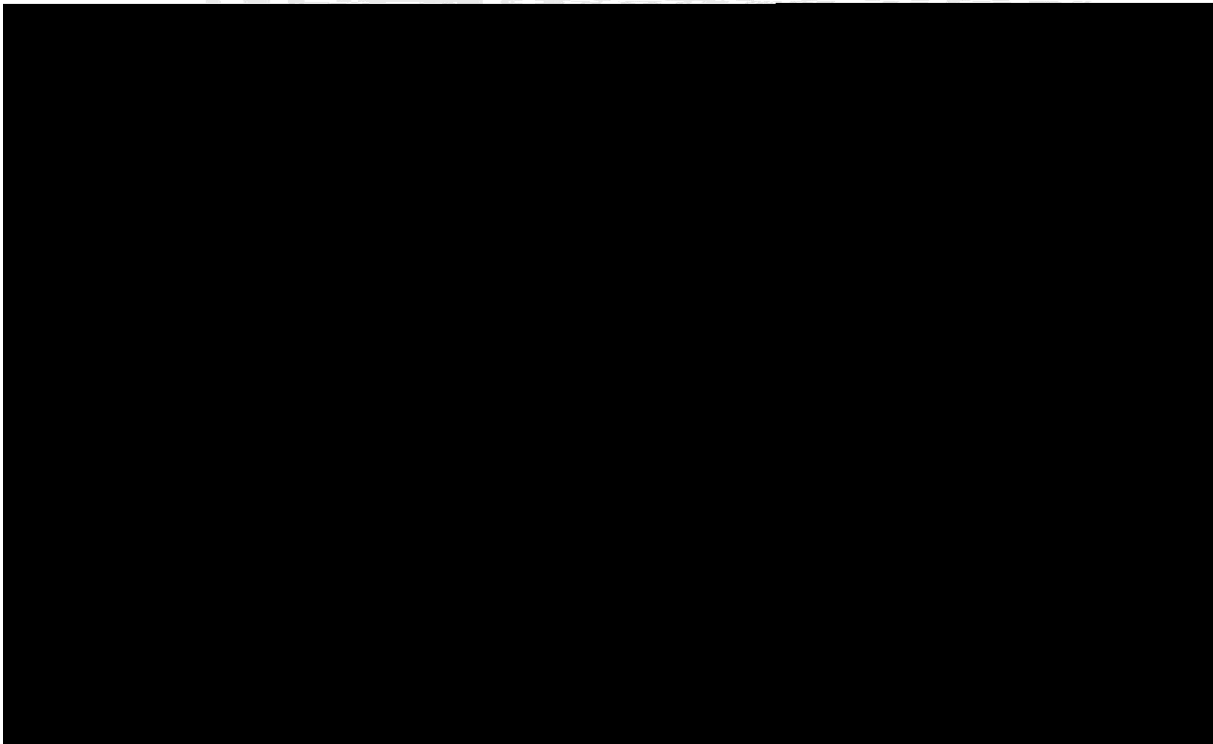




Judgment No. 2019-UNAT-966



Counsel for Mr. Krioutchkov: Mohamed Abdou, OSLA

Counsel for Secretary-General: Isavella Vasilogeorgi

JUDGE MARTHA HALFELD, PRESIDING.

1. The Secretary-General appeals against Judgment No. UNDT/2019/048, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 27 March 2019, in the case of *Krioutchkov v. Secretary-General of the United Nations*. This appeal involves the non-selection of Mr. Vladislav Krioutchkov for a temporary job opening (TJO) after he was not short-listed on account of not meeting a minimum eligibility requirement that he already be located at the same duty station as the advertised post. The UNDT found this was an unlawful requirement and rescinded the decision and awarded Mr. Krioutchkov compensation. The Secretary-General appealed. This Tribunal grants the Secretary-General's appeal and reverses the UNDT's Judgment on grounds that the "local recruitment" criterion is lawful.

Facts and Procedure

2. Mr. Krioutchkov, a Russian Translator, holding a permanent appointment at the P-3 level, at the Economic and Social Commission for Asia and the Pacific (ESCAP) in Bangkok, applied to the position of Russian Reviser at the P-4 level in the Department of General Assembly and Conference Management (DGACM) in New York, advertised as TJO 64192. This TJO had a special notice indicating the position was for a period of 11 months and for local recruitment only. The UNDT established that Mr. Krioutchkov and four other candidates applied for the position. Mr. Krioutchkov was placed on the "long list" of candidates. The hiring manager conducted a comparative review of the five candidates, limiting it to those who "met the minimum requirement of the position and also met the eligibility requirement of being located at the duty station". The selected candidate met both.

3. Mr. Krioutchkov timely filed a request for management evaluation of the decision not to select him for the advertised post with the Management Evaluation Unit (MEU). While the MEU proposed a monetary amount to settle the case, which Mr. Krioutchkov accepted, the MEU did not revert back to Mr. Krioutchkov. Mr. Krioutchkov thus filed his application before the UNDT.

4. The UNDT granted Mr. Krioutchkov's application and found that limiting a TJO in a professional category to "local recruitment only" was unlawful as it violated Article 101(3) of the United Nations Charter, which stresses the importance of recruiting staff on as wide a geographical basis as possible. The UNDT also found it violated Staff Rule 4.4 titled, "staff in posts subject to local recruitment" which designated the general service category of

staff members to local recruitment, and Staff Rule 4.5 titled, “staff in posts subject to international recruitment”, which designated that all other staff shall be regarded as internationally recruited. Rule 4.5(b) specifically provided that staff recruited locally at a duty station for posts in the professional and higher categories in that duty station are considered internationally recruited. The UNDT noted that Staff Rule 4.5(b) did not give a right to restrict

Submissions

The Secretary-General's Appeal

7. The Secretary-General requests the Appeals Tribunal to vacate the Judgment. The Secretary-General argues that Article 101(1) of the United Nations Charter and Staff Regulations 1.2(c) and 4.1 vest him with broad discretion in staff selection matters. The UNDT's standard of review is to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent, and non-discriminatory manner. The applicable legal framework is ST/AI/2010/4 Rev. 1, which indicates that the purpose of temporary appointments is to effectively and expeditiously manage short-term staffing needs. Per resolution 63/250, the General Assembly required the Secretary-General to effectively and expeditiously manage specific short-term requirements for less than one year by swiftly appointing qualified personnel. ST/AI/2010/4 Rev. 1 was issued to allow the Organization to fulfil this requirement. Furthermore, the issue of limiting eligibility of temporary positions to candidates at the same duty station was previously considered by the Appeals Tribunal in *Smith*,¹ which held that the Secretary-General had wide inherent discretion to determine eligibility criteria for temporary appointments. There was no provision prohibiting the Administration from imposing a restriction limiting recruitment of temporary positions to staff members at a particular duty station. The impugned Judgment contradicts this legal framework.

8. In addition, the UNDT erred in fact and law in finding that Mr. Krioutchkov's candidacy had not been given full and fair consideration.

need to ensure recruitment on as wide a geographical basis as possible to ensure recruitment of

not amount to a legal basis for limiting this recruitment to a specific duty station.⁴ The eliminatory eligibility criterion of the presence at the duty station was hence by itself

appointments, which, as discussed, necessarily and by definition do not involve widespread practice, but rather concern “short-term staffing needs” which should be effectively and expeditiously managed, without prejudice to the paramount consideration of highest standards of efficiency, competence and integrity, as established in Article 101(3) of the United Nations Charter and Staff Regulation 4.2, as well as to the recognition of the value of staff mobility to the Organisation, especially across duty stations, as stated in General Assembly resolutions 53/221 and 55/258 on human resources management. Within this context, the Secretary-General is correct in asserting that Section 5 of ST/AI/2010/4/Rev.1 does not have the effect of establishing a *numerus clausus* list of eligibility criteria for temporary appointments.

19. Further, it is true that the UNDT contradicts our jurisprudence established in *Smith*.⁹ In *Smith*, we stated that the statutory provisions confer upon the Secretary-General a wide inherent discretion to determine eligibility criteria for temporary appointments. No provision prohibits the Administration from imposing a restriction limiting recruitment for a temporary position to staff members at a particular duty station or mission. Such a restriction can be justified on various operational grounds such as cost, convenience, working environment, local conditions, etc., since local recruitment conveys the intrinsic notion of time and cost saving.

20. Despite the principle of legality, by which the Administration benefits from the assumption of being correct, and the discretion to introduce criteria in the interests of operational requirements or efficiency, the scope of the Administration’s actions is not unfettered and must be exercised lawfully, reasonably, and fairly.¹⁰ In cases where there is no *prima facie* absurd, perverse, discriminatory, capricious or any other unreasonable justification on the part of the Administration, the burden of proof rests with the staff member concerned. In other words, if the Administration is able to even minimally show that the staff member’s candidacy was given full and fair consideration, then the presumption of law stands satisfied.

Judgment

24. The appeal is upheld and Judgment No. UNDT/2019/048 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