



UNITED NATIONS DISPUTE TRIBUNAL

Original: English

Before: Judge Adams
Registry: New York
Registrar: Hafida Lahiouel

KRIOUTCHKOV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:

Introduction

1.

1. Provide in a timely manner translations, subject to revision, from English, Spanish and French to Russian, of documents covering the full range of subjects dealt with by the UN.

RELATED ACTIONS: The activities are of a continuing nature and based on the job description.

SUCCESS CRITERIA: Translations of the above-mentioned documents, requiring light to moderate revision, are submitted within

in economics and legal matters. While translating and *self-revising*, the reviser will have to meet the established workload and quality standards; develop new terminology for use where none exists in the target language, carry out linguistic research and participate on the preparation of terminological bulletins and glossaries, technical vocabularies and related reference tools; coach and assist temporary and junior translators and brief them on the procedures and practices of the Section, terminology and a number of subjects, as required; participate in drafting or consistency groups; perform other related duties as required.

...

Qualifications:

...

Work experience: At least five years of translation experience, of which three should have been within the United Nations, with *experience in self-revision*. Knowledge of a broad range of subjects dealt with by the United Nations, with recognized specialization in criminal and /or trade law.

...

Other skills: Knowledge of CAT tools. Some degree of specialization in subjects dealt with by the United Nations, especially in economics and legal matters.

(Italics added.)

5. The respondent conceded that the vacancy announcement was not sent to the applicant's office by mistake, and that he did not know of it at the time.

6. UNOV did not receive any applications in response to the internal vacancy announcement and the post was accordingly advertised on Galaxy (the online UN job site) on 3 July 2008. The Galaxy announcement was almost identical to the internal vacancy announcement. The only relevant differences were first, that the second sentence under "Responsibilities" referred to "translator" and not "reviser", which therefore instead read: "While translating and self-revising, the *translator* will have to meet ...", and secondly that under Qualifications, "Other Skills", (under which knowledge of CAT tools were mentioned) were described as "Other *Desirable Skills*" (italics added). The evaluation criteria, which had been pre-approved by the Central Review Committee (CRC), closely reflected the description of the responsibilities for

the position from the vacancy announcements and literally repeated the qualification section from the Galaxy advertisement. The Officer-in-Charge, Conditions of Service Selections (OIC/CSS), Office of Human Resource Management (OHRM) stated that the post in question is “representative of a P-3 level classifiable position” and did not violate the discretion to vary to some degree the specialised requirements of the post.

7. On 8 July 2008 the applicant applied for the vacancy as the only candidate to do so within the 15-day mark. The applicant claimed that he forwarded his last two e-PAS records by facsimile on 8 July 2008 to UNOV but there is no record of its receipt. The Programme Case Officer (PCO) thus considered only the applicant’s Personal History Profile (PHP) for the purpose of identifying candidates who satisfied the necessary prerequisites and should be placed on the short-list for interview. The relevant evaluation criteria had been approved in the usual way by the Central Review Committee (CRC) prior to the advertisement of the position on Galaxy.

8. In September 2008 applications from three external candidates were released at the 60-day mark and evaluated against the evaluation criteria. One of these candidates was tested and interviewed on 10 and 15 September 2008, and this candidate was subsequently recommended for the post to the CRC on 15 October 2008. However, the CRC returned this recommendation to the PCO as it was not clear how the weaknesses expressed by the PCO regarding the applicant’s candidacy had been established based on his PHP and, implicitly, that the e-PAS records should also have been examined. The PCO therefore decided to restart the evaluation process. Following a request for his last two e-PAS records, the applicant supplied them on 17 November 2008. Based on these and the applicant’s PHP, the applicant received the following overall evaluation (which, it seems, was prepared by the PCO) in the Galaxy evaluation compendium (only parts relevant to this case are included) –

Competencies

...PHP cover note contains the text from the description of responsibilities and competencies in the VA [vacancy announcement] with minor changes and without specific examples. Description of duties is limited entirely to relevant standard/generic job profiles. Achievements for the last 18 years are moderate: 'timely and accurate documents translation/revision'. The candidate does not meet the major criteria (self-revision/revision and translation of texts on criminal and/or trade law) and meets only some of the work experience (at least five years of translation experience) and education/languages formal criteria: - as stated on his last two e-PAS reports 'the staff member provided translation ... with quality requiring medium to light revision', and 'generally, the staff member was not assigned self-revision jobs'; - no terminological and reference research specified; - did not demonstrate his ability to produce his output on screen and, as stated in his last two e-PAS reports, 'his ability to produce his output on screen remains to be proved'; - did not demonstrate any knowledge of CAT tools; - has limited potential, if any, to coach and assist temporary and junior translators (require revision himself); - did not demonstrate a recognized specialization in economics and legal matters: no experience with UNCITRAL [United Nations Commission on International Trade Law] (until recently one half of the in-session documents was translated in UNHQ) documentation (of special practical significance, as the ongoing everyday work-pressure requires full operational sustainability of anyone entrusted with self-revising functions under this post). The candidate definitely does not meet the requirements of the post as he is not able to self-revise texts requiring experience and recognized proficiency in economics and legal matters, can not be allowed to participate in drafting or consistency groups or to coach and assist temporary and junior translators. In the overall comments on his last e-PAS report (2007-2008) the FRO [the first reporting officer] states that 'some translation quality upgrading would be in order'

...

Experience

The candidate meets only some of the criteria, but does not meet the major criteria (self-revision/revision and translation of texts on criminal and/or trade law): - 18 years experience in translation of UN documents; - requires medium to light revision, not assigned self-revision jobs (e-pas); no terminological and reference research specified; - did not demonstrate his ability to produce his output on

11. On 2 December 2008 the Director-General of UNOV decided to accept the recommendation and the external candidate was chosen for the position. The applicant said that he was not informed of the outcome of his application. On 25 December 2008 he discovered that he was unsuccessful when he saw that the post had been filled on the UN website on 25 December 2008. On 5 February 2009 OHRM approved the selection. On 25 February 2009 the applicant submitted his request for administrative review. On 26 February he discovered that there had been an internal vacancy announcement. Also on this day, the PCO informed him that he had not been selected for the post.

Applicant's submissions

12. The applicant did not received the internal vacancy announcement, which was a breach of his entitlements.

13. The applicant was not fully and fairly considered for the post, since he was appraised against standards normally reserved for P-4 level revisers, whilst the position was P-3 level, a violation of sec 4.3 of ST/AI/2006/3. Under the "GJP [ie, generic job profile] Guidelines" any significant departure must be justified, but the respondent did not do so. In particular, self-revision is not a job responsibility of, nor is it a required qualification for, translators below the P-4 level. According to the generic job profile, while P-4 translators provide translations "mostly without revision" and self-revision is listed as an "expected result", the work of P-3 translators is "subject to revision" and neither self-revision nor experience in self-revision is listed as a responsibility. This suggests that the generic job profile for P-4 level revisers was used to create the vacancy announcement, to which the different uses of the term "reviser" or "translator" in the vacancy announcements also point. It can be deduced from the applicant's e-PAS report from 2007-2008 that the applicant had some experience in self-revising.

14. By substituting the requirements for P-4 level reviser for the requirements for P-3 level translator, the respondent violated the applicant's legitimate expectation as a P-3 translator with 18 years of experience that his application would be treated as an application for a lateral transfer. It is a "universal obligation of both employee and employer to act in good faith towards each other": *James* UNDT/2009/025. The applicant was treated as if he had applied for a promotion when he was in fact seeking a lateral transfer.

15. The respondent improperly appraised the applicant against a 60-day external candidate in violation of sec 7.1 of ST/AI/2006/3.

16. The applicant was not informed that he was not selected or placed on the roster, which breaches the applicant's rights under sec 9.5 of ST/AI/2006/3.

Respondent's submissions

17. The issue of the applicant not receiving the internal vacancy announcement is not receivable since it was not the subject of his request for administrative review (under former staff rule 111.2). In any event, there is no obligation to advertise internally rather than on Galaxy.

18. The applicant was not evaluated against the requirements of a P-4 level reviser position. The requirements for the different posts may vary within the same grade level and managers are provided with wide discretion in building the vacancy announcements. The vacancy announcement for the contested post required experience in self-revision, but this did not alter the classification level of the post.

19. The selection process was not flawed. The applicant did not meet the requirements for the post since he was not a "suitable candidate" under sec 7.1 of

Self-revision as a requirement in the vacancy announcements and for the post

23. The applicant claims that both vacancy announcements (the internal and the Galaxy advertisements) improperly deviated from the generic job profile by including self-revision as a required qualification. Sec 1 of ST/AI/2006/3 defines a generic job profile as –

... a classified standard job description that encompasses a large group of related jobs for which major characteristics of the job are similar in duties and responsibilities, education, work experience, technical skills and essential core competencies.

Sec 4.3 requires –

[the] vacancy announcement ... [to] include the qualifications, skills and competencies required and reflect the classified functions of the post, using to *the greatest possible extent* the database of generic job profiles maintained by OHRM [italics added].

Accordingly, requirements differing from those expressed in a generic job profile which are seen as necessary or desirable for the particular post are permitted. Indeed, PCOs, when building vacancy announcements and evaluation criteria, are instructed that “elements of [the generic job profile] which are at a generic level should not be copied wholesale in [the vacancy announcement/evaluation criteria]” (see Staff Selection System Guidelines for Programme Managers, sec III, “Responsibilities”).

24. The applicant’s submission would be correct if the specified requirements amounted to an attempt to fill what was in substance a P-4 post at the P-3 level. Such an attempt would undoubtedly be improper. However, a variation of one of a number of necessary requirements would be unlikely to be sufficient. This is also explained in the GJP Guidelines, which state that the “[specific] duties of a particular job are not identified in a GJP” and continue –

GJPs form the basis from which VAs are created. ***Managers will not be able to modify GJPs in any way.*** However, managers may tailor VAs by adding or deleting bullets taken from the GJPs to highlight responsibilities, educational requirements and work experience of a

particular job to meet their recruitment needs. Too much tailoring of VAs from the original GJP would be a cause for concern and could lead to questions concerning the classified level of the job.

25. The respondent submitted (and it did not appear to be contradicted by the applicant) that self-revision skills were crucial for the P-3 translator position with UNOV as up to half of the work, and sometimes much more, had to be self-revised. However, the actual evidentiary value of a submission in the absence of any actual

the evaluation criteria and applicable to the evaluations both of the PCO in identifying the candidates for interview and of the interview panel in assessing the

meaning of sec 7.1 of ST/AI//2006/3. Since the only material available to the PCO was that contained in his PHP, the applicant was initially assessed as not fulfilling the requirement of self-revision experience and, accordingly, not interviewed. At that stage, he was not a “suitable candidate” and it was necessary to consider the other non 15-day candidates. The e-PAS reports were later considered in the context of a re-appraisal of his suitability. Although they provided some slight evidence of self-revision, the panel’s appraisal of the applicant against the evaluation criteria was that he was not suitable for the variety of reasons that have been mentioned. Had he been found to be suitable, as the only eligible 15-day candidate he must have been appointed, however favourable had been the appraisals of the other candidates that had occurred in the meantime, since he could not lose the priority accorded to him by sec 7.1 as an eligible 15-day candidate merely because, as it happened, the other candidates had been appraised before him as a matter of chronology: see *Kasyanov*. It follows that, once it be accepted that the applicant was found not be suitable for appointment, there was no error in not appointing him.

35. That the applicant found the process prolonged, stressful and humiliating is unfortunate, and maybe understandable, but there is no basis for concluding that he was unfairly appraised or that the incorrect criteria were applied to his suitability.

The applicant not being informed of the decision

36. The programme manager is obliged, under sec 9.5 of ST/AI/2006/3 to inform unsuccessful interviewed candidates of their non-selection. It is implied that the information must be conveyed within a reasonable time. To leave these candidates to discover their lack of success by checking a later Galaxy announcement showing the

UN website, ie, three weeks after the decision of the Director-General of UNOV was made. I would accept that, as with all candidates, there are natural feelings of uncertainty and anxiety in these situations, but the applicant's feelings would scarcely have been assuaged by discovering he had failed.

Conclusion

37. No legally adverse consequences followed from the failure to inform the applicant of his failure within a reasonable time. I am not prepared to find that the right is valueless, although only nominal compensation is payable. I award the applicant the sum of US\$500 for this breach of his contract.

38. In all other respects, the application is dismissed.

(Signed)

Judge Adams

Dated this 15th day of April 2010

Entered in the Register on this 15th day of April 2010

(Signed)

Hafida Lahiouel, Registrar, New York