

P.
v.
OPCW

127th Session

Judgment No. 4070

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms I. R. P. against the Organisation for the Prohibition of Chemical Weapons (OPCW) on 1 March 2017 and corrected on 13 March, the OPCW's reply of 19 June, the complainant's rejoinder of 9 August and the OPCW's surrejoinder of 7 November 2017;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

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

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decision not to select her for a position for which she had applied.

At the material time the complainant performed the duties of accountant in the OPCW's Finance and Accounts Branch at the P-2 level under a fixed-term contract. In October 2014 she applied for the P-4 position of Head of Accounts and Reporting. In November 2014 she tendered her resignation with effect from 25 January 2015 in order to take up a position in another organisation.

On 9 February 2015 the complainant was notified that she had not been shortlisted for the P-4 position for which she had applied. The following day she requested a review of that decision. On 5 March the

Head of Human Resources (HR) informed her that the Selection Recommendation Panel had decided to shortlist the candidates it considered as meeting the requirements of the post, including, in particular, experience in managerial capacity. The selected candidate was considered to be the most suitable for the position given his experience, qualifications and performance in the interview. On 8 April the complainant again requested a review of the decision of 9 February and also a review of that of 5 March. Her requests were rejected on 4 May 2015 and the matter was referred to the Appeals Council.

In its report of 4 November 2016 the Appeals Council recalled that its duty was to review whether the selection process was fair, and not to compare the complainant's credentials against those of the successful candidate. It noted that most of the complainant's arguments were based on the profile of the selected candidate she had found on a public website. That profile was different to the information provided in the application form and was not an "appropriate source of evidence". The Appeals Council added that it had evaluated the selection process against the relevant rules and had concluded that they had been correctly followed. It therefore recommended rejecting the appeal.

By a letter of 1 December 2016 the complainant was informed that the Director-General had decided to endorse the conclusions and recommendation of the Appeals Council. That is the decision the complainant impugns before the Tribunal.

The complainant asks the Tribunal to set aside the impugned decision. She seeks an award of material damages, in an amount equivalent to the difference between the salary she would have earned in the P-4 position of Head of Accounts and Reporting and that of her current position for three years (which corresponds to the duration of the fixed-term position advertised in the vacancy notice). She also claims payment of any additional benefits associated with the P-4 position at the OPCW and that she is not entitled to in her current position. She further seeks moral damages, costs and such other relief the Tribunal may deem just, fair and appropriate. Lastly, she claims 5 per cent interest on all amounts awarded to her.

The OPCW asks the Tribunal to dismiss the complaint as being without merit.

CONSIDERATIONS

1. The complaint, which was filed on 1 March 2017, impugns the decision issued by letter dated 1 December 2016, on behalf of the Director-General. That decision accepted the recommendation of the Appeals Council and upheld the Director-General's prior decision of 4 May 2015 rejecting the complainant's request for review of the decision not to shortlist her for the P-4 position of Head of Accounts and Reporting in the OPCW's Finance and Accounts Branch (the subject post). The complainant had been notified of the decision not to shortlist her for the subject post on 9 February 2015. On 10 February 2015 she sent her request for review of the "administrative decision [...] to recruit an external candidate for the post [...] including the decision to exclude her from the testing and interview process". After further communication with the Head of HR, the complainant additionally requested a review of the letter to her from the Head of HR dated 5 March 2015. This letter however did not contain a challengeable or reviewable administrative decision, as the Head of HR had merely sought to confirm that the recruitment process had been fair. This was in response to matters which the complainant had raised concerning the decision of 9 February 2015. This latter request added nothing to the initial request.

As to remedy, the complainant stated that, as she had already left the OPCW and the selected candidate had already left his prior employment to work with the OPCW, "[she was] willing to be compensated in an alternative manner to the annulment of the contested recruitment" of the selected candidate.

2. The vacancy notice for the subject post listed the essential knowledge and skills for that post as:

- (a) An advanced university degree in accounting, finance, public or business administration or related field. A first degree with nine

years of directly relevant experience may be considered in lieu of an advanced degree;

- (b) Certification from an internationally recognized accounting body, e.g. “CPA, CA, ACCA, etc.”;

The vacancy notice further listed essential experience as:

- (c) At least seven years of progressively responsible experience in accountancy and/or financial audit;
- (d) Experience in an international organization and in application of international accounting standards; and
- (e) Knowledge of the United Nations (UN) procedures, International Public Sector Accounting Standards (IPSAS), and International Financial Reporting Standards (IFRS).

3. The Selection Recommendation Panel (the Panel) stated that the complainant was not shortlisted because she did not meet the minimum essential requirements contained in the vacancy notice. This, according to the Panel, was because, in the first place, she did not have a Master’s degree. At the material time, the complainant was pursuing a Master’s degree in Finance, but had not completed the Thesis requirement. In the second place, the Panel stated that the complainant did not have the required nine years of directly relevant professional experience deemed “essential” for the post given that she held a Bachelor’s degree, and, additionally, because her personal history form showed that “she [had] an approximate 8.25 years [of experience], including trainee and internships, however not all the work experience [was] relevant to [the] post”. In the third place, the Panel stated that the complainant had “very limited supervisory experience and no experience managing a team like the Finance and Accounts Unit”. Moreover, one member of the Panel pointed out that there were other candidates who possessed academic qualifications that were superior to the complainant’s and had more years of relevant experience but were not shortlisted. In her request for review, the complainant admitted, as she does in her complaint, that she did not meet the essential stated requirements for the subject post.

4. The Tribunal holds that the complainant's admission that she did not meet the requirements for the subject post means that she has no cause of action to challenge the shortlisting of the selected candidate or his final selection to fill the contested post. The complaint is therefore unfounded and will be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 1 November 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ