

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

116th Session

Judgment No. 3255

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms N. T. against the International Telecommunication Union (ITU) on 10 February 2011 and corrected on 21 March, the ITU's reply of 24 June, the complainant's rejoinder of 29 September 2011 and the ITU's surrejoinder of 10 January 2012;

Considering the interlocutory order contained in Judgment 3209, delivered on 4 July 2013, in which the Tribunal requested further submissions;

Considering the documents forwarded by the ITU to the Registry of the Tribunal on 17 July 2013, the complainant's further submissions of 19 August and the ITU's final observations thereon dated 26 September 2013;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

CONSIDERATIONS

1. The complainant applied for the grade G.6 post of Chief of the Mail Section. As she was not shortlisted, she challenged the

lawfulness of the competition. Having exhausted the internal remedies, on 10 February 2011 she filed a complaint asking the Tribunal to set aside the entire selection process as well as the subsequent appointment.

2. The Tribunal noted, on examining the file, that there were several points on which the parties disagreed, particularly whether the possession of a baccalaureate diploma had been a decisive factor in choosing candidates for the shortlist and whether there had in fact been any comparative assessment of the candidatures, and it therefore considered it necessary to obtain the file of the selection process.

3. By Judgment 3209, delivered on 4 July 2013, the Tribunal issued an interlocutory order requiring the production of the file of the selection process for the grade G.6 post of Chief of the Mail Section for which the complainant had applied.

4. Pursuant to the above-mentioned Judgment 3209, the ITU produced a file containing inter alia the “evaluation table drawn up by the preselection panel”, the “list drawn up by the [Appointment and Promotion] Board”, the “briefing note of the Recruitment Service of 16 July 2013 concerning the dispatch of documents to the Board”, and the “recommendation of the supervisor of the post in question”.

5. This file was forwarded to the complainant, who then entered further submissions.

She asks that the document entitled “Briefing note” be disregarded on the grounds that it was drawn up on 16 July 2013 and hence cannot be considered as part of the file of the selection process, the production of which was required by the Tribunal.

For the remainder, she says that she does not relinquish “any of the pleas entered in her previous submissions, to which she has not adverted in [her further submissions], which [are] not in any way a recapitulation and which [concentrate] on the file of the selection process and certain arguments raised in the surrejoinder”.

She states that she maintains all her claims, “save for her request for an award of costs, which she increases to 12,000 euros”.

6. In its final observations of 26 September 2013 the ITU asks the Tribunal to “declare the complainant’s further submissions irreceivable insofar as they do not pertain to the file of the selection process and to dismiss them for that reason”.

It also asks the Tribunal to dismiss the complainant’s claims in their entirety.

7. The Tribunal will disregard the document entitled “Briefing note” since, having been drawn up on 16 July 2013, this document cannot form part of the file of the selection process the production of which was requested in the judgment delivered on 4 July 2013. The Tribunal will likewise disregard the complainant’s further submissions to the extent that they are unrelated to the file produced.

8. The Tribunal finds that, in the absence of any minutes of the Appointment and Promotion Board’s deliberations, none of the documents produced by the ITU sheds light on the real reason for not placing the complainant’s name on the shortlist.

There being no proof to the contrary, it must therefore be accepted that the reason for rejecting her candidature was indeed that given in the e-mail of 4 May 2010 by which the Head of the Recruitment Service informed her, in response to her query, that “[t]he Appointment and Promotion Board [had] not include[d] [her] on the shortlist because [she] [had] not obtained a baccalaureate diploma or the equivalent in technical or commercial studies”, that “that qualification [was] specified in the vacancy notice in question and [that it had to] be satisfied in the selection process”.

9. As the ITU admitted in its submissions, Vacancy Notice No. G22-2009 did not require the holding of a baccalaureate diploma, but only “[c]ompleted secondary education OR equivalent technical or commercial studies”.

10. Although she had not obtained a baccalaureate, the complainant had shown that she had completed secondary education and she therefore did satisfy the conditions set out in the vacancy notice. Hence, the Appointment and Promotion Board was wrong to discard her application for the reason mentioned in consideration 8 above.

11. As the selection process was thus flawed, the decisions taken at the end of it must be set aside, without there being any need to rule on the complainant's other pleas.

The process must be resumed as from the stage at which it became tainted with irregularity.

12. However, the person who was appointed at the end of the selection process must be shielded from any injury that might result from the cancellation of that process.

13. The complainant requests the payment of compensation equal to eight months' salary to redress the injury suffered under all heads, in particular for the material injury caused by the loss of a serious opportunity to be appointed to the post for which she applied. In the circumstances of the case, this claim is unfounded insofar as material injury is concerned.

The Tribunal considers, however, that the complainant is entitled to redress for the moral injury which she has suffered. She will be awarded *ex aequo et bono* compensation in the amount of 8,000 euros under this head.

14. The complainant is entitled to costs which the Tribunal sets at 6,000 euros.

15. The complainant asks the Tribunal to rule that, should the sums awarded be subject to national taxation, she would be entitled to a refund of the tax paid from the ITU. In the absence of any present cause of action, this claim must be dismissed as irreceivable.

DECISION

For the above reasons,

1. The impugned decision of 16 November 2010 is set aside, as is the decision making the appointment to the post advertised.
2. The selection process shall be resumed at the stage at which it became flawed.
3. The person who was appointed at the end of the selection process shall be shielded from any injury.
4. The ITU shall pay the complainant compensation in the amount of 8,000 euros for the moral injury suffered.
5. It shall also pay her 6,000 euros in costs.
6. All other claims are dismissed.

In witness of this judgment, adopted on 14 November 2013, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 5 February 2014.

Claude Rouiller
Seydou Ba
Patrick Frydman
Catherine Comtet