

UNDT/2011/058, Kozlov & Romadanov

UNAT Held or UNDT Pronouncements

The filling of the Post with the ultimately-successful candidate cannot be characterized as a “transfer”, be it lateral or not. The ultimately-successful candidate was therefore rather selected for the Post. Simply stated, the Post did not qualify as a lateral transfer. The Respondent employed the wrong procedure. The Applicants, although ranked behind the initially-successful candidate, were also “suitable” candidates for the Post. The Tribunal finds that the selection exercise for the initially-selected candidate was improper. The Applicants having been deemed by the Tribunal as suitable candidates for the Post, the Tribunal finds that the Respondent breached his obligation to select one of the two Applicants for the Post, since they were the only two remaining eligible roster candidates at the time. The Tribunal finds that the Respondent has not made a minimal showing that the Applicants’ statutory rights were honoured in good faith in that the Administration gave fullest regard to them in the selection process for the Post. Further, the Respondent has not met his burden of showing that the Respondent’s discretion was exercised fairly and without extraneous considerations or improper motivation, particularly when appointing the wife of the Head of Service to the Post.

Accountability referral: under art. 10.8 of its Statute, the Tribunal refers this case to the Secretary-General of the United Nations for possible enforcement of accountability measures to determine whether the unfortunate possibility of nepotism may have occurred in this case. It is for the Secretary-General to determine which persons (both within and without the selection process) may have been involved in the matters discussed herein, and who may be held accountable.

Decision Contested or Judgment/Order Appealed

Applicants’ non-selection for a post.

Legal Principle(s)

The Tribunal generally will not substitute its decision for that of the Organization in the discretionary matters of appointment and promotion, but the Tribunal may examine whether the selection process was carried out in an improper, irregular or otherwise flawed manner and assess whether the resulting decision was tainted by undue considerations or was manifestly unreasonable.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Kozlov & Romadanov

Entity

DGACM

Case Number(s)

UNDT/NY/2010/019/UNAT/1622

Tribunal

UNDT

Registry

New York

Date of Judgement

30 Mar 2011

Duty Judge

Judge Kaman

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Non-disciplinary

Compensation

Discrimination and other improper motives

Bias/favouritism

Referral for accountability

Staff selection (non-selection/non-promotion)

Selection decision

Applicable Law

Administrative Instructions

- ST/AI/1998/7
- ST/AI/2000/1
- ST/AI/2002/4

Former Staff Rules

- Rule 104.15(b)(i)

GA Resolutions

- A/RES/57/305

Staff Regulations

- Regulation 4.4

UN Charter

- Article 101.3

UNDT Statute

UNRWA DT Statute

- Article 10.8

Related Judgments and Orders

2012-UNAT-228

UNDT/2010/134

UNDT/2009/045

UNDT/2009/047

UNDT/2009/048

UNDT/2010/065

UNDT/2010/095