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Case No. UNDT/NY/2018/065

Judgment No. UNDT/2020/003

Consideration

The issues of the present case

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minimally show that [an applicant's] candidature was given a full and fair consideration, then the presumption of law stands satisfied" where after the applicant "must show through clear and convincing evidence that [s/he] was denied a fair chance of promotion" in order to win the case (*Lemonnier* 2017-UNAT-762, para. 32).

Was the written test properly administered or did any irregularities, procedural or substantive, occur?

Did the Administration properly rectify all shortcoming following from the technical IT issue, which caused the Applicant's written test to be submitted too late and initially disqualified?

12. The Tribunal notes that the parties agree that the technical IT issue with OHCHR's email server erroneously initially caused the Applicant's application to be disqualified from the selection process. From the agreed facts also follows that the CRP's endorsement of this process was given before the mistake was discovered and that the Applicant's test was only thereafter corrected by the assessment panel. Consequently, the CRP was never provided an opportunity to assess the part of the process involving the evaluation of the Applicant's written test, including that the rating of her score was deemed to fall below the minimum passing score.

13. The Applicant, in essence, submits that it was inappropriate for the Administration not to take action on the erroneous disqualification of two candidates until the CRP had already endorsed the selection recommendation on 11 April 2017 and that it also failed to notify the CRP of this mistake.

14. The Respondent contends that when the hiring manager discovered that the Applicant's late submission was due to the technical IT

contacted all other disqualified candidates, including the Applicant, to receive confirmation that they had submitted their answers. The written test of the candidates initially disqualified due to the technical IT error was finally assessed under the same conditions as all other candidates' tests. Only once it was established that the Applicant had not received the required passing grade, did the hiring manager give the approval to proceed with the selection exercise. The Administration had no control over the technical error in the computer servers, and once known, the error was corrected in good faith which prevented any impact on selection process.

15. The Respondent further submits that since the technical error was discovered after the transmission of the final memorandum to the CRP, which constitutes a Central Review Body ("CRB") and the subsequent grading of the Applicant's test revealing that she had failed, it was not considered necessary to update or resubmit the transmittal memorandum. The transmittal memorandum submitted to the CRP accurately described the assessment method used to evaluate the candidates, as well as provided a comprehensive record of the result of the assessment conducted during the competency-based interview. The Administration's reaction at that time concentrated its efforts on ensuring full and fair consideration of the candidates despite the technical error. The hiring manager therefore put the recruitment process on hold and made sure that the Applicant's written test would be assessed as the other candidates' tests. The Administration then did not consider necessary to revise the transmittal memo which would have only changed the Applicant's status from "disqualified" to "failed the assessment". Even if one considers that a resubmission of an updated transmittal memo to the CRP would have been

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selection decision is made in writing” (emphasis added). Unlike what the Respondent submits, ST/AI/2010/3 does give a very clear indication as to when an unsuccessful job candidate, like the Applicant in the present case, is to be notified. The Tribunal

the nature of the specific assessment type entails revealing the identity of the applicants” (see point 9, Chapter 7). The email sent to the Applicant on 5 April 2017 informing her that her candidacy had not been successful did not reveal her identity to the panel members, including the hiring manager. The document referred to by the Applicant only shows an email from Ms. AB for the purpose of keeping record of the notification that she had sent at the same time to all candidates who had failed the test

test is compromised. The fact that such irregularity occurred, however, is not by itself indicative that the process was irretrievably flawed as the administrator of the test

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that the panel members merely disagreed a great deal about the different job candidates' performances in the written test.

37. Consequently, after considering both the calculation mistakes in the grading of the Applicant's test response and the intentions of the assessment panel members, the Tribunal concludes that despite the different flaws which affected the selection process, the Applicant's test response did receive an objective and independent assessment.

Were any of the alleged irregularities of such a nature that had they not occurred, the Applicant would have had a foreseeable and significant chance for promotion?

38. The Applicant submits that she had a significant and foreseeable chance of selection as evidence shows that she was a serious contender for the post. Firstly, it is not disputed that she not only met all the requirements for the post but also all other desirable criteria. Secondly, the Applicant should have been invited for an interview. At that stage, she would have only been competing with four other candidates, one of whom did not possess the language requirement. Thirdly, the Applicant's ability to perform higher functions at the G-7 level was recognized in rather unequivocal terms by her second reporting officer in her 2015-2016 electronic performance assessment system report, which immediately preceded the impugned selection process. In the overall end-of-cycle comments, it was recognized that "she is ready to assume higher-level responsibilities and more independent managerial tasks. It is in the interest of the Organization to invest in her continued career development".

39. The Respondent submits that the technical IT error, which occurred during

was not provided will full information about the selection process, including with regard to the circumstances surrounding the assessment of the Applicant's test; (b) no relevant measures were taken to resolve the potential breach of anonymity when grading the Applica

Conclusion

43. The application is rejected.

(Signed)

Judge Joelle Adda

Dated this 10th day of January 2020

Entered in the Register on this 10th day of January 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York