

# **UNDT/2017/068, Nikolarakis**

## **UNAT Held or UNDT Pronouncements**

How to measure a loss of chance. The Tribunal finds that, as stated in Niedermayr, the assessment of loss of chance is an inexact science, and the Tribunal must assess the matter in the round and arrive at a figure deemed to be fair and equitable having regard to the number of imponderables present in the case, including the chances of being selected. The Tribunal should take into account two matters: (a) the nature of the irregularity and (b), thereafter in the assessment, all the imponderables, noting all the while that this is an inexact science (Niedermayr). The Tribunal notes the established jurisprudence that the calculation of loss of opportunity damages need not be determined by the number of candidates involved in a recruitment exercise, but by the objective measure of an individual applicant's loss, as a fair and equitable measure, and upon consideration of a conspectus of all material factors and imponderables. Factors to be considered. The Tribunal, in all the circumstances, and taking into account the Applicant's seniority, performance history and prior candidacy, together with all the imponderables, finds that his chances were more than slight, and cannot exclude the possibility that it is more probable than not that he would have been selected as he is long serving, a strong candidate with a good record of service, and has been recommended for promotion by his reporting officers.

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

The Applicant, a Security Officer serving at the S-2 level, step 11, in the Department of Security and Safety ("DSS") in New York, filed an application contesting his "[e]xclusion from [a] recruitment procedure for S-3 Senior Security Officers on job opening ["JO"] #52215", published on 24 December 2015. The recruitment exercise resulted in the selection of twenty Senior Security Officers ("SSO") at the S-3 level from a roster. The Respondent having admitted that 12 out of 20 selected roster candidates were ineligible for selection, the Tribunal found for the Applicant and awarded him USD24,166.55 (20,000 plus 5,000 minus 833.45 that had already been

paid to him) in compensation.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Nikolarakis

## Entity

DSS

## Case Number(s)

UNDT/NY/2016/39

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

25 Aug 2017

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Loss of chance

## Applicable Law

UNDT Statute

- Article 10.5(a)

## Related Judgments and Orders

UNDT/2009/045

UNDT/2011/103

2010-UNAT-044

2012-UNAT-245

2014-UNAT-429

2011-UNAT-117

2013-UNAT-346

2014-UNAT-448

2015-UNAT-603

2012-UNAT-205

2011-UNAT-109

2017-UNAT-723