

# UNDT/2012/200, Finniss

## UNAT Held or UNDT Pronouncements

The Tribunal found that the PCO's role was vitiated by bias towards the Applicant, the evaluation of the Applicant was not objective, the selection exercise was unlawful and the Organization failed to discharge the burden of presumption of regularity. Naming of names: The Statute does not define "personal data", but for the purposes of judgments, it is unlikely to include names. Applicants are routinely named by the UNDT and UNAT in the headings of published cases except in circumstances where anonymity is granted by the Tribunal. Bias: In the legal sense, may be actual or apparent but either way it is assessed objectively. Actual and conscious bias which is proven as a matter of fact automatically disqualifies a decision maker. Test for apparent bias: Whether the fair-minded observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. Staff Selection: The guidelines in ST/AI/2006/3 provide that the evaluation of the candidates is to be against the pre-approved evaluation criteria and as a matter of fair process, there is no room for extraneous considerations such as bias, prejudice and discrimination. Presumption of regularity: A decision maker is the repository of much, if not all, of the evidence necessary to establish the facts about the reasons for the decision and the manner in which it was taken. The Respondent has an obligation to give reasons for a decision he has taken where requested. In such cases the burden of demonstrating both the reasons and the factual basis for them lies with the decision maker. It is unreasonable and unfair to require an Applicant to call the decision maker who is the representative of the Respondent and to produce documents which are neither in the Applicant's possession nor control. Minimal showing: The Respondent bears the evidential burden of making at least a minimal showing of regularity. This is particularly so where, as in this case, a decision is seriously called into question. The Respondent will have made a minimal showing of regularity and will have met his evidentiary burden if he provides the Applicant and the Tribunal with information about the decision being challenged. This information should include the findings of fact material to the decision; the evidence on which the findings of fact were based; the

reasons for the decision and all of the documentation in the possession and control of the decision maker which is relevant to the review of the decision.

Accountability referral: the Tribunal referred the case to the Secretary-General, pursuant to Art. 10(8) of its Statute, for appropriate action to be taken to enforce the accountability of those staff members who were responsible for the biased assessment and unlawful non-selection of the Applicant.

## Decision Contested or Judgment/Order Appealed

The Applicant appealed the decision not to select him for the post of Senior Investigator, P-5 level with Investigations Division, Office of Internal Oversight Services a vacancy for which he had applied and believed he was qualified. He challenges the decision arguing that it was tainted with bias of the Program Case Officer (PCO), irregularity in the interview, selection and evaluation process.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

The Tribunal awarded financial compensation.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Finniss

## Entity

UNON

## Case Number(s)

UNDT/NBI/2009/019

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

19 Dec 2012

## Duty Judge

Judge Shaw

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Staff selection (non-selection/non-promotion)

Selection decision

Referral for accountability

## Applicable Law

### Administrative Instructions

- ST/AI/2006/3

### Secretary-General's bulletins

- ST/SGB/2009/11

### UNDT Statute

- Article 11.3
- Article 11.6
- Article 9

### UNRWA DT Statute

- Article 10.8

## Related Judgments and Orders

UNDT/2009/022

UNDT/2009/088

UNDT/2010/095

UNDT/2010/108

UNDT/2011/129

UNDT/2011/032

UNDT/2012/125

2010-UNAT-084

2011-UNAT-122

2012-UNAT-201

2012-UNAT-245