

The Administrative Tribunal,

Considering the complaint filed by Mrs C. F. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 12 November 2002 and corrected on 17 December 2002, UNESCO's reply of 16 April 2003, the complainant's rejoinder of 16 July, and the Organization's surrejoinder of 6 October 2003;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a British national born in 1946, is a Senior Administrative Assistant at grade G-7 in the Bureau of Human Resources Management (HRM) at UNESCO's headquarters in Paris. She works in the unit responsible for personnel administration of staff members serving in the Organization's field offices in Latin America and Europe.

On 27 April 1999 Vacancy Notice PER/RCR/JD/99/08 was published for a P-3 post as Administrative Officer in UNESCO's office in Montevideo, Uruguay. Among other requirements, the notice called for a university degree in accounting, business administration or related field as well as excellent knowledge of English and Spanish and a good knowledge of French. The complainant applied for the post on 20 May 1999. She was ranked third on the short list made by the Natural Sciences Sector, which was responsible for supervising the post. In accordance with the recruitment procedures for administrative officer positions, the Technical Board for Administrative Officers and the Senior Personnel Advisory Board were consulted. Both Boards agreed with the evaluation of the candidates and with the recommendation to appoint the first-ranked candidate, who was also working in HRM.

In a memorandum of 27 March 2000 the Chief of the Recruitment Section informed the Administrative Officer in the Natural Sciences Sector of the decision to appoint the selected candidate to the post in question. The complainant received a copy of this memorandum in the exercise of her duties. On 4 April she sent a memorandum to the Acting Director of HRM, pointing out that there appeared to be errors in the selection process, notably in the evaluation of the selected candidate's level of education. She further stated that she was "obliged to make an official contestation" and she suggested that the appointment of the selected candidate be delayed until a proper inquiry into the recruitment process could be made.

On 12 May 2000 a staff movement information sheet was issued to all staff, announcing staff changes in the Professional category; it included the promotion and transfer of the selected candidate to the Montevideo Office. On that same day a memorandum from the Acting Director of HRM informed the staff of that Bureau of the redistribution of the selected candidate's functions in HRM.

By a memorandum of 8 August 2000 to the Chief of the Recruitment Section the complainant asked to be informed of the outcome of the competition; she added that without a reply within 30 days she would take the silence as notification that she had not been selected. Having received no reply, on 5 October 2000, she submitted a "[p]reliminary protest against an administrative decision" under paragraph 7 of the Statutes of the Appeals Board and on 21 November she filed an appeal with the Board. On 26 December the Director of HRM informed her that her protest was not receivable, because she had not protested against the appointment of the selected candidate when she became aware of it as early as 4 April 2000. Her appeal was subsequently considered by the Appeals Board.

In its opinion of 5 July 2002 the Board considered that it was normal practice to send a letter of regret to non-

selected candidates and since the complainant had not received one, it considered her appeal to be receivable. It found flaws in the selection process and recommended that the Director-General assign the complainant to a P-3 post before 30 November 2002. The Director-General informed the complainant by a letter of 26 August 2002 that he rejected the recommendation of the Appeals Board. That is the impugned decision.

B. The complainant contends that the selection process was seriously flawed, constituting breaches of the UNESCO Manual, flouting the principles of justice and equity, and tainting the process with lack of impartiality and objectivity. She finds irregularities in that the selected candidate did not satisfy the minimum requirements for the post, and in that the "Evaluation of Candidate" file contained errors misrepresenting the latter (in level of education and in language skills). Furthermore, the qualifications required in the post description were changed after the selection process and subsequent to the complainant's memorandum pointing out the procedural flaws; she submits that this was in "flagrant violation of the [r]ecruitment [c]riteria" set out in UNESCO's recruitment handbook.

Also, she was never officially notified that she was not selected for the post; therefore there was no individual decision against which she could have appealed.

She points out that during the hearing of the Appeals Board additional irregularities in the selection process came to light. Despite the fact that the Board found in her favour, the Director-General rejected her appeal.

The complainant informs the Tribunal that the highly confidential documents that she produces in support of her pleadings came into her possession during the exercise of her duties.

She seeks as compensation for "the severe professional prejudice suffered" to be promoted to grade P-3, retroactive to the date of the appointment of the selected candidate to the post in question (that is 17 April 2000) plus "interest at the prevailing rate". She also claims reimbursement of legal costs amounting to 3,000 United States dollars.

C. The Organization replies that the complaint is not receivable. The complainant should have filed her protest within 30 days of becoming aware, as early as 4 April 2000, that another candidate had been selected for the post in question. This time limit cannot be changed by her subsequent enquiries several months later. The complainant has confused the concepts of "official notification" and "individual decisions". For example, in the case of a non-renewal of contract an individual must be given a reasoned decision against which an appeal can be made. But for decisions concerning non-selection for a post, all that is required before an appeal can be filed is that the complainant be aware that a decision has been taken, and all staff, including the complainant, were officially notified of the appointment. Despite the fact that the Appeals Board considered her appeal to be receivable this does not alter the Organization's objection to receivability, and therefore the complaint to the Tribunal, although filed in a timely manner after the final decision was taken, "is still saddled with the prior defect" of irreceivability.

On the merits, it denies that the selection procedure was flawed. It points out that under the Staff Rules the education requirement for professional posts is a university degree or "equivalent experience". Thus, the post description was updated following the selection procedure in order to make it clear that it was preferable that the incumbent have a university degree but that equivalent work experience may suffice. UNESCO submits that all staff regulations and rules have been followed and it refutes the complainant's "inaccuracies and innuendoes".

The complainant's allegations that the selected candidate was not qualified for the post are speculative and unfounded. The determination of the selected candidate's suitability for the post was made at various stages in the selection process and it is not for the complainant to evaluate the selected candidate's qualifications.

The Organization takes exception to the fact that the complainant has disseminated confidential documents and considers that this constitutes a lack of discretion on her part as well as an exploitation of her professional position. It asks the Tribunal to consider these documents inadmissible.

D. In her rejoinder the complainant presses her plea that the selection procedure was seriously flawed. She points out that the Appeals Board rejected UNESCO's argument that her appeal was not receivable and that it had recommended that she be compensated for the injury arising from a flawed selection procedure. She refers to the Tribunal's case law in support of her pleas.

In the event that the Tribunal is unable to grant her claim for promotion, she adds an alternative claim, asking for moral and material damages in the amount of 50,000 dollars.

E. In its surrejoinder UNESCO denies all the complainant's allegations. It presses its objections to receivability, pointing out that the complainant's arguments are contradictory. It adds that the decision is a discretionary one, subject to only limited review, and that the case law cited by the complainant supports this point of view.

CONSIDERATIONS

1. The complainant applied for the post of Administrative Officer at grade P-3 in UNESCO's office in Montevideo on 20 May 1999. According to the vacancy notice, the relevant requirements were as follows: "University degree in accounting, business administration or related field" and "[e]xcellent knowledge of English and Spanish, with good knowledge of French".
2. An evaluation of the candidates by the Natural Sciences Sector resulted in the shortlisting of three candidates; the complainant was ranked third. In accordance with the recruitment procedure for administrative officer positions, the case was referred to the Technical Board for Administrative Officers and the Senior Personnel Advisory Board, both of which agreed with the recommendations of the Natural Sciences Sector.
3. By a memorandum of 27 March 2000, the Chief of the Recruitment Section notified the Administrative Officer of the Natural Sciences Sector of the decision to appoint the selected candidate to the post in question. The complainant received a copy of the memorandum in the exercise of her duties.
4. In a memorandum dated 4 April the complainant informed the Acting Director of HRM of serious factual errors in the "Fact Sheet" of the selected candidate and in the recruitment process itself. For instance, certain studies which the latter had undertaken were classified as "University level or equivalent" when these were not even at the level of the French Baccalaureate. Being one of the candidates shortlisted for the post, the complainant felt obliged to make an official contestation and to suggest that the appointment of the selected candidate be delayed until a proper inquiry could be made into the recruitment procedure that had been followed. She stressed that the memorandum, which was addressed to the Acting Director of HRM and not to the Director-General, did not constitute a protest under paragraph 7(a) of the Statutes of the Appeals Board.
5. On 4 May the minimum qualifications in the post description which were used to draft the vacancy notice were modified from "University degree in accounting, business administration or related field" to "Preferably, advanced university degree in accounting, business administration or related field".
6. On 12 May 2000 the Organization issued to all staff a list of appointments, promotions and other staff changes in the Professional category, including the name of the selected candidate whose appointment was effective from 17 April 2000. Another memorandum of the same date was issued by the Acting Director of HRM informing all his colleagues of the departure of the selected candidate for the Montevideo Office and the names of those who would be assigned, on an interim basis, to carry out the functions of the post she had vacated.
7. In a memorandum of 8 August 2000 to the Chief of the Recruitment Section the complainant asked to be informed of the outcome of the recruitment process. She stated that because of the long delay, unless she received a reply regarding her candidature for the post in question within the next 30 days, she would take it as notification that she had not been selected.
8. Having received no reply to her memorandum, she submitted a "Preliminary Protest against an administrative decision" to the Director-General on 5 October 2000 on the grounds that there were serious irregularities in the recruitment process for the post in question.
9. The complainant then filed a notice of appeal with the Appeals Board on 21 November 2000, and later followed it up with a detailed appeal dated 31 January 2001. The Appeals Board, in its opinion of 5 July 2002, found in favour of the complainant and recommended that the Director-General assign the latter to a post in the Professional category, at grade P3, before 30 November 2002.
10. The Director-General rejected the Board's recommendation on 26 August 2002. The complainant thus filed a complaint with the Tribunal on 12 November 2002.
11. Under paragraph 7(a) of the Statutes of the Appeals Board, a protest should be filed within a period of one

month of the date of receipt of the decision contested. The complainant's protest was submitted on 5 October 2000, months after she learned that another candidate had been appointed to the position; firstly, from the memorandum of 27 March 2000, secondly, from the list of appointments, promotions and transfers that had taken place as of 12 May 2000 and lastly, from the memorandum of the same date where all HRM staff was informed by its Acting Director that a colleague of theirs had been appointed to the post in question in the Montevideo Office. Nowhere in the Statutes of the Appeals Board is it required that notice of a decision shall be brought to the staff member "officially, individually and in due form", as the complainant contends.

12. The complainant already knew of the decision not to appoint her to the post in Montevideo on 4 April 2000 when she sent her memorandum to the Acting Director of HRM. At that stage, she knew of the decision only incidentally in her capacity as Administrative Assistant in HRM. It is unnecessary to decide whether, by reason of knowledge acquired only incidentally, she was then in receipt of the decision. At the very latest, she was in receipt of the decision on 12 May 2000 when both the staff notice and the memorandum to HRM staff confirmed that knowledge. Accordingly, she should have lodged her protest no later than 12 June 2000.

13. The Tribunal considers that, in deciding to treat the complainant's appeal as receivable, the Appeals Board erred in law. Even if the practice had been to send a letter of regret to non-selected candidates in competitions, there was no obligation on the part of the Organization to send an individual notification and no right on the part of the complainant to receive one. Her appeal should, therefore, have been filed within one month, the period prescribed in the Statutes of the Appeals Board - which are annexed to the Staff Regulations and Staff Rules. The Tribunal refers to previous case law in which it held that if an internal appeal was time-barred and the internal appeals body was wrong to hear it, the Tribunal would not entertain a complaint challenging the decision taken on a recommendation by that body (see Judgment 775, under 1). In the circumstances, the Director-General was justified in rejecting the recommendation of the Appeals Board.

14. Accordingly, the complaint should be dismissed as irreceivable and it is unnecessary to consider the merits of the case.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2003, Mr James K. Hugessen, Vice-President of the Tribunal, Mrs Flerida Ruth P. Romero, Judge, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2004.

James K. Hugessen

Flerida Ruth P. Romero

Mary G. Gaudron

Catherine Comtet