

United Nations Dispute Tribunal

Case No.: UNDT/NBI/2014/002

English

JudgmentNo.: UNDT/2016/088

Date: 22 June 2016

Original:

Before: JudgeVinod Boolell

Registry: Nairobi

Registrar: Abena KwakyeBerko

## NGOKENG

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# Introduction

1. The Applicantis a Revise in the Language Seinces Section (LSS) at the

#### **FACTS**

- 10. On 16 February 2012, job opening No.-ADM-ICTR-21952R-ARUSHA (O) was publisheon Inspira for the position of Chief of LSS at the ICTR. It required candidates to have the following competencies:
  - (1) an Advanced University Degree (Master's or equivalent) in relevant modern languages or law and a **3lation** or an Interpretation Degree, Certificate from a recognized Translation or Interpretation Training School;
  - (2) a minimum of twelve years of experience in translation and revision in the languages services of an international organization, a national administration a largescale private organization, with at least five years within the United Nations;
  - (3) sound experience in the planning, coordination and supervision of translation services; and
  - (4) demonstrated ability to interpret. The Vacar Arynouncement also added that training skills and experience would be an asset.
- 11. On 16 March 2012, the Applicant applied for the position. The hiring manager, Mr

21. On 30 December 2013, MEU requested the Applicant to complete and sign a release form, "agreeing to forego [his] rights to further pursue the case (e.g. at the UNDT) in exchange for accepting the settleme@tibsequently, MEU clarified that the settlement would constitute the Secre@emyeral's response to the Applicant's request for management evaluation and that no separate

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staff and in the determination of the conditions of service shall be the necessity of securing the highest and ards of efficiency, c

### Respondent

- 38. The Application has no merit. The Applicant received full and fair consideration for the position but failed to demonstrate that he possessed the required competencies therefore no standing to challenge the selection of another candidate. The policant has not proffered any evidence to show that the decision to not select him for the position was flawed.
- 39. Following the interviews, the selected candidate was the only candidate who demonstrated that he possessed the requisite competencies prosition. He scored over 60% in his evaluation. On 5 July 2013, the Registrar of the ICTR selected and appointed this candidate as OffieldSS. The Applicant failed to demonstrate that he met the competencies required for the position. He scored 48.6%, which was well below the threshold for recommendation.
- 40. The Applicant failed to demonstrate to the interview panel that he met the competencies for the position; he could not have been recommended and ult 0 rg 0.99-o t 0 r0 0 rg 0.99ldut himst6(f)13(o)33-3(t)-112(h)-11(1(e)-3()-381(o)-11(s)5(i)22(t))

member was given full and fair consideration, the burden of proof shifts to the canddate who must be able to show through clear and convincing evidence that he or she was denied a fair chance of appointment.

- 43. The record in this case shows that the Applicant was fully and fairly considered for the position. He was found not suitable **ferfunctions** as he failed to demonstrate that he possessed the required competencies for the position.
- 44. The Applicant has no standing to challenge the selection of another candidate. The Applicant as a staff member only has standing to challenge a decisionaffecting his own terms of appointment or contract of employment.
- 45. Under section 9.4 of the dministrative instruction on staff selections candidate recommended for selection should be placed on a roster automatically. However, the Applicant was not remained for selections cause of how he performed at the interview. He therefore had no entitlement to be placed on a roster. The fact that he was not placed on the roster is not evidence of collusion it is the consequence of an application of the appriance rules and an acknowledgement that the Applicant failed to demonstrate to the interview panel that he possessed the requisite competencies of the position.
- 46. The Applicant has suffered no economic loss. He was not selected for the position because dfis performance at interview. The decision to select another candidate for for

- 48. In his Application, the Applicant has made references to settlement negotiations, which took place between MEU and himself. This is in direct violation of art. 15.7 of the Dispute Tribunal's Rules of Procedure, which wide that "No mention shall be made of any mediation efforts in documents or written pleadings submitted to the Dispute Tribunal or in any oral arguments made before the Dispute Tribunal
- 49. Accordingly, the Respondent submits that the references ton formal conflict-resolution process or mediation in the Application should be struck out.

#### **CONSIDERATIONS**

- 50. Was the decision not to select the Applicant lawful?
- 51. It is well established in law that in civil litigation the burden o50igat0.08 606.72 20(v)9(il )-27

(UNITAR) Geneva, Switzerland; (b) Maîtrise en droit [Masters in Law] as well a Licence en Droit (320 [Degee] from the Université de Yaoundé II, Cameroun; (c) A Maîtrise de Langues Étrangères Appliquées [Humanities/ Other Humanities/ applied Foreign Languages] from the Université Sorbonne Nouvelle (Paris 3); ADiplôme de Traducteur [Diploma in Translation] from the Université Sorbonne Nouvelle (Paris 3); (d) A Degree in English and French language and Literature from the Université de Yaoundé I, Cameroun.

- 54. In matters of selection of staffhe role of the Dispute Tribunal is to review the challenged selection pess to determine whether a candidate has received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration
- 55. The United Nations Appeals Tribun(Appeals Tibuna) has held that:

There is always a presumption that official acts have been regularly performedBut this presumption is a rebuttable one. If managements able to even minimally show that the Appellant's candidature was given a full and fair constitution, then the presumption of law stands satisfied. Thereafthe burden of proof shifts to the Appellant who must show throughlear and convincing evidence that she was denied a fair chance of promotion (emphasis added)

- 56. The presumption of regularis rebutted by evidence of a failure to follow applicable procedure sias in the decisiormaking processand consideration of irrelevant material or extraneous factors
- 57. Following careful reviewof the facts as they appear in the pleading that the accompanying documentary evidence the Tribunal is unable to conclude that the conclude that t

the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies.

...Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

- 62. In *Ibekwe*<sup>6</sup>, the Appeals Tribunal held that a staff member who is challenging his or her selection cannot base the claim on general discrimination but must demonstratepecific discrimination when he or she was denied appointment to a specific post for which he or she had competed.
- 63. On the evidence before the Tribunalcannotconclude that the Applicant was subjected to any discrimination that the selection exercises tainted

Conclusion

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