

UNDT/2011/098, Mezoui

UNAT Held or UNDT Pronouncements

Based on the JAB recommendation, the Secretary-General had previously awarded the Applicant the amount of USD23,400 (three months net base salary) in compensation for an error in the consideration of her academic qualifications during the selection process. The Tribunal found that, in addition to the above-mentioned error, a number of substantial procedural irregularities had tainted the selection process, including the fact that the Senior Review Group had failed to pre-approve the evaluation criteria as required by ST/AI/2002/4 and met without having developed and published its own procedures as required by ST/SGB/2005/4. The Tribunal further found that the Applicant's chances of being promoted were one out of four. After setting at USD5,500 and USD2,000 respectively the amounts that would adequately compensate her for the material and moral damages suffered, the Tribunal did not order any award of compensation on the grounds that the compensation already awarded by the Secretary-General exceeded the amount set by the Tribunal. In the course of the proceedings before the Tribunal, the Applicant engaged in various misleading manoeuvres and disregarded several orders issued by the Tribunal. Based on a request by the Respondent, the Tribunal awarded costs against the Applicant (USD2,000) for abusing the proceedings before it. Finally, the Tribunal decided not to apply article 10.8 of the Statute, considering that the number and seriousness of the irregularities resulted more from collective negligence in the implementation of the applicable rules than from individual misconduct. Standard of review for non-selection decisions: The Tribunal only exercises a minimum degree of control over the lawfulness of the decision, limited to verifying the regularity of the procedure followed, and determining whether there was a mistake of fact or a manifest error of assessment on the Respondent's part. Compensation: In setting the appropriate amount of compensation, the Tribunal must assess the chance that the Applicant would have been promoted had the correct procedure been followed. Calculation of material damages: The material damage suffered by the Applicant corresponds to the difference between her net take-home pay at the D-1 level and that which she would have received at the D-2

level between June 2006, the earliest date on which her promotion could have been implemented, and February 2009 when she retired. In view of the salary scales and other variables such as post adjustment applicable at the time, the Tribunal set this amount at USD17,000 interest included. To this amount, the Tribunal added a lump sum of USD5,000 for the loss of pension benefits. Taking into account the Tribunal's assessment that the Applicant only had one chance out of four of being promoted, the appropriate compensation for material damage was assessed at one fourth of USD22,000, that is USD5,500. Moral damage: The moral damage suffered by the Applicant results from the unrest created by the procedural irregularities, not from the frustration of not being selected even though the Applicant considered herself to be the best qualified candidate.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision not to promote her, in 2006, to the D-2 post of Director, Office for ECOSOC Support and Coordination, DESA, at UNHQ.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Some claims on liability and procedure granted but no compensation or specific performance ordered.

Full judgment

[Full judgment](#)

Applicants/Appellants

Mezoui

Entity

DESA

Case Number(s)

UNDT/GVA/2009/060

Tribunal

UNDT

Registry

Geneva

Date of Judgement

9 Jun 2011

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Pension (see also, UNJSPF)

Staff selection (non-selection/non-promotion)

Central Review Body

Full and fair consideration

Selection decision
Standard of review (judicial)
Staff selection (non-selection/non-promotion)

Applicable Law

Administrative Instructions

- ST/AI/1999/9
- ST/AI/2002/4

Information Circulars

- ST/IC/2005/33

Secretary-General's bulletins

- ST/SGB/2001/9
- ST/SGB/2005/4

UNDT Statute

- Article 10.6

UNRWA DT Statute

- Article 10.8

Related Judgments and Orders

2010-UNAT-052

2010-UNAT-095

2010-UNAT-044