of time to all candidates, including the Applicant, allowing them to adequately prepare for the interview. The Applicant submitted that he needed additional material to prepare, but was unable to clearly identify any specific documentation. The Tribunal again notes, in particular para. 8 of the Applicant's own application, in which he conceded that he "had diligently prepared for the interview following the OHRM guide on 'Effective Job Interviewing Performance' and practiced [his] answers with colleagues who had served on interview panels in other departments".

Other allegations

37. In his application and in particular at the hearing the Applicant raised a number of additional claims and allegations. In the Tribunal's view, these allegations were raised primarily as circumstantial evidence with a view to illustrating the panel's alleged lack of full and fair consideration of the Applicant.

(a) Alleged disciplinary record of other candidates

38. The Applicant alleged that three of the recommended candidates had disciplinary records tainted with, or at least were investigated for, serious offences (including brandishing a gun and domestic violence), and should thus have been disqualified. Mr. MB testified that, to his knowledge, none of the five selected candidates had any disciplinary record. Mr. CS, when asked to opine on the Applicant's evidence, stated that he was not aware of any disciplinary measures barring any candidates from participation in the contested promotion exercise. He added that, generally, he was of the view that staff members generally could be seen to have been rehabilitated depending on the nature of the offences over time. In any event, the Tribunal finds that

non-selection, the disqualification of any other candidates would not have ensured the Applicant's selection. In all, the Tribunal found that the Applicant's evidence together with that of Mr. TK appeared to be of a more general criticism regarding the alleged promotion of Security Officers with some disciplinary history over those with a clean disciplinary record.

(b) Post-interview feedback

39. The Applicant raised another new issue at the hearing, also canvassed by Mr. TK, that although the response to Applicant's request for feedback was positive and encouraging, insufficient feedback was provided at the post-interview meeting with Mr. MB in December 2011. Mr. MB testified that such post-interview meetings were held as a matter of courtesy only, in order to provide the staff member with guidance on how to improve for future interviews. The Tribunal was not referred to any legal provision requiring any post-interview feedback. The Tribunal found that the general tenor of the evidence led on this point expressed general disgruntlement with the promotion exercise rather than a breach of any legal rights.

(c) Geographical representation

40. The Applicant further challenged that one of the core values of the UN system calling for geographical balance in staff recruitment has been persistently ignored by managers within DSS particularly at the supervisory levels resulting in geographical disparity. He stated at the hearing that 20 supervisors are from the Caribbean, 22 from the United States of America, two from Europe, and one each from Portugal, South Africa, Egypt, Italy, and Africa. This geographical bias, he contended, worked against him as a Middle Easterner. The Respondent submitted that SSS employs nationals of more than 48 countries and the relatively high number of staff from the Caribbean is due to the larger proportion of applicants being of English-speaking background from a region within close proximity to the Headquarters, particularly as candidates have to pay their own travel costs when attending job interviews in New York. The Applicant submitted that there are "tens

of thousands” of English-speaking candidates from other countries who are in New York. Mr. CS testified that the geographical imbalance did strike him as well when he took over as Executive Officer in DSS, and he endeavoured to address the issue by giving instructions for a better geographical balance to be ensured, including a fair procedure for selection. Even if the Applicant’s contention has merit, the Tribunal is constrained to deal with the issue before it, i.e., whether in his *given case* the interview panel committed fatal flaws in assessing him as not meeting two key competencies. In this regard, the general allegation regarding the geographical imbalance in SSS is insufficient, in the absence of evidence of bias or discrimination, to reach a conclusion that the panel’s decision regarding the Applicant’s failure to meet two of the required competencies was unlawful.

(d) Use of roster

41. The Applicant queried whether it would have been fairer for SSS to promote those Security Officers who were on the existing roster of Security Officers pre-approved for similar functions (such as the Applicant), thus excluding other Security Officers from consideration. This claim too did not form part of the management evaluation or the Applicant’s application, and if it had merit, it should have been addressed from the outset when the job was advertised and/or the candidates shortlisted. In any event, the Tribunal was not referred to any regulation or rule demonstrating that the approach chosen by the SSS with respect to this exercise was in breach of the Applicant’s rights.

(e) Other circumstances alleged by the Applicant

42. The Applicant further referred to general dissatisfaction as to how selections and promotions are handled in SSS. (This was also to a large degree the essence of the testimonies of Mr. KG and Mr. TD.) In particular, the Applicant referred to an email apparently circulated within SSS in January 2009, which allegedly included a pre-determined promotion list. Mr. CS testified that the email was not a pre-determined promotion list but rather a promotion planning document. The matter

was apparently investigated by representatives of management and the Staff Union and no wrongdoing was found. Although the Applicant's reference to the email of January 2009 has no direct bearing on the interview panel's determination of him as not meeting the competencies of teamwork and communication, there was no explanation by the Respondent regarding four question marks which had been placed in handwritten text by persons unknown against the Applicant's name on the print-out of the email. The general tenor of the allegations by the Applicant (and also by Mr. TK, who had similar markings against his name), together with other general allegations, was that the Applicant did not receive full and fair consideration.

43. There are some elements of the selection exercise that warrant further discussion in this judgment. Firstly, all candidates, including those who failed the written test were invited for the interview. Mr. MB explained that it was felt that all candidates should obtain experience in competency interviews as this was the first time this process was used in DSS. There was certainly no possibility of selecting any of those who had failed the written test, even if they performed excellently in the competency interview. Secondly, although Mr. CS testified that as the Executive Officer, DSS, he gave instructions that all efforts be made to assuage any mistrust or perception of geographical bias, two of the four members of the competency interview panel came from the allegedly geographically overrepresented countries. Mr. MB explained that he ensured as panel chair that there was no bias against any interviewee. Furthermore, apart from the general comment on geographical bias, the Applicant did not allege that the panel showed bias against him. Finally, the Applicant submitted that in its assessment the panel found in its comments to the competency of "Communication" that "throughout the interview, the candidate

The Applicant questions how, given that he articulated well in court, he could have passed three of the five competencies and yet failed the other two. Mr. MB, however, explained that the panel found that although the Applicant passed three competencies, he did not demonstrate his abilities in regard to the two other competencies to the required level, which had to be reflected in the report.

44. Accordingly, upon careful weighting of the evidence in its entirety, on a balance of probabilities, the Tribunal cannot come to the conclusion that the consideration of the Applicant's candidacy was marred by significant errors or procedural violations such as to result in a failure to give him proper consideration.

45. Overall, the Tribunal notes that the non-selection in the exercise in question was not a reflection of the Applicant's overall performance, nor should it be viewed as such. To the contrary, there is no doubt that the Applicant is a valuable staff member with over 20 years of service with the Organization and diverse experiences within SSS. He has been in the Secretary-General's detail and travelled to over 46 countries. In the particular exercise in question, although the Applicant "diligently prepared ... and practiced [his] answers with colleagues" prior to the interview, the panel found that his answers were not satisfactory with respect to two competencies. Although the Applicant raised a number of allegations as described above, the Tribunal finds that the panel's substantive finding regarding the two competencies were not effectively challenged by the Applicant.

46. As indicated above, the general tenor of the evidence of all of the Applicant's witnesses appears to be a long-standing dissatisfaction with recruiting and promotion exercises within DSS. Indeed, in his written closing submissions the Applicant states that he "displayed great courage in taking on the festering matter of unfair selection procedures in DSS that has apparently bedeviled a fair number of security officers for a number of years". The Applicant's witness Mr. TK, a Staff Union representative, commented that procedures and criteria need to be developed cooperatively. The Tribunal is satisfied from the candour of the witnesses, including

the Respondent's witnesses, that these matters are being addressed with a view to assuaging any perceptions whether real or imagined.

Conclusion

47. The Tribunal finds on the evidence before it that the Applicant has been unable to prove that the selection process was biased against him and that the consideration of his candidacy was marred by significant errors or procedural violations such as to vitiate the selection process or result in a failure to give him proper consideration.

48. The application is dismissed.

(Signed)

Judge Ebrahim-Carstens

Dated this 16th day of August 2013

Entered in the Register on this 16th day of August 2013

(Signed)

Hafida Lahiouel, Registrar, New York