

UNDT/2013/153, Boutiba

UNAT Held or UNDT Pronouncements

The Tribunal found that the selected candidate did not fulfill the requirement of fluency in French hence his selection was illegal, despite his status as a roster candidate. It further noted that since the Administration had not examined the other candidates, including the Applicant, the latter's right to full and fair consideration was violated. The Applicant had only requested the rescission of the decision not to select her, without requesting the rescission of the decision to select the successful candidate. The Tribunal rejected the Applicant's request for rescission and merely ordered financial compensation for the material and moral damages suffered by the Applicant as a consequence of the illegal selection decision. Right to full and fair consideration: Under art. 101.3 of the UN Charter and staff regulation 4.2, the Administration has to select the most qualified candidate for a post; therefore, and to respect each candidate's right to full and fair consideration, it has to evaluate and compare all the eligible candidates. Moreover, the Administration has to ensure that the selected roster candidate does actually possess the qualifications required by the VA. Roster status: The roster status provides a simple presumption that a candidate is able to fulfill the functions for which he/she has been placed on the roster and that presumption can be contradicted if evidence to the contrary is produced by an Applicant. Judging otherwise, namely that the Tribunal cannot question a competence considered as acquired by a roster candidate, would imply that it knowingly accepts that an error committed by a jury with respect to the qualifications of a staff member in languages, university diploma etc.—which led to that candidate being placed on the roster by mistake—continues to produce effects in the future, even though at the time of a new selection procedure, evidence is produced that the candidate does not fulfill the requirements of the relevant VA. Legal consequences of the illegality of the decision: If an Applicant only requests rescission of the decision not to select him/her—without asking for rescission of the decision to select the successful candidate—the Tribunal will not grant that rescission, despite the fact that it found the selection decision to be illegal. Rescission of the negative decision not to select the Applicant only makes sense if the decision to select the successful candidate is also rescinded, in which case the Administration is obliged to restart the selection procedure. Since the Tribunal cannot take purely theoretical decisions, the Applicant's request for rescission can only be rejected. However, the Tribunal has to set an amount for the material and moral prejudice, if any, suffered by the Applicant as a consequence of the illegal decision.

Decision Contested or Judgment/Order Appealed

The Applicant, a roster candidate, appealed her non-selection for a G-6 post, on the grounds that her candidature was not compared to that of the selected candidate and that the latter did not fulfill the requirements of the vacancy announcement ("VA"). The VA required fluency in French. The successful candidate was selected from the roster. His PHP indicated that he was "confident" in French (read, speak, understand, write) and, at the time of his application to the contested post, he was attending level four of the French language classes offered by the Staff Development and Learning Section, UNOG.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Only financial compensation

Full judgment

[Full judgment](#)

Applicants/Appellants

Boutiba

Entity

OCHA

Case Number(s)

UNDT/GVA/2013/15

Tribunal

UNDT

Registry

Geneva

Date of Judgement

29 Nov 2013

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

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

Related Judgments and Orders

UNDT/2013/040

UNDT/2013/113

2010-UNAT-044

2011-UNAT-109

2011-UNAT-117

2012-UNAT-220

2013-UNAT-347