

UNDT/2010/190, Bofill

UNAT Held or UNDT Pronouncements

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. While the Tribunal can only examine the legality of a decision which has been subject of a request for a management evaluation, no provision prevents an applicant from raising before the Tribunal arguments different from those raised in her request for management evaluation. 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. The Judge will only grant compensation for moral damage if he considers that the applicant would have had a chance of promotion had no irregularity been committed. In the case at hand, the applicant did not have a chance of promotion thus there is no compensation for moral damage. The Tribunal did not find that the respondent had abused the proceedings. Hence, it did not award costs against the respondent pursuant to article 10.6 of the UNDT Statute.

Decision Contested or Judgment/Order Appealed

The applicant, a UNHCR staff member, contests the decision of the High Commissioner not to promote her 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

Bofill

Entity

UNHCR

Case Number(s)

UNDT/GVA/2010/090

Tribunal

UNDT

Registry

Geneva

Date of Judgement

18 Oct 2010

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Compensation

Loss of chance

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)
- Article 10.6

Related Judgments and Orders

2010-UNAT-044

2010-UNAT-052