

UNDT/2010/187, Dualeh

UNAT Held or UNDT Pronouncements

A decision which has not been the subject of a request for a management evaluation cannot be contested before the Tribunal. As regards promotions, considering the discretionary nature of these decisions, the Tribunal's role is only to review the legality of the procedure followed and to examine whether there have been any errors of fact in the assessment of the staff member's career. Under the principle that similar acts require similar rules, the decision that modifies the original provision governing the promotion procedure in UNHCR must be taken through the same procedure followed to adopt the original provision. The lack of transparency alleged by the applicant is a general argument which, to be retained, must be based on particular facts showing that the legal instruments applicable to the promotion of staff were not followed. The APPB rules of procedure state that the APPB is established to advise the High Commissioner on appointments, postings and promotions of staff. Hence, the High Commissioner cannot legally promote a staff member whose situation has not been considered by the APPB. This irregularity must lead to the rescission of the decision to deny the applicant a promotion. Pursuant to article 10.5(a) of the Tribunal's Statute, the Judge set the sum of CHF10,000 as the amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision. This sum compensates the material damage suffered by the applicant but not the moral damage. In the case at hand, the applicant did not request compensation for moral damage thus the Tribunal cannot pronounce itself on this issue.

Decision Contested or Judgment/Order Appealed

The applicant, a UNHCR staff member, contests the decision of the High Commissioner not to promote him to the D-1 level in the 2008 annual promotion session.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The contested decision is rescinded. As an alternative to the rescission, the respondent may elect to pay CHF10,000 to the applicant.

Full judgment

[Full judgment](#)

Applicants/Appellants

Dualeh

Entity

UNHCR

Case Number(s)

UNDT/GVA/2009/105

Tribunal

UNDT

Registry

Geneva

Date of Judgement

17 Oct 2010

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Pecuniary (material) damages

Performance management

Performance evaluation

Staff selection (non-selection/non-promotion)

Applicable Law

Former Staff Regulations

- Regulation 8.2

Other UN issuances (guidelines, policies etc.)

- UNHCR Appointments, Postings, Promotion Board (APPB) Procedural Guidelines

UNDT Statute

- Article 10.5(a)