UNDT/2010/087, Sprauten

UNAT Held or UNDT Pronouncements

Case 1. Mere knowledge of or acquaintance with one or more candidates by an interview panel member does not disqualify her or him from being on the panel. It would be otherwise if there were a personal relationship (such as family or friendship) with or personal antipathy for a candidate. The practical apprehension that objective and independent assessment will be adversely affected, quite apart from any issue of fairness, is improper. Where a panel member has another interest that could significantly affect his or her assessment, this should also require exclusion from the panel. In this case, the UNMAS chairperson, it appears, had a substantial and irrelevant interest in not selecting the applicant as this was perceived as disadvantageous to UNMAS—this was hence improper. Also, the fact that the chairperson was from UNMAS and the human resources representative voted in the panel's deliberations were two substantial and unwarranted departures from the UNOPS rules, which significantly undermined the integrity of the panel's conclusions and should not have occurred. They were not merely formal in character but had substantive effect on the outcome of the process, which was therefore flawed. Case 2. The applicant unqualifiedly accepted the job offer. His identification of a timing issue regarding his start date no more than indicated a desire to discuss this. There is no suggestion that, absent agreement on this issue, the applicant would have declined to comply with the specified date. Another approach is to consider that the respondent had made an offer which was accepted subject to an agreement on start date, about which question negotiations then followed (an option). There was an implicit representation that the respondent would hold open the offer for the purpose of those negotiations, which gave rise to a legitimate expectation that the respondent would not unilaterally withdraw its offer without giving notice of its intention to do so to the applicant. Outcome: Case 1. The selection process was in breach of the applicant's contractual rights to have his candidacy adequately and properly considered in accordance with the applicable rules. Case 2. The respondent was in breach of its contract with the applicant to appoint him to the post in question. Issue of compensation to be dealt with

separately.

Decision Contested or Judgment/Order Appealed

After an interview process, the applicant, a longstanding UNOPS staff member holding a 200 series contract, was not selected for a position with UNOPS as another candidate (on a 300 series contract) was recommended for the job by the interview panel. The rules of UNOPS stipulated that the panel should be chaired by a UNOPS staff member, but, in fact, the chairperson was from UNMAS, and that the human resources representative should not vote in its deliberations, but he did. UNMAS was the largest “client” of UNOPS and its Director stated in a reference check in connection with the selection process that, in effect, it would not accept the applicant for the position for reasons which from UNOPS’ perspective were mistaken and unfair (case 1). Some time later the applicant was informed that his contract in New York would not be renewed beyond an envisaged date. He obtained an offer for another UNOPS position, but after discussions between the parties concerning the start date the Administration decided to withdraw it (case 2).

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

Full judgment

Applicants/Appellants

Sprauten

Entity

UNOPS

Case Number(s)

UNDT/NY/2009/085/JAB
UNDT/NY/2009/118

Tribunal

UNDT

Registry

New York

Date of Judgement

6 May 2010

Duty Judge

Judge Kaman

Language of Judgment

English
French

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)
Interview
Selection decision

Applicable Law

Staff Rules

- Rule 109.1(c)

Related Judgments and Orders

UNDT/2009/095