

UNDT/2015/075, Melpignano

UNAT Held or UNDT Pronouncements

The Tribunal found that the Guidelines were not applicable to the recruitment of UNLB GS local staff, because UNLB is not an “established mission” and, therefore, does not fall within their remit; additionally, the Guidelines were never duly issued at UNLB. In fact, given that UNLB is not a peacekeeping operation or a special political mission, GS staff recruitments are covered by ST/AI/2010/3 and do not fall, as argued by the Respondent, in a lacuna of law,. The Tribunal further found that the time-in-grade requirements were abolished long ago and are contrary to norms of superior legal status than the Guidelines. Administrative decision: The decision finding a candidate ineligible for a post is a reviewable administrative decision. It produces direct consequences, i.e. excluding the Applicant from any possibility of being considered for selection for a particular vacancy. It is not merely a preparatory act, as it has direct and very concrete repercussions on the Applicant’s right to be fully and fairly considered for the post through a competitive process. UNLB is not an “established mission” under the Guidelines: UNLB does not fall under the notion of “established mission”. Hence, UNLB does not fall within the Guidelines’ remit. Scope of application of ST/AI/2010/3: Recruitments of GS local staff fall under ST/AI/2010/3. Inasmuch as UNLB is not a political operation or a special political mission, its staff is not excluded from the instruction’s scope of application by the exception in its sec. 3.2(h). Inapplicability of instruments not properly promulgated: Since the Guidelines were never issued through the established procedures, they cannot apply. Abolition of time-in-grade requirements: While the time-in-grade requirements set out in the Guidelines may have been in line with the administrative issuance governing selection procedures in force from 1996 until 2002, such requirements have been abolished twice since then, by ST/AI/2002/4 and ST/AI/2006/73. If ST/AI/2010/3 does not explicitly abolish them, it certainly did not restore them. To this extent, the Guidelines have been, and still are, at odds with the relevant administrative instructions successively promulgated since 2002. Legal status of guidelines and similar instruments: As held in Villamorán, information circulars, office guidelines, manuals, and memoranda are at the very bottom of the hierarchy of norms and lack

the legal authority vested in properly promulgated administrative issuances. They cannot run against or supersede superior rules (such as duly adopted administrative instructions), nor can they add substantive requirements not catered for in higher norms, unless expressly authorised to do so. As a matter of principle, guidelines, SOPs and similar documents are brought into existence for the sole purpose of implementing higher rules. By nature, they are not designed to subsist disconnected from, and beyond the duration of, the superior instrument that they implement. Upon the superseding of administrative instructions upon which any guidelines are based, those guidelines cease to be operative, either in total or to the extent to which the substratum upon which they are based has been removed. They are, to that extent, rendered void and of no effect. Rescission and compensation: The rescission of a decision to deem a candidate ineligible when the selection process is still in progress implies that he/she must be further considered for selection on equal footing with other candidates. Since such an applicant will then be fully considered, he/she suffered no loss of opportunity or any other demonstrable damage triggering compensation. Declaring a candidate ineligible is not a decision requiring the Tribunal to set alternative compensation. Although it is closely related to a potential promotion, it is not per se a decision to appoint and/or promote another candidate or not to select/appoint.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to consider him ineligible for a GS post in UNLB because he did not meet the time-in-grade requirements of the vacancy announcement (VA). Such requirements were laid down in the Guidelines for promotion of locally recruited General Service (GS) staff at the established missions issued in 1996 ("Guidelines").

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

No compensation ordered (but judgment for Applicant)

Full judgment

[Full judgment](#)

Applicants/Appellants

Melpignano

Entity

UNLB

Case Number(s)

UNDT/GVA/2015/124

Tribunal

UNDT

Registry

Geneva

Date of Judgement

24 Aug 2015

Duty Judge

Judge Downing

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Subject matter (*ratione materiae*)

Staff selection (non-selection/non-promotion)

Eligibility

Applicable Law

Administrative Instructions

- ST/AI/2002/4
- ST/AI/2003/3
- ST/AI/2006/3
- ST/AI/2010/3

Secretary-General's bulletins

- ST/SGB/2009/4
- ST/SGB/2010/2
- ST/SGB/413

UNDT Statute

- Article 10.5

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

UNDT/2010/134

UNDT/2012/178

UNDT/2011/126

UNDT/2012/044

UNDT/2013/072

UNDT/2015/002

UNDT/2015/054

2010-UNAT-011

2010-UNAT-013

2010-UNAT-030

2010-UNAT-049

2011-UNAT-118

2011-UNAT-152

2011-UNAT-173

2012-UNAT-240

2012-UNAT-271

2013-UNAT-304

2013-UNAT-378

2015-UNAT-526

2015-UNAT-527