

UNDT/2012/020, Charles

UNAT Held or UNDT Pronouncements

The Tribunal finds that the Applicant has not identified any detrimental effects on him caused by the combination of the selection processes established or that he was; misled by the combined process.; The Applicant did not meet one of the job requirements, therefore, he had no expectation of being selected against the posts.; In the absence of any prospect of being selected for the Posts, the Tribunal finds that the Applicant has not established that he suffered any harm from being considered along with other candidates.; Nothing on the record suggests that any of the questions that the panel asked him were inappropriate for a competency-based interview.; The Tribunal finds that there was nothing illegal in the interview panel recording in their assessment notes that the Applicant did not meet the work experience requirement for the posts.; The Tribunal finds that by 23 February 2010 the Applicant had been advised of and was aware of the outcome of the selection process as on that date he learned of the identity of the selected candidates and he was not the one selected.; The procedural breach in this case did not deprive the Applicant of a fair chance of promotion. In any event, he does not provide evidence of any harm.

Decision Contested or Judgment/Order Appealed

The Applicant's non-selection for two posts.

Legal Principle(s)

The selection process conducted by an interview panel can be rescinded under rare circumstances. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the selection shall be upheld.; There is always a presumption that official acts have been regularly

performed. This is called the presumption of regularity, but it is a rebuttable presumption. If the management is able to even minimally show that the appellant's candidature was given a full and fair consideration, then the presumption of law is satisfied. Thereafter the burden of proof shifts to the appellant who must be able to show through clear and convincing evidence that she was denied a fair chance of promotion.; An applicant must discharge the onus to provide sufficient evidence of harassment, prejudice or any kind of improper motivation against him.; Not every violation will necessarily lead to an award of compensation. Compensation may only be awarded if it has been established that the staff member actually suffered damages.; The Appeals Tribunal will not approve the award of compensation when absolutely no harm has been suffered.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Charles

Entity

OCSS

Case Number(s)

UNDT/NY/2010/079

Tribunal

UNDT

Registry

New York

Date of Judgement

10 Feb 2012

Duty Judge

Judge Shaw

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Full and fair consideration

Interview

Applicable Law

Administrative Instructions

- ST/AI/2006/3