

# **UNDT/2016/219, Sarrouh**

## **UNAT Held or UNDT Pronouncements**

The Tribunal granted the application in part and awarded the Applicant USD18,000 in moral damages: USD3,000 for each of the six RC position for which she applied in her August and November 2013 job applications (the appeal against other non-selection decisions was not found receivable as it had been made out of time). When assessing the Applicant's relevant applications, it was unlawful for the EG to not nominate the Applicant as this decision was based on her 2012 performance appraisal report, which, at the given time, was still under rebuttal, and not on the last three performance appraisal reports. The Tribunal cannot order priority placement as specific performance as it cannot substitute the role of the EG in this regard, especially when no post may be available. The request for priority placement is rejected. Pecuniary damages Since the Applicant only pleaded for such compensation in her closing submissions and not in her application, and thus the Respondent was not given an opportunity to present views on this issue, the request for pecuniary damages in the amount of two years' salary is rejected. In addition, it appears that the request was related to the Applicant's separation from service which is the subject of another case of the Applicant before the Tribunal. Costs Since no evidence supports a finding of abuse of process by the Respondent, in accordance with art. 10.6 of the Statute of the Dispute Tribunal, the Tribunal is not in a position to award any costs to the Applicant and this request is to be rejected. Furthermore, no evidence was submitted by the Applicant in relation to the amount and payment of legal fees. Observations The Tribunal considered it necessary to observe procedural irregularities related to the initial performance appraisal issued on 18 June 2013 and the rebuttal process, as reflected by the written and oral evidence presented in the present case. Taking into consideration the complexity of such process and to prevent similar proceedings in the future, the Tribunal underlined that the relevant evidence was available to the Advisory Group but it was not considered by it.

## **Decision Contested or Judgment/Order Appealed**

Rejections of the Applicant's candidacy for all Resident Coordinator/Resident Representative posts to which she had applied in 2013.

## Legal Principle(s)

The EG, on behalf of the UNDP, must review the profiles of each of the relevant posts and the corresponding country check list to determine the required work functions and assess in writing the potential nominee's suitability for each functions and corresponding minimum criteria. As results from the IAAP's Terms of Reference read together with the UNDP Guidelines for the Selection and Appointment of Resident Coordinators of November 2009, in order to decide on the Applicant's formal nomination, the EG has the obligation to review the potential nominee's three latest performance appraisals. In accordance with the UNAT judgment Gueben et al 2016-UNAT-692, the amended text of art. 10.5(b) of the Statute is of immediate application because an award of damages takes place at the time the award is made and not at the time the application is filed. According to the Appeals Tribunal, "applying the amended statutory provision is not the retroactive application of law. Rather, it is applying existing law".

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

Only financial compensation

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Sarrouh

## Entity

UNDP

## Case Number(s)

UNDT/NY/2014/21

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

21 Dec 2016

## Duty Judge

Judge Greceanu

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Evidence of harm

Non-pecuniary (moral) damages

Pecuniary (material) damages

Staff selection (non-selection/non-promotion)

## Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNDP Recruitment and Selection Policy

UNDT Statute

- Article 10
- Article 2
- Article 3
- Article 8