

# **UNDT/2012/178, Korotina**

## **UNAT Held or UNDT Pronouncements**

The Applicant had been assured of her eligibility, short-listed, interviewed, recommended for the position, and copied on subsequent communications, following which the Administration decided that she was not eligible. The UNDT found that the decision to disregard part of the Applicant's work experience because it was obtained prior to her Master's degree was unlawful. The UNDT also found that the decision to disregard, in its entirety, the Applicant's experience between February 2004 and April 2006 because it was deemed by OHRM to be equivalent to the G-5 or G-6 level, was unlawful. Accordingly, the determination that the Applicant was ineligible for the P-3 level temporary appointment was unlawful. The UNDT further found that, through representations made to the Applicant prior to and during the selection process, the Respondent created an expectation, in line with the standard selection procedures, that the Applicant was cleared and selected for the post. The UNDT found it appropriate to award the Applicant the amount of USD8,496.75, with interest, as compensation for the pecuniary loss suffered. Non-selection and preparatory decisions: Administrative decisions resulting in the ending of a staff member's participation in a selection process cannot be described as merely preparatory. Even if the vacancy was never filled, it would not necessarily mean that such staff member would lack standing to claim that her or his rights were violated. It may very well be that the selection process was never finalized as a result of the very decision the staff member may seek to challenge. Judicial review of non-selection cases: The Secretary-General has broad discretion in matters of appointment and promotion and it is not the role of Tribunal to substitute its own decision for that of the Secretary-General. However, the Tribunal may examine whether the selection procedures were properly followed or were carried out in an improper, irregular or otherwise flawed manner, as well as assess whether the resulting decision was tainted by undue considerations or was manifestly unreasonable. Legal hierarchy: At the top of the hierarchy of the Organization's internal legislation is the Charter of the United Nations, followed by resolutions of the General Assembly, staff regulations, staff rules, Secretary-General's bulletins,

and administrative instructions. Information circulars, office guidelines, manuals, and memoranda are at the very bottom of this hierarchy and lack the legal authority vested in properly promulgated administrative issuances. Circulars, guidelines, manuals, and other similar documents may, in appropriate situations, set standards and procedures for the guidance of both management and staff, but only as long as they are consistent with the instruments of higher authority and other general obligations that apply in an employment relationship. Just as a staff rule should not conflict with the staff regulation under which it is made, so a practice or a statement of practice must not conflict with the rule or other properly promulgated administrative issuance which it elaborates. It is important to highlight that a distinction must be made between matters that may be dealt with by way of guidelines, manuals, and other similar documents, and legal provisions that must be introduced by properly promulgated administrative issuances.

Counting of years of experience, disregarding work experience prior to Master's degree: Not having specified that the five years of work experience have to be completed after the Master's degree, in the absence of properly promulgated issuances stating otherwise, the Respondent is bound by the terms of the vacancy announcement, which did not include any such requirement. It is a contractual right of every staff member to receive full and fair consideration for job openings to which they apply. Even if OHRM's internal guidelines contained a provision that only experience obtained after a Master's degree should be counted, the lawfulness of such provision would be questionable, as it would appear to be manifestly unreasonable and imposing unwarranted limitations on qualification requirements. The adopted unwritten practice of not counting the experience obtained prior to the Master's degree is not supported by any rules or regulations forming part of the staff member's contract and lends itself to being arbitrary and manifestly unreasonable. Such a provision may constitute an unfair restriction on eligibility of a group of staff members for appointment and promotion without any basis in any of the properly promulgated administrative issuances.

Counting of years of experience, relevant professional experience: It follows from OHRM's own guidelines that "relevant professional experience" is generally any work experience after the first university degree that contributes to professional competencies/skills and prepares a candidate to perform the functions of the post, and that such experience should be counted towards the requirement of five years. The expression "in most cases" also indicates that there is no absolute or hard and fast proscription or bar, and that there is room for discretion. Not having included in the vacancy announcement the requirement that the candidates' prior work experience had to be at a certain

professional level, and having solicited applications on that basis, in the absence of any properly promulgated issuances to the contrary, the Respondent was bound by the terms of the vacancy announcement, which did not include any such requirement. Stages of selection process: ST/AI/2006/3 envisages that a selection process goes through separate stages, of which the review of eligibility is one of the first. Specifically, sec. 7.5 states that interviews or written tests are to be conducted after the candidates have been “identified as meeting all or most of the requirements of the post”. It may be improper for the Administration to revisit issues of eligibility after going through the entire selection process. Compensation: 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 harm.

## Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member of the United Nations Secretariat in New York, contested the decision finding her ineligible for an appointment to a temporary position at the P-3 level.

## Legal Principle(s)

The Tribunal notes that the Applicant’s request for management evaluation was limited to requesting the payment of certain benefits as a result of the non-renewal of her contract. The Applicant is also contesting the decision not to consider these issues using local national laws on the grounds that they allegedly supersede internal policies and rules of the United Nations.

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Korotina

## Entity

UN Secretariat

## Case Number(s)

UNDT/NY/2010/073

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

16 Nov 2012

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Staff selection (non-selection/non-promotion)

Eligibility

Standard of review (judicial)

## Applicable Law

UNDT Statute

- Article 2.1
- Article 8.1

UNRWA DT Statute

- Article 10.8

## Related Judgments and Orders

UNDT/2010/065

UNDT/2010/134

UNDT/2010/147

UNDT/2010/194

UNDT/2011/115

UNDT/2011/126

UNDT/2011/178

UNDT/2012/004

UNDT/2012/043

UNDT/2012/123

2010-UNAT-059

2010-UNAT-095

2011-UNAT-110

2012-UNAT-242