

UNDT/2010/113, Fayek

UNAT Held or UNDT Pronouncements

The applicant, a P-3 level staff member, applied for the P-4 post of Chief of her Unit. She was not selected. It later transpired that the applicant had initially received the highest score, but her supervisors, who participated in the selection, increased the successful candidate's score. This resulted in the successful candidate being ranked higher than the applicant. The Secretary-General agreed with the finding of the Joint Appeals Board that the applicant's rights were violated and awarded her compensation in the amount of three months' salary. The applicant appealed, seeking additional compensation. The main issue was the proper measure of compensation. UNDT found that the supervisors' actions showed bias against the applicant and that, if not for the manipulation of the scores by the supervisors, the applicant would have been selected for the post. UNDT found that the actual damages should be calculated based on the difference between the actual salary, benefits and entitlements at the P-3 level and those that the applicant would have received at the P-4 level, for two years. UNDT ordered the parties to attempt to resolve the issue of compensation. If the parties are unable to reach an agreement, they will be ordered to file further submissions.

Decision Contested or Judgment/Order Appealed

non-selection

Legal Principle(s)

JAB reports: UNDT is not bound by the JAB findings. Compensation, probability of selection: In some cases, complete certainty that, if not for some improper consideration, a staff member would have been selected, is not required to find that the staff member's rights were violated. If the probability that the selection could have happened is sufficiently high, UNDT will find it reasonable to conclude that the

applicant would have been selected and appointed, if not for the improper interference. Rights of third parties: If the rights of the selected candidate, who was not a party to the proceedings, would be affected by an order to appoint the applicant, and if the applicant does not claim such relief, UNDT will only make an appropriate award of compensation. Compensation, generally: In assessing compensation, certain assumptions can be made, but they must be reasonable. Normal contingencies and uncertainties which may and frequently do intervene in the average working life, including early retirement, career change, death or disability, and lawful termination should be taken into account. Each case must be seen on the basis of its own facts and surrounding circumstances and the mitigating and aggravating circumstances. Compensation for emotional distress (moral damages): For UNDT to award compensation for emotional distress, the applicant's claims must be specific and supported by evidence. Relief in the form of an order to select the applicant for another post: UNDT's order to the Organization to select a particular candidate to some future post would go against the competitive nature of the selection process established by the Organization and would prejudice the rights of other candidates to be fully and fairly considered for such posts. Outcome: The parties were ordered to attempt to come to an agreement on compensation. If the parties are unable to reach an agreement, they will be ordered to file further submissions.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Fayek

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2010/041/UNAT/1705

Tribunal

UNDT

Registry

New York

Date of Judgement

25 Jun 2010

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Staff selection (non-selection/non-promotion)

Selection decision

Applicable Law

Administrative Instructions

- ST/AI/2006/3

Related Judgments and Orders

UNDT/2009/013

UNDT/2009/063

UNDT/2009/088

UNDT/2009/095

UNDT/2010/006

UNDT/2010/040

UNDT/2010/071

UNDT/2010/080

2010-UNAT-009

2010-UNAT-030