

UNDT/2013/113, Skourikhine

UNAT Held or UNDT Pronouncements

The Applicant was considered for one of the VA under review as a roster candidate, but not selected. The Applicant subsequently applied to another of the VA under review, but that VA was cancelled. The P-5 post opened under that VA was subsequently re-advertised, one day after the Applicant's status as a roster candidate had expired. The new VA was accessible to the public only for one day and the Administration selected a roster candidate, who had been the only candidate who had applied during the one-day opening of the VA. The Applicant did not have a chance to apply for the re-advertised post. He applied for the fourth VA under review, but at the time of his application, the Administration had already decided to select a roster candidate for that post. The Tribunal found that part of the application was not receivable, since the Applicant had failed to submit a request for management evaluation with respect to one of the selection decisions. With respect to the remaining three VAs, which led to two selection decisions, the Tribunal found that the application was receivable and that the Applicant was denied his right to full and fair consideration, in several instances, and suffered economic and moral damages. The Tribunal decided to annul the two selection decisions, and determined the amount of alternative compensation payable under art. 10.5 of its Statute (USD12000), should the Administration opt not to cancel the selection decisions. The Tribunal further granted compensation for the moral damages resulting from the fundamental and repeated irregularities committed by the Administration vis-à-vis the Applicant (USD4000). During the proceedings, the Tribunal had joined the two selected candidates to the case, under art. 11 of its Rules of Procedure.

Decision Contested or Judgment/Order Appealed

Between 2010 and 2012, several P-5 posts of Senior Russian Revisers were opened within the Russian Translation Section, UNOG, under various vacancy announcements, one of which was cancelled and subsequently re-advertised with slightly revised terms. The Applicant, a P-4 Russian Reviser, appealed several

decisions not to select and promote him to one of these P-5 posts of Senior Russian Reviser, concerning altogether four vacancy announcements.

Legal Principle(s)

Receivability: Since the request for management evaluation is the first mandatory step which may ultimately result in the cancellation of the administrative decision, the Tribunal has to undertake a very strict assessment of which administrative decision was contested during the management evaluation. Even if the applicable rules did not provide for the Administration to individually notify candidates in case of cancellation of a vacancy announcement, this absence of a rule cannot lead to an obligation on the part of the candidates to themselves actively seek that information. If the Administration fails to notify an individual decision, it creates legal uncertainty for itself and for the staff member and cannot complain that some of its decisions are contested a long time after they were taken. In such case, the statutory time-limits for management evaluation start to run only once the Applicant receives a written notification that the vacancy announcement was cancelled. An Applicant who was unable to apply for a post because a vacancy announcement was accessible to the public only for one day cannot be denied having a standing to sue (*intérêt à agir*). Discretion to cancel a VA: While the Administration has broad discretion in cancelling a vacancy announcement, if it provides a reason, that reason must be supported by the facts. The justification that a VA was cancelled and re-advertised with slightly different terms, allegedly to adjust it more closely to the requirements of the post, does not stand if in a subsequent VA, the Administration gets back to the wording of the initial VA for the same category of posts. Right to full and fair consideration: It follows from art. 101.3 of the UN Charter and art. 4.2 of the Staff Regulations that the Administration has to select the best candidate for each post. To determine the most qualified person for a post, it is indispensable that all candidatures are evaluated and compared to each other, with respect to the criteria and requirements of the vacancy announcement. Therefore, the Administration cannot simply choose a roster candidate, who, admittedly, fulfills the requirements of the post, but whose candidature has not been compared to that of other eligible candidates; it cannot, either, close the public access to a VA before its terms, after it chooses a roster candidate, even if the Manual for the hiring manager supports such practice by the Administration. This practice constitutes a clear violation of other candidates' right to apply and to full and fair consideration, and is contrary to the

paramount requirements of art. 101.3 of the United Nations Charter and staff regulation 4.2. Moral damages: A fundamental violation of an Applicant's due process rights can in itself give rise to moral damages.

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

Skourikhine

Entity

UNOG

Case Number(s)

UNDT/GVA/2013/7

Tribunal

UNDT

Registry

Geneva

Date of Judgement

3 Sep 2013

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Staff selection (non-selection/non-promotion)

Full and fair consideration

Applicable Law

Administrative Instructions

- ST/AI/2010/3/Amend.1

Staff Regulations

- Regulation 4.2

Staff Rules

- Rule 11.2

UNDT RoP

- Article 11

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2013/040

2010-UNAT-044

2012-UNAT-220

2013-UNAT-309

2013-UNAT-347

2013-UNAT-346