



Judgment No. 2014-UNAT-468



Counsel for Mr. Skourikhine: Self-represented

Counsel for Secretary-General: Rupa Mitra/John Stompor

JUDGE INÉS WEINBERG DE ROCA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgment No. UNDT/2013/113, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 4 September 2013. The Secretary-General appealed 4 November 2013, and Mr. Alexandre Skourikhine filed his answer and cross-appeal on 6 January 2014.¹ On 7 March 2014, the Secretary-General filed his answer to the cross-appeal.

Facts and Procedure

2. The following facts are uncontested:²

Job Opening No. 16337

... On 30 September 2010, a P-5 post of Senior Reviser (Russian) in the Russian Translation Section (“RTS”), Division of Conference Management (“DCM”), United Nations Office at Geneva (“UNOG”), was advertised as Job Opening No. 16337.

... The Applicant did not apply for the post, but the Executive Office of DCM forwarded his name to the hiring manager, the Chief, RTS, DCM, as a roster candidate.

... On 5 May 2011, the Secretariat of the Central Review Bodies, UNOG, approved the list of recommended candidates sent to it by the Chief, RTS, DCM. The Chief, RTS, DCM, explained that he had reviewed the roster candidates but that none of them had been found suitable for the post.

... On 23 June 2011, the Director-General, UNOG, selected Mr. Mouraviev for the post advertised under Job Opening No. 16337.

Job Opening No. 17880

... On 3 December 2012, the Applicant asked the Chief, Human Resources Management Section (“HRMS”), UNOG, whether the post advertised under Job Opening No. 17880 had been filled and, if so, who had been selected.

... By email of 5 December 2012, an Associate Human Resources Officer informed the Applicant that the Job Opening published in February 2011 had been cancelled.

Job Opening No. 20354

... On 21 July 2011, the post of Senior Reviser (Russian) previously advertised under Job Opening No. 17880 was re-advertised under Job Opening No. 20354. The Applicant did not apply for this post and, at the time the Job Opening was published, he was no longer on the roster of candidates for similar posts. On 9 August 2011, the Director-General, UNOG, selected a roster candidate, Mr. Blokhine, for the post. Mr. Blokhine had submitted his application on the day that the Job Opening was published and the Job Opening was removed from public advertising on 22 July 2011.

Job Opening No. 23895

... On 23 May 2012, another post of Senior Reviser (Russian), at the P-5 level, was advertised under Job Opening No. 23895, with an application deadline of 2 July 2012.

... On 1 June 2012, the Senior Revisers’ Council, a consultative body of RTS, met and unanimously recommended that the roster candidate Mr. Bebenine should be selected for this post. Mr. Bebenine had been placed on the roster in July 2011, following Job Opening No. 16337 (see above). The Applicant was not on the said roster and, consequently, his file was not released to the hiring manager as a roster candidate.

... On 4 June 2012, the hiring manager proposed the selection of Mr. Bebenine.

... On 5 June 2012, the Applicant applied for the post through Inspira.

... On 7 June 2012, the Executive Office, DCM, sent documents relating to the selection of Mr. Bebenine, and a screenshot from Inspira showing all candidates who had applied for the post, to the Office of the Under-Secretary-General, Department for General Assembly and Conference Management (“DGACM”). On 8 June 2012, the Deputy Executive Officer, DGACM, confirmed by e-mail that the Under-Secretary-General, DGACM, had approved the selection of Mr. Bebenine.

... On 29 June 2012, the Director-General, UNOG, selected Mr. Bebenine for the post.

... On 23 August 2012, the Applicant was informed by means of an automatically generated e-mail sent by Inspira that he had not been selected for the post advertised under Job Opening No. 23895.

Requests for management evaluation

... On 17 October 2012, the Applicant submitted to the Secretary-General a request for management evaluation of the decision not to select him for the post advertised under Job Opening No. 23895.

... On 28 December 2012, the Applicant submitted a further request for management evaluation regarding his non-selection for the P-5 post of Senior Reviser, initially advertised under Job Opening No. 17880. In this request, he noted that, following the cancellation of Job Opening No. 17880, that P-5 post was filled using a different selection procedure, which led to the selection of Mr. Blokhine. The Applicant therefore requested a review of the decision to fill vacancy No. 17880 using a procedure in lieu of the original call for candidates. Furthermore, in his request for management evaluation dated 28 December 2012, the Applicant raised irregularities concerning Job Opening No. 16337, however without requesting a review of the selection decision for that Job Opening.

... In a letter dated 29 November 2012, the Under-Secretary-General for

... A hearing took place on 16 July 2013, in the presence of the parties. At the hearing, the Applicant submitted to the Tribunal his observations on the Respondent's reply, and on Mr. Bebenine's comments.

... After the hearing, the Tribunal considered that it was necessary to join the candidate selected for Job Opening No. 20354, Mr. Blokhine, as a party to the application, and invited him to submit comments, which he did on 5 August 2013.

3. On 4 September 2013, the UNDT issued Judgment No. UNDT/2013/113. The UNDT found that Mr. Skourikhine's claim regarding Job Opening No. 16337 was not receivable because it had not been subject to management evaluation. With respect to Job Opening No. 17880, the UNDT found that the Administration provided no valid reason justifying the cancellation of the vacancy and therefore found it illegal. The UNDT also found illegal the Administration's selection of Mr. Blokhine for Job Opening No. 20354 and its selection of Mr. Bebenine for Job Opening No. 23895; the UNDT opined that the Administration did not have the discretion to make a selection decision from rostered candidates, without considering non-rostered candidates for each post. The UNDT ordered the rescission of the decision to select Mr. Blokhine for Job Opening No. 20354 and Mr. Bebenine for Job Opening No. 23895 or, in the alternative, payment of compensation for material damages in the amount of USD 12,000. The UNDT also awarded Mr. Skourikhine USD 4,000 for moral damages on the ground that over a period of almost two years, he was denied serious consideration for promotions due to irregularities committed by co-workers and that these irregularities had seriously affected his living conditions.

Submissions

The Secretary-General's Appeal

4. The Secretary-General submits that the UNDT erred in law and exceeded its competence in finding that the decisions to select rostered candidates for Job Openings No. 20354 and No. 23895 were unlawful.

5. The UNDT erred in finding that appointment of staff of the "highest standards" requires a review of non-rostered candidates. Recommended candidates are placed on a roster only after a central review body confirms their qualifications and competencies, as well as the integrity of the selection process in which they were considered. Candidates who are placed on a roster have been deemed to meet the highest standards required to be appointed to the post they had applied for. Furthermore, a reading of General Assembly resolution 61/244

and the Secretary-General's report "Investing in people" (A/61/255) reveals that the use of the roster clearly serves an important interest of the Organization that has been emphasized by the General Assembly.

6. The Secretary-General submits that the UNDT erred in finding that the established staff selection framework requires a review of non-rostered candidates. Contrary to the UNDT finding, neither Section 9.4 nor Section 9.5 of ST/AI/2010/3 require that the hiring manager/head of office first review all new candidates before properly exercising his or her discretion to select a rostered candidate for a particular post. Fu

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2014-UNAT-468

THE U

and consequently caused him moral injury”. Finally, he contends that the UNDT did not err in calculating the number of promotion opportunities missed and that there is no ground for reducing the compensation awarded.

20.

27. The Secretary-General contests Mr. Skourikhine's assertion that the screening questions for Job Opening No. 23895 had been changed in order to accommodate a specific candidate. The successful candidate had been placed on the roster of pre-approved

32. We held otherwise. ST/AI/2010/3 establishes the staff selection system. Section 9.4 of that instruction, the interpretation of which is the central issue in the instant case, provides in part:

Section 9

Selection decision

9.4 Candidates for position-specific job openings up to and including at the D-1 level included in a list endorsed by a central review body other than the candidate selected

34. It was thus not open to the UNDT to come to the conclusion that Section 9.4 requires the head of department/office to first review all non-rostered candidates before selecting a rostered candidate.

35. We find that the UNDT erred in law in deciding that the appointment of the rostered candidates was contrary to ST/AI/2010/3. The decision to do so was entirely within the Administration's discretion, and no abuse of that discretion has been demonstrated.

36. The Appeals Tribunal finds that Mr. Skourikhine's contention that the UNDT failed to consider his arguments regarding the lack of experience of rostered candidates, the decision not to select him for improper motives and the existence of a black list is without merit. In fact, these issues were considered by the UNDT.

37. Accordingly, we find that there was no violation of Mr. Skourikhine's due process rights. It follows that the award of damages including moral damages in his favour cannot be allowed to stand.

Judgment

38. The Secretary-General's appeal is allowed and the UNDT Judgment is vacated. Mr. Skourikhine's cross-appeal is dismissed in its entirety.

Original and Authoritative Version: English

Dated this 17th October 2014 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Lussick

(Signed)

Judge Adinyira

Entered in the Register on this 22nd day of December 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar