



Judgment No. 2019-UNAT-961



Counsel for Mr. Wilson: Daniel Trup, OSLA

Counsel for Secretary-General: Wambui Mwangi

THE UNITED NATIONS APPEALS TRIBUNAL

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... On 30 August 2016, [the Management Evaluation Unit (MEU)] issued its evaluation letter, which rescinded the contested decision, and stated that [the Under-Secretary-General for the Department of Management (USG/DM) had decided that] selection exercise should be recommenced, with additional requirements:

- UNJSPF should establish a panel, comprising a majority of individuals outside of the UNJSPF and with no prior involvement in this recruitment, to assist the hiring manager in the recruitment.
- The panel should assess whether the rostered candidates meet the requirements and competencies of the job opening. Such assessment should include a review by the panel of the candidates' applications and competency-based interviews, as well as any other evaluation mechanisms which the panel considers appropriate.
- The panel should prepare a documented record of its assessment of the rostered candidates.
- The hiring manager should submit the documented record of the panel and his/her own reasoned recommendation for selection to the UNJSPF Chief Executive Officer ["CEO/UNJSPF"] for his decision.

... On 22 September 2016, the panel members evaluated the personal history profiles of the roster candidates, and confirmed that all of them met the requirements of the position.

... On 23 September 2016, the rostered candidates were invited for interviews to take place on 28 September 2016 via Skype, and on 27 September the names of the panel members were disclosed:

- [Mr. PD, name redacted, Deputy Chief Executive Officer (Deputy CEO)]
UNJSPF – Hiring Manager (D2)
- [Ms. OP, name redacted], Deputy Chief [Enterprise Resource Planning]
Umoja – UN Secretariat (D2)
- [Mr. CH], Director Chief Technology Officer – UNDP (D1)
- [Ms. NC], Chief Unit [Headquarters] Staffing Section [the Office of
Human Resources Management (OHRM)] – UN Secretariat (P5),
ex officio

... The panel members, with the exception of the hiring manager, were external to the UNJSPF. In addition, none of the external panel members had any prior involvement in the selection exercise.

... The Applicant's interview was scheduled for 9:00 am on 28 September 2016. Immediately thereafter, the Applicant wrote to [Ms. NC], copying the MEU, stating that he had received an anonymous email to his [United Nations] email account, which alleged irregularities in the selection process. The interview was canceled.

... The Applicant also wrote to the panel stating that on 28 September 2016, prior to the scheduled time of the 9:00 am interview, another anonymous email was

3. On 7 April 2017, Mr. Wilson filed an application with the Dispute Tribunal against the decision not to select him for JO 57744. He requested rescission of the contested decision and an award of six months' salary for violation of his rights and loss of opportunity in career advancement.

4. In its Judgment now under appeal, the Dispute Tribunal granted Mr. Wilson's application in part, but declined to award him any monetary compensation.

5. The UNDT determined that there was a lack of regulatory guidance for a selection exercise limited to rostered candidates, but if the Administration decided to establish an assessment panel to conduct a competency-based selection exercise, it must follow the general rules and directives set forth in the related regulatory framework including Administrative Instruction ST/AI/2010/3 titled "Staff selection system". "This must be particularly so where an election is made to follow such process, ... and where the initial selection exercise appeared marred with irregularity so as to be set aside by the Administration."²

6. Upon review of the history of the selection exercise for JO 57744, the Dispute Tribunal took issue with several factors, of which the most serious was the involvement of the Deputy CEO of UNJSPF in the second selection exercise as both a voting and therefore deciding member of the assessment panel and the hiring manager. In the view of the Dispute Tribunal, such an

8. While it found that the selection exercise was flawed in several respects and Mr. Wilson did not receive full and fair consideration during the selection exercise for JO 57744, the Dispute Tribunal declined to award him compensation because he had provided no evidence of either pecuniary or non-pecuniary harm. For the same reason, the Dispute Tribunal declined to rescind the contested decision because no basis existed for awarding Mr. Wilson any in-lieu compensation.

9. The Secretary-General appealed the UNDT Judgment to the United Nations

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According to the Secretary-General, this was not enough for the conclusion that his personal interest had interfered with, or was perceived to have interfered with, the performance of his official duties or with the integrity, independence and impartiality required of him in the second selection exercise.

17. Further, the Secretary General argues that *Finniss*⁵ is distinguishable from the present case, as in the former, there was an acrimonious relationship between the candidate and the panel member, which led to the perception of the possibility of bias in the panel, while, in the latter, there was no such allegation of animosity between Mr. Wilson and the Deputy CEO, as acknowledged by the UNDT.⁶

18. We agree with the Secretary-General on this issue. As governed by Staff Regulation 1.2(m) “Basic rights and obligations of staff”:⁷

[a] conflict of interest occurs when, by act or omission, a staff member’s personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member’s status as an international civil servant. When an actual or possible

must be recalled. When the first selection decision was rescinded by the Administration, the USG/DM issued specific instructions for the second selection exercise. This would involve the establishment of “a panel, comprising a majority of individuals outside of the UNJSPF and with no prior involvement in this recruitment, to assist the hiring manager in the recruitment”.⁸ There is no challenge to the fact that the Administration complied with this specific instruction, particularly with regard to the composition of the assessment panel.⁹

21. In the case at hand, the assessment panel did not consider Mr. Wilson as meeting all the required competencies and unanimously recommended another candidate for selection. This recommendation was submitted to the CEO as head of office, who ultimately took the decision to select the other candidate. Even granted that any further participation by the Deputy CEO in the second selection exercise could have been avoided in light of his involvement in the first selection exercise that had been cancelled, it is not reasonable to assume that his involvement in the first selection exercise automatically meant that he was conflicted and therefore should be excluded from any selection exercise.

22. The present case is distinguishable from *Finniss*,¹⁰ since there was no allegation of bias, discrimination or any other kind of deteriorated or privileged relationship between the involved candidates and the Deputy CEO. Therefore, no threat to his impartiality in the evaluation of Mr. Wilson’s candidacy could be assumed. On the contrary, the Deputy CEO’s participation in the selection exercise was expected and reasonable, as the selected candidate would be reporting directly to him and the CEO. This might be the reason for the UNDT’s opinion that the Deputy CEO could simply have acted as the hiring manager.¹¹ We agree with the UNDT in this finding. However, we must disagree with the UNDT when it held that the Deputy CEO should not have acted as a voting member of the assessment panel. Either there was a conflict of interest, actual, possible or perceived, or there was none. In conclusion: to

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26. The appeal is upheld and Judgment No. UNDT/2019/041 is hereby vacated.

Original and Authoritative Version: English

Dated this 25th day of October 2019 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Neven

Entered in the Register on this 20th day of December 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar