

UNDT/2013/072, Gusarova

UNAT Held or UNDT Pronouncements

The Tribunal found that the decision was illegal and ordered that it be rescinded, and that the Applicant be granted USD3,000 as compensation for the material damages. Administrative decision/receivability *ratione temporis* The preliminary determination by an Interview Panel that a person is not eligible to apply for a vacancy announcement does not produce direct legal consequences and as such does not constitute an administrative decision for the purpose of staff rule 11.2(c) and art. 2(a) of the Tribunal's Statute. The statutory time-limit of staff rule 11.2(c) only starts to run once a final decision, which ought to be qualified as an administrative decision as per the definition of Judgment No. 1157 Andronov (2003) of the former UN Administrative Tribunal, endorsed by the UNAT, is notified to the Applicant. Unlike under former staff rule 11.2(a), under current staff rule 11.2(c) an administrative decision does not need to be notified in writing. Discrimination The intent and purpose of sec. 1(o) of ST/AI/2010/3 is to give a competitive advantage to female staff members working at the P-3 or P-4 level at a fund and programme, by extending to them the status of internal applicants when applying for P-4 or P-5 posts falling within the scope of ST/AI/2010/3. The decision to find that the Applicant, as an internal candidate under sec. 1(o), is ineligible under sec. 6.1 of ST/AI/2010/3 to apply for the generic vacancy announcement for P-5 positions, constitutes unjustified discrimination, which is in clear contradiction to the intent and purpose of sec. 1(o) of ST/AI/2010/3. Indeed, sec. 6.1 obviously does not apply to male staff members of the separately administered funds and programmes in the same contractual situation, who, unlike their female colleagues, are not considered as internal applicants under sec. 1(o) and, as such, would not be precluded from applying for posts more than one level higher than their personal grade. Scope of art. 10.5(a) of the Tribunal's Statute Article 10.5(a) has to be applied restrictively. An applicant whose candidature for a generic vacancy announcement is successful is not automatically promoted, but is merely selected to be put on a roster; the promotion only materialises if and when the applicant is subsequently selected from the roster. Therefore, the decision to find an applicant ineligible to apply for a

generic vacancy announcement does not in itself constitute a 'promotion' decision for the purpose of art. 10.5(a) of the Statute. Compensation/material damages A lost chance of being selected to be put on a roster and subsequently to be selected for a P-5 position, and as such to improve the Applicant's status within the Organization, may create material damages which warrant that the Applicant be granted moderate compensation.

Decision Contested or Judgment/Order Appealed

The Applicant, a female P-3 staff member of the UNFCCC, applied for a generic vacancy announcement for Chief Civilian Personnel Officer positions within the Department of Peacekeeping Operations. After the Applicant successfully passed the written test, she was convoked for an interview. After she informed the Interview Panel that her personal grade at the UNFCCC was at the P-3 level, the interview was terminated. Upon her inquiry, the Occupational Group Manager, Recruitment, Outreach and Career Development Section, Field Personnel Division, Department of Field Support, informed the Applicant that as a woman working at the UNFCCC, she was an internal candidate under sec. 1(o) of ST/AI/2010/3 and as such subject to the restriction of sec. 6.1, hence ineligible to apply for the generic P-5 vacancy announcement. The Tribunal found that the decision was illegal and ordered that it be rescinded, and that the Applicant be granted USD3,000 as compensation for the material damages.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Both financial compensation and specific performance

Full judgment

[Full judgment](#)

Applicants/Appellants

Gusarova

Entity

DFS

Case Number(s)

UNDT/GVA/2012/014

Tribunal

UNDT

Registry

Geneva

Date of Judgement

25 Apr 2013

Duty Judge

Judge Laker

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Compensation

Loss of chance

Pecuniary (material) damages

Discrimination and other improper motives

Jurisdiction / receivability (UNDT or first instance)

Temporal (ratione temporis)

Applicable Law

Administrative Instructions

- ST/AI/2006/3
- ST/AI/2010/3

Former Staff Rules

- Rule 111.2(a)

Staff Rules

- Rule 11.2(c)
- Rule 11.4(a)

UNDT Statute

- Article 10.5(a)
- Article 2(a)
- Article 8(a)
- Article 8(d)(i)

Related Judgments and Orders

UNDT/2009/036

UNDT/2011/043

UNDT/2010/111

UNDT/2010/009

UNDT/2012/121

2010-UNAT-069

2012-UNAT-273

2010-UNAT-013

2010-UNAT-030

2012-UNAT-269

2012-UNAT-201

2012-UNAT-205

2011-UNAT-109

2012-UNAT-224

2012-UNAT-238