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did not have the required seven years' "progressively responsible experience in high volume procurement", something he had himself indicated in his communications with his supervisor and the PD Director. As such, he had no prospect of selection and the breach did not result in "denial of a loss of chance of promotion". The UNDT did not award him compensation and rejected his remaining claims.

Submissions

Mr. Charles' Appeal

10. Mr. Charles submits that the Dispute Tribunal made several errors of fact and of law, including misunderstanding his application and ignoring his motion for disclosure of documents pertaining to the evaluation process.

11. Mr. Charles claims the UNDT erred in finding that his case "was against the decision not to select" him, noting "[t]he focus of my appeal was at all times and remains on the unfairness and unlawful nature of the selection process".

12. Insofar as the substance of the case is concerned, he contends that the errors committed by the Respondent significantly deprived him of a real opportunity to be, at the least, rostered, if not selected and promoted. He asserts that he has adequately discharged the burden of proving that there were procedural flaws and bias in the selection process which prevented him from receiving full and fair consideration, and refers to the issuance of misleading vacancy announcements; the decision to review 30- and 60-day candidates together; the decision to combine the exercises; and, the evaluation process. Furthermore, he disputes the finding of the UNDT that he was adequately notified of the selection decision.

13. Mr. Charles submits that he has "suffered significant material damage, as well as a high degree of moral damage as a consequence of the flaws in the selection process".

14. He requests the Appeals Tribunal to find that his candidature was not given full and fair consideration and that his contractual rights were violated. He seeks "monetary compensation, as the Tribunal deems reasonable and appropriate under the circumstances".

15. Finally, Mr. Charles contends that his case was unreasonably delayed at the UNDT, resulting in "tremendous uncertainty and anxiety".

Secretary-General's Answer

16. The Secretary-General considers that Mr. Charles has established no factual, legal or procedural errors on the part of the Dispute Tribunal that would warrant reversal of its Judgment.

17. On the substance of the case, the Secretary-General submits that the UNDT correctly concluded that Mr. Charles did not have the professional experience required, and that the interview panel conducted the interview in a fair and reasonable manner, without bias or prejudice, and did not act ultra vires in finding that he lacked the required experience.

18. The Secretary-General further submits that the UNDT was correct in not awarding compensation to Mr. Charles, who suffered no harm as a result of the procedural irregularity in his case.

19. The Secretary-General requests the Appeals Tribunal to affirm the Judgment of the UNDT, and to dismiss the appeal in its entirety.

Considerations

20. The first issue to be addressed is the Dispute Tribunal's decision not to take up the Appellant's motion for disclosure of documents pertaining to the evaluation process prior to the final judgment. Whilst an advance express decision on that motion would have been preferable, the Appellant fails to demonstrate how the implicit denial affected his rights or how the disclosure would have had a relevant impact on the evidence already collected in this case, the basic facts of which were not contested. Therefore, there are no procedural grounds to vacate the Judgment under appeal.

21. With respect to the merits of the case, the Tribunal holds that the Appellant has not established any error of fact or law that would warrant reversal of the first instance Judgment. This Court held in *Isarabhakdi* that "[i]t is not enough to demonstrate an illegality to obtain compensation: the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting from the illegality on a cause-effect lien. If these other two elements of the notion of responsibility are not justified, only the illegality can

be declared but compensation cannot be awarded.² As stated by this Tribunal in Wu, “not every violation of due process rights will necessarily lead to an award of compensation”.³

22. We agree with the UNDT’s determination that the Appellant had no chance of being promoted, since he did not have the years of experience required for the P-4 positions in which he was interested. Hence, the errors committed by the Respondent (i.e., about the 30-day candidates’ right to priority consideration; notification of his non-selection) did not deprive him of a real opportunity to be promoted or even included in the roster. He cannot be considered simply as a candidate qualified for the post but not selected after the competitive process, thereby suitable to have his name put on the roster, because his lack of experience, albeit noticed late, made him unsuitable for the positions. Despite any procedural flaws in the impugned process, he had no foreseeable chance of being promoted or included in the roster; the irregularities did not, thus, affect his status as a staff member.

23. This reasoning leads us to affirm the correct decision not to award compensation to the Appellant, as adopted by the Dispute Tribunal.

Judgment

24. The UNDT Judgment is affirmed and the appeal is dismissed in its entirety.

² Isarabhakdi v. Secretary-General of the United Nations, Judgment No. 2012-UNAT-277, para. 24.

³ Wu v. Secretary-General of the United Nations, Judgment No. 2010-UNAT-042, at para. 33.

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Dated this 28th day of March 2013 in New York, United States.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Lussick

Entered in the Register on this 24th day of May 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar