



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2019-UNAT-928

**Abdellaoui
(Appellant)**

v.

Secretary-General of the United Nations

Counsel for Ms. Abdellaoui: Self-represented
Counsel for Secretary-General: Wambui Mwangi

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/113, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 21 November 2018, in the case of Abdellaoui v. Secretary-General of the United Nations. Ms. Naima Abdellaoui filed the appeal on 24 January 2019, and the Secretary-General filed his answer on 25 March 2019.

Facts and Procedure

2. Ms. Abdellaoui is an Arabic Reviser (P-4), on a permanent appointment in the Arabic Translation Section (ATS), Division of Conference Management (DCM) at the United Nations at Geneva (UNOG). She filed two applications before the UNDT: one contesting the decision not to short-list her and the other contesting the decision not to select her for the post of Chief, ATS at the P-5 level in DCM/UNOG. The UNDT ordered that the proceedings of the two cases be combined since the two contested decisions involved the same job vacancy. Ms. Abdellaoui satisfied the requirement of a management evaluation request for both contested decisions.

3. The post in issue was advertised in Inspira from June to August 2016 and contained the following requirement relating to professional experience:

A minimum of ten years of professional experience in translation, revision and/or in the provisions of language or language related services, of which preferably four years [were] within the United Nations. Significant language-related management experience in international, regional or national institutions is required.

4. Ms. Abdellaoui was one of 23 candidates released to the Hiring Manager, who was the Chief of the Language Service. Following the Hiring Manager's review, 17 candidates including Ms. Abdellaoui and four others serving at the P-4 level from ATS/DCM/UNOG were deemed not suitable. The remaining six candidates were short-listed for a written test, and thereafter, five candidates were invited to an interview. Two candidates were found to have met all the criteria and were placed on a recommended list, which was endorsed by the Ceo7otto wecis trans t(-.01D)5R2787 Bure Ab

5. In the impugned Judgment, the UNDT dismissed Ms. Abdellaoui's applications having found that she had been given full and fair consideration. The UNDT found that the Administration had provided a clear and lawful account of the process through which the candidates had been assessed and had provided satisfactory explanation for not considering Ms. Abdellaoui as a suitable candidate. Ms. Abdellaoui's wide ranging allegations of impropriety in the selection process were without substance and there was no evidence of bias or extraneous motive. In particular, the UNDT found that the classification of the post prior to its announcement from a "geographical" to a "language" post removed the lateral move requirement to Ms. Abdellaoui's benefit. The UNDT found no merit to Ms. Abdellaoui's claim that the classification of the post was used to add an illegal requirement, namely, "significant language related management experience in international, regional, or national institutions" as this requirement had also been listed in vacancies of similar posts in other language units. At the hearing, the Hiring Manager testified that she considered this requirement was met if a candidate had either served as Chief for one to three years or frequently served as Officer-in-Charge(OiC), and that she would look at the breadth and depth of the managerial experience. The UNDT found that the Hiring Manager had applied this criterion consistently to all the candidates and that she did not abuse her discretion when she determined that Ms. Abdellaoui's supervision of interns over the years had not satisfied the requirement.

6. The UNDT further found that even if the post remained under the job code of Senior Reviser, for which Ms. Abdellaoui was rostered, she still would not have been shortlisted and offered the position because the Hiring Manager had decided to conduct a full selection exercise and not recruit from the roster. As to Ms. Abdellaoui's argument that the Hiring Manager prevented her from gaining managerial experience by not assigning her to act as OiC in March 2016, the UNDT noted that this still would not have changed the fact that at the time of the vacancy in June 2016 she did not have the requisite managerial experience. The UNDT noted that because she had failed to contest that decision before the Management Evaluation Unit, it was not an issue before it.

7.

filed his response requesting the Appeals Tribunal to reject her motion. On 27 March 2019, this Tribunal issued Order No. 343 (2019) denying Ms. Abdellaoui's request on the ground that she had failed to demonstrate how inclusion of this additional evidence complied with Article 2(5) of the Appeals Tribunal's Statute, which required exceptional circumstances.

Submissions

Ms. Abdellaoui's Appeal

8. Ms. Abdellaoui requests the Appeals Tribunal to rescind the contested decision and to appoint her to the post of Chief of ATS, UNOG. To make it possible, she requests this Tribunal to order the Under-Secretary-General for DCM to laterally move the incumbent from the post in issue to the vacant post of Chief, ATS in Vienna. She also requests reimbursement of her attorney's fees, the award of moral damages in the amount of two years' net base salary (NBS) for damage to her reputation and career prospects, and material damages in the amount of two years' net base salary for damage to her well-being and mental and physical health.

9. In support of her request, Ms. Abdellaoui argues that the UNDT erred in its case management as relates to the following: i) the consolidation of her two applications served the interests of the Administration only; ii) the UNDT should not have had a hearing which weakened her position as a self-represented party and there had been sufficient evidence already before it; iii) the Judge asked her and her counsel to discuss among themselves her requested damages, thus misleading her into believing that the UNDT acknowledged what she had gone through; and iv) the UNDT rejected her motion for witnesses to appear, and her other cases before UNDT were transferred from one judge to another.

10. In addition, Ms. Abdellaoui argues that the UNDT Judgment lacks impartiality as it condoned the Administration's discrimination when it did not implement recruitment equally to all female candidates and for condoning an improper reclassification of the post. In particular, the UNDT erred in fact in finding that prior to advertising the post it had been classified as "geographical" rather than as "language". The posts had been turned into language posts back in 2015 by the Hiring Manager before advertising two Chief posts in French and Chinese. She tried to revert the post back to a geographical classification as a pretext to depart from the two prior Chief vacancies and exclude her from fulfilling the

Hiring Manager had rejected her requests to serve as OiC; iv) the Administration did not associate the job title prior to the recruitment; and v) the selected candidate was an external candidate who did not possess the requisite experience.

The Secretary-General's Answer

14. The Secretary-General requests this Tribunal to affirm the impugned Judgment and dismiss the appeal in its entirety. In support thereof, the Secretary-General argues that Ms. Abdellaoui fails to identify any reversible error in the Judgment; she merely disagrees with the Judgment and repeats the same arguments she made before the UNDT. The UNDT correctly concluded that the reclassification exercise was lawful. Ms. Abdellaoui's argument that the reclassification violated Administrative Instruction ST/AI/1998/9 (System for Classification of Posts) is a new argument not previously before the UNDT and cannot be introduced on appeal. Should this new argument be considered, the Secretary-General notes that Ms. Abdellaoui has already conceded that the roles and responsibilities set forth in the vacancy were identical to those for the Chiefs of French and Chinese translation sections as they had been changed to include a requirement for management experience. Thus, the inclusion of this requirement was lawful. As there was a change in the functions of the post that had occurred since the previous classification, the decision to reclassify the post of Chief, ATS, was in accordance with ST/AI/1998/9. Ms. Abdellaoui argues on appeal that the inconsistencies as to who requested the reclassification of the post is evidence of extraneous factors. Whether the request was made by the Executive Officer or the Hiring Manager was immaterial as all parties had agreed that the functions of the post materially had changed. Accordingly, the UNDT correctly found that she failed to meet her burden and concluded there was no evidence of improper motivation.

15. The UNDT correctly concluded that Ms. Abdellaoui's roster status had not impacted her non-selection. She was not considered a rostered candidate for the role of Chief, ATS, but her roster was for a Senior Reviser, which had a significantly different profile. Nonetheless, her roster status had no bearing on the short-listing criteria. As for the criteria, the UNDT correctly held that the requirement for managerial experience had been consistently applied. Notwithstanding the distinction between her supervisory experience over "two" interns versus "several" interns, the UNDT held that it was reasonable for the Hiring Manager to view

Accountability Framework, ST/AI/1999/9, and the Secretary-General's 2017 System-Wide Strategy for Gender Parity. The successful candidate is a woman and her selection was consistent with these policies.

16. Lastly, the Secretary-General submits that there is no merit to Ms. Abdellaoui's argument that the UNDT Judge at the hearing should have done a thorough cross-examination on her behalf since she had dismissed her counsel on the first day of the hearing. Likewise, there is no merit in her argument that the UNDT erred in holding a hearing in the first place since

Case management issues

19. We reject Ms. Abdellaoui's allegation that the case management of the UNDT was flawed. The UNDT has a broad discretion in managing its cases and we cannot see that this discretion was abused. The UNDT held an extensive hearing with several witnesses, which is the usual procedure when the facts of a case are unclear and/or the Dispute Tribunal has to deal with difficult legal issues. It undertook a thorough examination of the legality of the selection process.

Re-Classification of the Chief, ATS post in 2016

20. There is no merit in Ms. Abdellaoui's allegation that the post had been changed from a "geographical" to a "language" post as early as June 2015. Neither before the UNDT nor on appeal has Ms. Abdellaoui presented any evidence to support this allegation. To the contrary, both the documentary evidence and the witness statements during the oral hearing before the UNDT show that the post had originally been a geographical post and was only re-classified to a language post after a request by the Hiring Manager, Ms. Keating, dated 19 May 2016.

21. In addition, there is no merit in Ms. Abdellaoui's allegation that the Chief, ATS post in 2016 was re-classified in a way that it differed from the similar positions of Chief of the French Translation Section and Chief of the Chinese Translation Section advertised in June 2015. It is true that those job openings, under a Posting Title "Chief P-5", contained a Job Code Title "Senior Reviser", which obviously caused some confusion as "Senior Reviser" is also a P-5 position and, at the time, there were job openings with the same Job Code Title (Senior Reviser) but under a different Posting Title (Senior Reviser P-5).

22. However, it is obvious from the documentary evidence that, although both positions "Chief, ATS" and "Senior Reviser" are at the P-5 level, they can differ substantially with regard to duties and responsibilities. As can be seen from the 19 May 2016 reclassification request, the incumbent of the post of "Chief, ATS" has to supervise not only the P-4 Revisers and the P-3 Translators, but also the P-5 Senior Revisers while himself/herself being under direct supervision only of the Chief of Language Service, who is at the D-1 level. It is well understandable that management experience is required for such a position.

23. Comparing the job openings for the positions of Chiefs of the French, Chinese and Arabic Translation Sections, we cannot fi

in a complex duty station. Ms. Abdellaoui, in her appeal, does not present any convincing argument why this standard would be unlawful or unreasonable. Though it shows some flexibility, it is not “vague”. Neither does the Appeals Tribunal have a reason to doubt the UNDT’s finding that the abovementioned standard had been consistently applied to all the candidates for the position. On appeal, Ms. Abdellaoui does not present any evidence which could induce the Appeals Tribunal to assume that the standard had not been applied consistently.

27. Like the UNDT, we think it was obvious that Ms. Abdellaoui did not fulfill the requirement of significant management experience and it was thus lawful not to short-list and select her for the position in question. She herself concedes, in her personal history profile (the application form) and during the oral hearing, that her management experience related only

Opportunity to acquire managerial experience

29. We find that the UNDT did not err in stating that Ms. Abdellaoui had not been unduly denied the opportunity to acquire in-house managerial experience. Due to the situation of the ATS in Geneva, which is a rather big unit (the record indicates that this unit consisted of one P-5 Chief, three P-5 Senior Revisers, eight P-4 Revisers and twelve P-3 Translators), one P-4 Reviser like Ms. Abdellaoui will usually not act as OiC. When the P-5 Chief is away, it would be one of the P-5 Senior Revisers who would serve as OiC. It seems hardly possible to name a P-4 staff member as the OiC, while higher ranking P-5 staff members are on duty. We note that Ms. Abdellaoui, for family reasons, was not able to take up a position in another duty station and was thus restricted to the ATS in Geneva.

Extraneous factors and policy matters

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Judgment

33. The appeal is dismissed and Judgment No. UNDT/2018/113 is hereby affirmed.

Original and Authoritative Version: English

Dated this 28th