

UNDT/2014/068, Farrimond

UNAT Held or UNDT Pronouncements

In the course of the selection process, the post of Chief, IS, (D-1)—whose incumbent had been acting as Hiring Manager for the contested post—was being temporarily loaned to the Department of General Assembly and Conference Management (DGACM), for a period of more than ten months. Despite this vacuum, the Administration assigned a Chief of Section (P-5) as OIC, IS, for the whole period of the loan and derived from this status the authority to act as Hiring Manager in the selection process, including the submission of the recommendation memorandum for final selection to the Director-General, UNOG. The Tribunal found that the Chief of Section, acting as OIC, IS, lacked the legal authority to act as Hiring Manager in the selection process. Moreover, the Tribunal found that art. 1.8(d) of ST/AI/1999/9 (Special measures for the achievement of gender equality) was not respected, since the Administration failed to submit to the Director-General, as final decision maker, the required written analysis and appropriate supporting documentation, indicating how the qualifications of the recommended male candidate were clearly superior to those of the Applicant, who, as a rostered candidate, matched the requirements for the post. In view of these two procedural irregularities and the fact that the Applicant, as a rostered candidate, had a significant chance to be selected for the post, the Tribunal decided to rescind the contested selection decision. Moreover, it noted that the amount of alternative compensation under art. 10.5(a) of its Statute was to be determined on the basis of the estimated difference between the P-4 and P-5 grades, for a period of two years, divided by six, since the Applicant had a chance out of six to be promoted. In view of the fundamental nature of the procedural breaches, the Tribunal also granted compensation for moral damages.

Decision Contested or Judgment/Order Appealed

The Applicant, a P-4 English Interpreter, Interpretation Service (IS), Department for Conference Management (DCM), UNOG, appealed the decision to select another, male, candidate to the P-5 post of Senior Interpreter in the same service.

Legal Principle(s)

Hiring Manager: The Hiring Manager plays a crucial role in a selection process and a person who acts as Hiring Manager must have the legal authority to do so. **OIC:** The appointment of an OIC requires that the OIC's duties be clearly defined against an existing post, this means that where there is no post, the position of an OIC lacks its essential fundament. Therefore, in the absence of a given post against which a person can be assigned as OIC, the Administration cannot appoint an OIC and derive from this status the same authority vested in the position of the non-existent post of Chief (D-1), including the authority to act as a Hiring Manager. **Gender Equality:** The failure by the Administration in a selection process to submit to the final decision maker a written analysis with appropriate supporting documentation, indicating how the qualifications of the recommended male candidate are clearly superior to those of a female candidate who matches the requirements for the post, constitutes a violation of sec. 1.8(d) of ST/AI/1999/9. **Alternative compensation:** The compensation to be paid as an alternative to effective rescission of a non-promotion decision corresponds to the salary difference between an Applicant's current grade and the grade he/she would have had upon promotion, divided by the chances he/she had in the selection process. In the absence of clear indicators as to when the person will be able to assert her/his right to seek promotion in the future, the period to be taken into account should not exceed two years.

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

Farrimond

Entity

UNOG

Case Number(s)

UNDT/GVA/2014/3

Tribunal

UNDT

Registry

Geneva

Date of Judgement

19 Jun 2014

Duty Judge

Judge Laker

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Discrimination and other improper motives

Gender

Staff selection (non-selection/non-promotion)

Full and fair consideration

Applicable Law

Administrative Instructions

- ST/AI/1999/9
- ST/AI/2010/3/Amend.1
- ST/AI/2010/4/Rev.1

UNDT RoP

- Article 11

UNDT Statute

- Article 10.5(a)

Related Judgments and Orders

2010-UNAT-044

2011-UNAT-109

2011-UNAT-122

2011-UNAT-174

2012-UNAT-220

2013-UNAT-286

2013-UNAT-309

2013-UNAT-347

2013-UNAT-357

2013-UNAT-359