



## **Introduction**

1. The Applicant, a staff member holding a permanent appointment serving at the P-3 level as Procurement Officer in the Department of Management/Office of Central Support Services/Procurement Division/Field Procurement Service/Peacekeeping Procurement Section (“DM/OCSS/PD/FPS/PPS”) in the United Nations Secretariat, contests “the evaluation process [which] led to United Nations Office at Geneva’s (“UNOG”) decision to not even consider [her] for an assessment test and interview [ ... ]” following her application to Job Opening No. 16-PRO-UNOG-57126-R Geneva (“the JO”) regarding three Procurement Officer posts at the P-3 level within the Procurement and Contracts Unit, Central Support Services (“PCU/CSS”) of UNOG. As relief, the Applicant requests the Tribunal to:

- a. Order the Secretary-General to assess the way the vacancies, i.e. temporary [TJOs] and [JOs] are managed and advertised, to avoid wasting resources of applicants (internal and non-United Nations) who believe the vacancies to be genuine; and
- b. [The Applicant] will agree to whatever compensation the Dispute Tribunal considers to be fair and reasonable in this case.

2. The Respondent claims that the application is without merit and submits that the Applicant was fully and fairly considered for the position, and that she is not entitled to compensation since the contested decision was lawful.

## **Factual and procedural background**

3. On 6 April 2016, the JO was issued in Inspira (a United Nations online jobsite) for three posts of Procurement Officer at the P-3 level with the UNOG in the PCU/CSS Section, and the deadline to apply for the JO was 5 May 2016.

4. The JO included the following requirements:

Education

Advanced university degree in Business Administration, Public





selection exercise was made under the provisions of the ST/AI/2010/3 [(Staff selection system)] on the staff selection system.

... Information contained in [the Applicant's] PHP

... Sec[.] 7.4 of the ST/AI/2010/3 on the staff selection system provides that “[t]he hiring or occupational group manager shall further evaluate all applicants released to him/her and shall prepare a shortlist of those who appear most qualified for the [JO] based on a review of their documentation”.

... The Manual for the Applicant on the Staff Selection c149(S)-61 188.78004C(ξ)] TJETQ



because, although she met the minimum criteria for the position, she did not indicate



additional evidence, and that the Tribunal might decide the case on the papers before it.

18. In the Applicant's response to Order No. 117 (NY/2017) filed on 13 July 2017, responding to the initial reply, she stated as follows (emphasis omitted):

... Paragraphs 2, 7, 14, 19 and 21 [state as follows:] “did not indicate in her job application that she met the desirable criteria” “UNOG reasonably concluded that the Applicant did not meet the desirable criteria” “did not explicitly reference any work with ERP systems in the area of purchasing and/or supply chains” “[t]he Applicant claims that she should have been shortlisted despite her failure to identify her work with ERP” “no requirement under the Staff Selection [Administrative Instruction (“AI”)] to review performance evaluation reports during the initial screening”[.]

This is not true. ST/AI/2016/1 dated 28 [December 20]15, [s]ec[.] 5.2 states [that] “[c]andidates are required to submit their last two performance evaluation reports (PERs) as part of their applications” [...]. The two PERs elaborately describe all aspects of the experience in purchasing and supply chain management. The rationale for making the PER part of the application was to enable Hiring Managers to manually assess a candidate's experience and capabilities. I have had three similar subsequent situations ([United Nations Office in Vienna] (“UNOV/UNODC”) [P-4], [United Nations Office in Nairobi] (“UNON”) [P-3] and [United Nations Procurement Division] [P-3]), details of which I will provide, if requested, to evidence a pattern of lack of accountability in such cases, along with correspondence with the Hiring Manager UNOV/[United Nations Office on Drugs and Crimes (“UNOV/UNODC”)] who repeatedly evaded my question as to which criterion I did not meet, Head of Office (UNOV/UNODC) who chose not to respond at all, and an official at UNON who said it wwi

**Applicant's submissions**

21. The Applicant's principal contentions set in her application are as follows:

... [...] UNOG's reason f            ions

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[United Nations] Board of Auditors on 13 [March] 2008, by [the Department of Safety and Security (“DSS”)] on 22 [June] 2009, and by [the Department for General Assembly and Conference Management] on 17 [September] 2009; as P-3 Compensation Officer by [the International Civil Service Commission] on 2 [September] 2008; and as P-3 Ethics Officer by [the] Ethics Office on 14 [August] 2009); (vi) painstakingly studied all [United Nations] official languages (passed [the United Nations Language Proficiency Examination, (“UNLPE”)] in French and Spanish; passed all nine levels in Arabic, level six in Russian, and currently at level [eight] in Chinese); (vii) was willing to move to any location even laterally, yet was unable to because of the manner in which vacancies are managed and candidates selected for posts; (viii) even received a letter from [the] Central Review Panel [United Nations Headquarters] commending her interviewing skills.

... The internal justice system is a pillar in the overall effort to strengthen accountability and ensure responsible decision-making. It is in this spirit that [the Applicant] request[s] the Dispute Tribunal to:

- (a) Order the Secretary-General to assess the way the vacancies, i.e. temporary [JOs] and [JOs] [...] are managed and advertised, to avoid wasting resources of applicants (internal and non-[United Nations]) who believe the vacancies to be genuine; and
- (b) [the Applicant] will agree to whatever compensation the Dispute Tribunal considers to be fair and reasonable in this case.

### **Respondent’s submissions**

22. The Respondent’s principal contentions as set out in the reply as follows (emphasis omitted):

... The Staff Rules relevant to the selection exercise and ST/AI/2010/3 Staff selection system (Staff selection AI) were properly applied. These rules provide that job applications will be reviewed on the basis of information entered by the job applicants. The Applicant does not establish any error in the selection process, or that the selection process was tainted by extraneous considerations.

... The Secretary-General is vested with a wide discretion to select staff members for positions. The Dispute Tribunal does not substitute its own judgment for that of the Secretary-General regarding the outcome of the selection process (*Abassi*). In accordance with

[s]taff [r]egulation 4.3, selection is a competitive process. Staff members have a right to full and fair consideration; however, a staff member has no right to selection to a higher level position (*Andrysek*).

...



... The Applicant fails to meet her burden of demonstrating that the decision to not select her was arbitrary, unfair, or was tainted by any procedural flaws.

... The Applicant incorrectly claims that the recruitment exercise was a “jargon









- (a) A new position is established or an existing position is reclassified;
- (b) The incumbent separates from service;
- (c) The incumbent is selected for another position under



shortlist of those who appear most qualified for the [JO] based on  
a review of revia revi

- a. The cover letter;
- b. Part of the profile;
- c. The application form; and



level implies control of the previous level's functions and accuracy. The level of expertise is recorded as:

- a. Not Applicable
- b. Unsatisfactory
- c. Partially Satisfactory
- d. Satisfactory
- e. Outstanding.

...

Chapter 9 – Conducting Assessments:

Chap. 9.1 – Overview:

... Applicants who have successfully passed the pre-screening process are released to the Hiring Manager on a daily basis within the posting period shortly after the posting of the [JO]0000PTQq0.000005 52i80.37 523.75 Tm0 g0 ictions and



application entails reviewing and documenting the findings of a preliminary analysis for each applicant as to whether he/she meets all, most, some or none of the stipulated requirements against the evaluation criteria as stated in the [JO] in terms of:

- a. Academics;
- b. Experience;
- c. Language.

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29. The relevant provisions from the Applicant's Manual of August 2012 are as follows:

Chapter 2 – Overview of the Application Process

...

Step 4 – Complete the application:

Completing the application involves four parts:

Part 1 - Create Your Application:

Once your profile is saved, you can create an application. It is suggested that you prepare your application in advance even if you are

Part 4 - Apply to a [JO] and Answer the Questions (as applicable):

To apply to a [JO], you have to link your application to the [JO] of interest. Once you have applied to the position a series of questions, (10 to 15) may appear. These questions are selected from a library of questions, are objective and relate to the position. They are used to filter applicants and a passing grade of 80% is required.

Step 5 - Submit the Application:

Submit your application as early as possible after a [JO] has been posted and well before the deadline date stated in the [JO]. [JOs] posted on the Careers Portal are taken off at

c. Language

However, the specialized test and/or interview shall not commence until after the deadline date of the [JO] and the notification that all eligible applicants have been released has been sent.

... During the preliminary evaluation of each applicant, the Hiring Manager will review and rate each applicant in the three areas (academic, language and experience).

... After this review, which is recorded in a standardized format to enhance the quality of selected applicants, the Hiring Manager convokes the most promising applicants to an assessment exercise.

... Applicants who meet all required qualifications but do not meet the desirable qualifications are considered qualified for the job and should be considered for a long list. Applicants who meet both required and desirable qualifications are considered most promising applicants for the position.

... After the deadline date of the [JO], a substantive assessment is performed which may include, depending on success:

- a. The knowledge-based tests or other simulation exercise;
- b. The competency-based interview; and
- c. The assessment of applicants for positions involving significant functions in the management of financial, human and physical resources as well as information and communications technology shall also take into account the relevant criteria included in the [JO].

... The Hiring Manager is required to prepare a reasoned record of the evaluation of the applicants against the evaluation criteria. In doing so, the basis for this evaluation (e.g. application, cover letter, e-PAS, assessment exercise or interview) is indicated. The record should compare the applicants against the evaluation criteria and the [JO], not against one another. The Hiring Manager will review and modify the scores for each applicant, followed by selecting the applicant for the assessment exercises.

30. The relevant provisions from the Recruiter's Manual (2015 version) are as follows:

...

Chapter 5 – Advising on the Creation of a [JO]:

...



... For positions advertised at the P-3/FS-6 level, staff at the FS-5 level who are selected for such positions may only be appointed at the FS-6 level, regardless of their academic qualifications, due to the restrictions placed by the General Assembly on movement of staff from the General Service and related categories to the Professional level. Staff already at the Professional level may, of course, be appointed at the P-3 level.

... For National Professional Officer positions, the required minimum number of years of experience are:

- a. NO-A level - a minimum of one to two (1-2) years
- b. NO-B level - a minimum of two to three (2-3) years
- c. NO-C level - a minimum of five (5) years
- d. NO-D level - a minimum of seven (7) years
- e. NO-E level - over seven (7) years

...

#### Ch. 5.4.6 – Competencies:

... Every GJP and individually classified job description includes a set of applicable United Nations Secretariat competencies with their respective standard descriptions.

- a. For positions in the General Service and related category, the three most relevant competencies, one of which is Professionalism, are included in the evaluation criteria for job openings.
- b. For positions at the Professional and higher levels, the three most relevant competencies, are stated, plus two managerial competencies for managerial positions. The same number of competencies shall be listed in the published [JO].

... These definitions enable a common understanding of the core competencies required of all staff, namely the combination of skills, personal attributes and behavior assisting in building and maintaining the capacity of staff and in promoting a new organizational culture.

...

#### Ch. 5.5.1.6 - Work Experience:

... The required work experience is defined in such a way as to attract a suitable pool of qualified applicants. [JOs] that are too generally defined might attract a large pool of applicants who are generally qualified but do not necessarily meet the specific requirements of the position. Alternatively, if the required experience is too specific, this may eliminate perfectly suitable applicants who

lack a narrowly defined requirement. Too narrow a description could also lead to co

As a primary Recruiter, you can assign a designee (i.e. alternate, assistant or another member of your team) to review and approve the Evaluation Criteria, Screening Questions, Assessment Methodology and Job Posting information submitted by the Hiring Manager, as well as to publish the [JO]. However, you remain responsible for all actions

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- a. Has the applicant been working in the same position for many years?
  - b. Has the applicant advanced in terms of responsibility or complexity of the job?
7. Managerial experience:
- a. Does the applicant have the required number of years of planning and budgetary



whether a “candidate[...] ha[s] received fair consideration,





A minimum of five years of progressively responsible professional experience in procurement, contract management, administration or related area including preferably three years of experience in the [United Nations] common system.

Languages

Fluency in oral and written



General services (hotels, insurance, transportation, relocation,

52. It results that the CSS/OSU took the decision not to include the Applicant on the short list not because she was not fulfilling one of the desirable requirements, but one of the highest desirable requirements.

53. In the present case the CSS/OSU (the Recruiter) evaluated all the candidates, including the internal applicants, against all three requirements: mandatory, desirable and highly desirable based only on the cover letter and the PHP (application form), and prov11Qq0.000009m0 i

an alternate recruiter to evaluate the basic requirements, such an option is not available for the Hiring Manager.

57. The Tribunal further underlines that according to the mandatory provisions of sec.7.4 of ST/AI/2010/3, only the Hiring Manager or if it is the case, the occupational hiring manager, has the exclusive competence (“shall”) to evaluate all applicants included in the long list.

58. It results that the Hiring Manager has the obligation, due to the importance of his/her role and personal experience, to act fairly



for the applicants who are United Nations staff members) together with the other documents, if any, filed by each applicant.

64. The Tribunal further considers that mandatory texts do not establish an order of priority/preference of the documents to be reviewed and/or a hierarchy of the value of the documentation and considers that the Hiring Manager has to review the entire documentation filed by the Applicant. According to the fundamental legal principle *ubi lex non distinguit, nec nos distinguere debemus* (where the law does not distinguish, the interpreter is not allowed to distinguish), the Hiring Manager, throughout the entire selection process, including the preliminary phase of pre-screening, cannot establish an eliminatory order of the parts of the application to be evaluated and/or cannot impose a limit as to what documentation contained in the application is to be evaluated, namely only the cover letter and the application form (PHP).

65. Pursuant to sec. 5.1 of ST/AI/2010/3, applications must be submitted in accordance with the instructions set out in the JO, including the use of the electronic platform (Inspira).

66. In the present case the Applicant, who is a current staff member, filed her application timely, which consisted in the cover letter, PHP and the e-PAS reports for the last two years. A3(92 reW\*10.000JETQq0.00000912 0 h )-13Tf1 0 0 1 379is6124q0.00000912 0 h de

by the mandatory legal provisions presented above. The Hiring Manager only











**Goal 1:**

Description and Related Actions: [t]o optimise the acquisition process and improve procurement services in relation to service delivery, in particular to reduce the time required to process requirements, execute [purchase orders]/[c]ontracts and communicate and report to customers.

**Related Actions:**

- i) Train customers on how the procurement process works and what customers need to do to allow the Engineering Support Team to render services more efficiently and professionally[.] Organise monthly review meetings with customers to monitor acquisition plan, provide updates and discuss any other issues.
- ii) Implement and monitor personal Key Performance Indicators (KPIs): (a) increase in procurement cases pre-cleared by HCC to help [UNPD] meet its target-of 45% for the performance evaluation year; [b] Decrease in procurement cases per year rejected by HCC to help [UNPD] meet its 10% target; (c) Process and post Expressions of Interest within three (3) days of receipt; (d) for Statement of Requirement/Works requiring no further input from requisitioners including changes/discussions, prepare and send RFP/ITB [unknown abbreviation] documents within a ten (10) day time-frame after receipt of the SOR/SOW [unknown abbreviation].
- iii) Continuously search for new commercial sources and potential vendors, which may be able to provide goods/services/solutions that meet customers' requirements.

**Success Criteria:**

- i) Held monthly meetings as per (i) above.
- ii) Met KPIs as per (ii) above.
- [iii]) Identified and included on the sourcing list additional vendors from developing countries and countries with economy in transition to help [UNPD] meet its target of 40%.

**Goal 3:**

Description and Related Actions: Improve professional Procurement knowledge/skills; timely submission of evaluation.

Related Actions:

- i) Attempt and succeed in on-line procurement training programme

posts, and the evaluation consisted only in a statement of “yes” or “no” made by the  
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- a. Order the Secretary-General to assess the way the vacancies, i.e. [TJOs and JOs] [...] are managed and advertised, to avoid wasting resources of applicants (internal and non-[United Nations]) who believe the vacancies to be genuine; and
- b. [The Applicant] will agree to whatever compensation the Dispute Tribunal considers to be fair and reasonable in this case.

79. The Tribunal underlines that as results from the above considerations, the contested decision not to shortlist the Applicant pursuant to ST/AI/2010/3 is to be rescinded as being unlawful.

80. Pursuant to art. 10.5(a) and (b) of the United Nations Dispute Tribunal's Statute, the Tribunal can order rescission of the contested decision and/or specific performance:

... As part of its judg[...]ment, the Tribunal may only order one or both of the following:

- (a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;
- (b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

81. The Tribunal concludes that it has no competence to order the Secretary-General to assess the way the vacancies, i.e. JOs and TJOs, are managed and advertised, but only to review the lawfulness of the decisions taken based on the existing legal provisions, even though when it considers it necessary, the Tribunal may make observations and/or recommendations related to specific legal aspects of the current existing provisions. Therefore, the above-requested relief is to be rejected.



Case No. UNDT/NY/2017/037

Judgment No. UNDT/2018/



Where the breach is of a fundamental nature, the breach may of itself give rise to an award of moral damages, not in any pu





93. Such a substantive review, which is expected to be conducted on an urgent basis, should harmonize all the procedural details included in ST/AI/2010/3 and each of the instructional manuals, including the ones regarding the specific role and mandate of the Recruiter and the Hiring Manager during each step of the selection procedure. The harmonization of the existing provisions or the adoption of new additional provisions in the manuals must ensure that their content is not exceeding and/or contravening the mandatory content of the principles and legal provisions of the United Nations Charter and ST/AI/2010/3 and that all the different interpretations and /or established irregular practices within the entire Organization will be corrected.

*(Signed)*

Judge Alessandra Greceanu

Dated this 20<sup>th</sup> day of February 2018

Entered in the Register on this 20<sup>th</sup> day of February 2018

*(Signed)*

Morten Albert Michelsen, Officer-in-Charge, New York