

UNDT/2018/029, Finniss

UNAT Held or UNDT Pronouncements

The Tribunal finds it noteworthy that in relation to functional delegation of authority, the person in whom authority is vested by virtue of his/her position/function has the power to delegate that authority. However, such delegation does not equate to the delegator definitively ridding himself/herself of the powers and authority that he or she delegates. Legally, a delegator continues to maintain the powers and authority that he or she has delegated, and such delegation is thus revocable at any time. Therefore, both parties' arguments that the USG/OIOS could or should have "surrendered" her delegation back to the Secretary-General are flawed. Rather, the Secretary-General may simply revoke a prior delegation of authority at any time. Relevant provisions do not contain any exception to any selection at the D-2 level as being exempted from appointment by the Secretary-General. Thus, the Tribunal cannot but conclude that the Secretary-General's authority to select staff members to positions at the D-2 level applies across the board to any appointment to positions at that level, without any exception. By virtue of ST/SGB/2015/1, any prior delegation of appointments to the D-2 level within OIOS to the USG/OIOS was revoked by the "retention", as per sec. 4.2(a) and annex 1 of ST/SGB/2015/1. Furthermore, according to the principle of hierarchy of norms, ST/SGB/2015/1, which is also a specialized norm, prevails over Administrative Instructions ST/AI/401 amended by ST/AI/2003/4 (see Villamoran 2011-UNAT-160). Since the decision-maker in this instance was the Secretary-General, the OIOS Review Body had no role to play in this selection exercise. The Tribunal reaches the conclusion that the Secretary-General had the authority to make the selection decision for the post of Director, ID/OIOS.

Decision Contested or Judgment/Order Appealed

Non-selection to the position of Director ("D-2"), Investigations Division, Office of Internal Oversight Services.

Legal Principle(s)

In cases of staff selection, the Tribunal cannot substitute its assessment to that of the Administration and, as a consequence, its role is to evaluate the procedure and verify whether the Applicant was given full and fair consideration. The Secretary-General, as the Chief Administrative Officer of the United Nations, holds the primary authority and is accountable for the Administration of the Staff Rules and Regulations. The highest authority of the United Nations hierarchy of norms is the United Nations Charter. Its article 101.1 provides that staff members shall be appointed by the Secretary-General, under regulations established by the General Assembly.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Finniss

Entity

OIOS

Case Number(s)

UNDT/GVA/2016/092

Tribunal

UNDT

Registry

Geneva

Date of Judgement

27 Feb 2018

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Applicable Law

Administrative Instructions

- ST/AI/2003/4
- ST/AI/2010/3
- ST/AI/401

GA Resolutions

- A/RES/54/244

Secretary-General's bulletins

- ST/SGB/2015/1
- ST/SGB/273

UN Charter

- Article 101.1

Related Judgments and Orders

2011-UNAT-160

UNDT/2012/125