

UNDT/2016/101, El-Kholy

UNAT Held or UNDT Pronouncements

The Tribunal found that the facts of the case created a situation in which a fair-minded observer would have concluded that there was a real possibility that the presence of that senior official on the interview panel would lead to a reasonable perception of bias. It was thus unreasonable for that Panel member not to, at least, have raised the matter of a perceived conflict of interest with the panel and, ultimately, not to have recused himself from sitting on it. However, since there was no evidence that the presence of the senior manager had an impact on the outcome of the selection process for the Applicant, the Tribunal did neither order rescission of the selection decision nor compensation for material damages. It did, however, order moral damages.

Conflict of interest: The relevant test for a person to consider whether he/she ought to recuse him/herself from sitting on an interview panel is the existence of a reasonable perception of bias from the perspective of a fair-minded observer. A staff member's subjective fear of bias cannot in itself be sufficient to support a finding that a conflict of interest exists, nor is the actual existence of such conflict of interest necessary.

Impact on the selection decision: In the absence of evidence that the presence of a person who ought to have recused him/herself from an interview panel, had an impact on the outcome of the selection process for the Applicant, the Tribunal cannot order rescission or compensation for material damages. It cannot, either, base its conclusions in this respect on speculations, such as, that the Applicant may have performed better at the interview if said person had not been a member of the Panel.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision to deny her full and fair consideration for the D-2 position of Special Representative of the Administrator, Programme of Assistance to the Palestinian People ("PAPP"), United Nations Development Programme ("UNDP"), and, specifically, the decision to conduct an assessment interview with a panel that included a senior official whose conduct the Applicant had questioned. In this

respect, the Applicant had sent several communications to senior Management within UNDP, including the senior official in question, complaining about his dealing with the Applicant in the framework of a restructuring exercise. The Applicant also referred to a complaint of harassment and abuse of authority that she had filed against said senior official.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Only financial compensation was awarded.

Full judgment

[Full judgment](#)

Applicants/Appellants

El-Kholy

Entity

UNDP

Case Number(s)

UNDT/GVA/2015/127

Tribunal

UNDT

Registry

Geneva

Date of Judgement

21 Jul 2016

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Discrimination and other improper motives

Bias/favouritism

Staff selection (non-selection/non-promotion)

Full and fair consideration

Applicable Law

Laws of other entities (rules, regulations etc.)

Other UN issuances (guidelines, policies etc.)

- UNDP Recruitment and Selection Policy

UN Charter

- Article 101.3

UNDT Statute

- Article 10.5