



UNITED NATIONS

## **Introduction**

1. The Applicant contests the decision not to promote him to one of 37 Senior Security Officer posts at the S-3 level (“the Posts”), in the Security and Safety Service (“SSS”), Department of Safety and Security (“DSS”). The Posts were advertised by job opening number 10-SEC-DSS-NY-16958-R-NEW YORK (“JO 16958”). The Applicant seeks an award of compensation for anxiety and loss, as well as an order that he receive priority consideration for the next promotion exercise.

2. This case concerns a promotion exercise that took place in SSS/DSS in 2011. The Applicant was not recommended for promotion for the sole reason that the interview panel found that, during the competency-based interview, he did not adequately demonstrate that he met the competency of Teamwork.

3. The Applicant argues that the hiring manager’s decision not to recommend him for promotion was unreasonable because it failed to take into account relevant material, namely his performance assessment reports. On his last two electronic performance assessment system (“e-PAS”) reports prior to the interview, the Applicant had been rated as “outsta

promotion, simply because of an allegedly poor performance during a brief competency-based interview?

**Relevant background**

6. On 3 November 2010, JO 16958 was published with a deadline of 3 December 2010, later extended to 31 December 2010. The job opening listed three core competencies: Professionalism, Communication and Teamwork. The job opening provided the following information about the Teamwork competency:

Teamwork:

Works collaboratively w

9. At 6:10 a.m. the following day, 18 August 2011, the Applicant responded by email, stating (emphasis added):

My [rostered days off] are FRI/SAT so unless admin/CSU [abbreviation unknown] approves overtime of 4hrs for coming in on my day off, I believe we will have to reschedule the interview. Also, please be advised that I will be on annual leave from 8/21-8/28. *Another possibility would be this morning (Thursday 18, August 2011).* I have some affairs I need to attend to and will be at Headquarters until at least 11.30am. Feel free to give me a call if you are able to arran[ge] something. If not, I await your email confirmation for a future date.

Kindly note that I am a member of 'A' Squad, so *the earlier in the AM*, the more convenient it would be.

10. Two hours later, at 8.12 a.m., an Administrative Officer in SSS/DSS responded, inviting the Applicant to attend the Chief's Office at 11:00 a.m. that day for the interview. He was asked to confirm that this was fine with him.

11. Although there is no evidence of the Applicant confirming, in writing, that the

Acceptable; 5-6 – More than acceptable; and 7 – Superi

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19. The Respondent's 19 June 2014 filing states:

situations”. His Second Reporting Officer commented that the Applicant “should receive high consideration for movement to the next level”.

### **Procedural history**

23. On 16 January 2012, the Applicant requested a management evaluation and, on 23 February 2012, the Applicant was informed that the contested decision had been upheld.

24. On 22 May 2012, the Applicant filed his application. The Respondent filed his reply on 21 June 2012.

25. On 1 April 2014, the case was assigned to the undersigned Judge.

26. A case management discussion (“CMD”) was held on 12 June 2014 and by Order No. 141 (NY/2014), dated 13 June 2014, the Tribunal scheduled an oral hearing to be held on 21 July 2014, and ordered the parties to submit further information. Due to the unavailability of a witness, the 21 July 2014 hearing was rescheduled to 4 August 2014.

27. The Applicant gave evidence at the hearing and was represented by Mr. Joseph Grinblat. His witnesses were: Captain Carl Di Marco, a retired staff member who worked with him for the last four years of his career before retiring, and served as his First Reporting Officer for the performance period 2009-2010, and Sergeant Frank Ranelli, who had worked with the Applicant for two and a half years. Mr. Bryan Black, the Chairperson of the interview panel, and Mr. Michael Browne, Deputy Chief of the Security and Safety Service, who was responsible for designing and executing the relevant promotion exercise, gave evidence for the Respondent.

28. By Order No. 230 (NY/2014), dated 8 August 2014, the Tribunal ordered the Respondent to disclose to the Tribunal, on an *ex parte* basis, unredacted copies of the individual panel member’s interview notes, as well as the evaluation forms relating to the 46 candidates whose names were forwarded to the Central Review Committee.



The Respondent was also ordered to provide the indicators against which each of the competencies was assessed, the individual panel members' handwritten notes in relation to the Applicant's interview, and the list of interview questions. An examination of these documents confirmed that there was a consistent approach on the part of the interview panel and the documents corroborated the oral evidence regarding the interview process. Given the narrow ambit of the Tribunal's task when carrying out a judicial review, it was not necessary to delve further into the

31. In *Rolland* 2011-UNAT-122, the Appeals Tribunal set out a more specific test for consideration of promotion decisions, stating (emphasis added):

21. All candidates before an interview panel have the right to *full and fair consideration*. A candidate challenging the denial of promotion must prove through clear and convincing evidence that procedure was violated, the members of the panel exhibited bias, irrelevant material was considered or *relevant material ignored*. There may be other grounds as well. It would depend on the facts of each individual case.

32. The Tribunal considers that these two seminal cases are to be read together. Though the Respondent has attempted to narrow the scope of this case as much as possible, there is no reason why *Rolland* should be read as limiting the scope of judicial review set out in *Sanwidi*. Indeed, the Appeals Tribunal in *Rolland* explicitly referred to ignoring relevant material and also alluded to the fact that other valid grounds of review may exist, depending on the facts of each individual case.

33. The Tribunal will consider whether the hiring manager's failure to have regard to the Applicant's performance record prior to deciding whom to include in



37. It is not difficult for the Tribunal to accept the Applicant's submission that he was disadvantaged by the timing of the interview. However, the evidence shows that

integrity”. This overriding principle is given effect by the issuances of the Organization, in particular ST/AI/2010/3 (Staff selection system).

41. ST/AI/2010/3 is silent as to what role performance reports should play in assessing candidates for selection or promotion. The Organization’s performance management system, set out in ST/AI/2010/5 (Performance Management and

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different at the S-3 grade than the S-2 grade, it would be logical for the Administration to test that competency during an interview by asking candidates questions based on the differentiated, and presumably more complex, tasks, responsibilities and functions that are required at the higher grade. This is not what occurred during this promotion exercise. It appears illogical for the Organization to submit that the same competency has different characteristics at different grades, such that performance appraisals at a lower grade are to be accorded little or no weight or relevance, while also using competency-based interview questions, which ask for examples of past performance and experien

performance reports prior to the promotion exercise, the Applicant was rated as “outstanding” for the competency of Teamwork. In 2009-2010, his First Reporting Officer described him as “the ultimate team player”. Each of the performance reports indicated that Teamwork was a particular strength, as it was one of only two competencies for which he received the highest rating.

51. It would appear from the oral evidence that the decision-makers involved in devising and implementing the procedures for this promotion exercise had an understanding that is inconsistent with ST/AI/2010/3. Their understanding regarding the primacy of competency-based interviews under the staff selection system is not supported by the provisions of ST/AI/2010/3. There is no provision in ST/AI/2010/3 stating that a competency-based interview is the determining factor in considering candidates for promotion, providing strict criteria as to how it is to be conducted or scored, or stating that a candidate must “succeed” at or “pass” the competency-based interview in order to be successful in a staff selection process. The Applicant was denied the opportunity to receive further consideration for promotion based on a flawed interpretation and understanding of the Organization’s staff selection system.

## **Conclusion**

52. The Tribunal has considered a large number of documents and the testimony of all the witnesses that appeared at the hearing. At the heart of this case is the question: “What is the proper role of a competency-based interview in a promotion or selection exercise?” The Tribunal takes judicial notice of the fact that the competency-based interview model was designed to ensure that selection processes are, as far as humanly possible, free from bias, prejudice or favoritism. However, the competency-based interview is only one of several components of the United Nations staff selection system.

53. It is clear from the evidence that those responsible for designing and implementing the 2011 promotion exercise in SSS/DSS acted in good faith. A







the competency of Teamwork in his day-to-day work. The Applicant was therefore denied the right to full and fair consideration of his candidacy for promotion.

### **Remedy**

59. As a remedy, the Applicant requested priority consideration for the next promotion exercise. This is a matter for DSS. The Tribunal declines to make any such order.

60. The Applicant also requested that the Tribunal award him compensation for the “loss and anxiety” suffered since the decision not to recommend him. While the Applicant’s loss of a chance is evident, it is also evident in this case that the Tribunal cannot substitute its judgment for that of the Administration and determine whether the Applicant would have been selected for the Post. However, it is clear from the Applicant’s evidence and demeanor at the hearing that he is distressed by the experience and feels undervalued notwithstanding his excellent performance ratings. He is entitled to appropriate compensation for the consequences flowing directly from the procedural error and unfairness to which he was subjected. The Tribunal assesses the degree of moral damage as commensurate to awards in the lower third of the range of awards to date. Accordingly, the sum of USD3,000 is considered appropriate as compensation.

### **Judgment**

61. The decision that the Applicant failed to meet the competency of Teamwork was based on a flawed understanding of the role of competency-based interviews in ST/AI/2010/3. The Applicant was and continues to be distressed by the decision and is entitled to appropriate compensation.

62. The Respondent is ordered to pay to the Applicant USD3,000. The amount shall be paid with interest at the United States prime rate with effect from the date that this Judgment becomes executable until payment of the said amount. An

additional five per cent shall be added to the United States prime rate 60 days from the date this Judgment becomes executable.

*(Signed)*

Judge Goolam Meeran

Dated this 6<sup>th</sup> day of August 2015

Entered in the Register on this 6<sup>th</sup> day of August 2015