

UNDT/2018/061, Ndahigeze

UNAT Held or UNDT Pronouncements

The Tribunal found that the impugned administrative decision was the decision not to offer the Applicant the post when the first candidate declined the offer and that it satisfied the test in Andronov (former UNAT Judgment No. 1157 (2002)) as further elaborated and clarified in Andati-Amwayi (2010-UNAT-058). The Tribunal rejected the Applicant's claim that she had a legitimate expectation of being selected for JO 39506 because while the Applicant made this allegation in her request for management evaluation, she did not raise it in her application. Further, the fact that the Applicant had been performing the duties for eight months did not in and of itself amount to a legitimate expectation to be appointed. By taking into account adverse comments that were outside the selection process and which the Applicant was never given an opportunity to challenge, MINUSMA failed to accord to the Applicant the full and fair consideration that she was entitled to. Related

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to select her for a P-3 Gender Affairs Officer post ("JO 39506").

Legal Principle(s)

Administrative decisions are characterized by the fact that they are taken by the Administration, they are unilateral and of individual application and they carry direct legal consequences. In order for a staff member's claim of legitimate expectation to succeed, it must not be based on mere verbal assertion but on a firm commitment revealed by the circumstances of the case. When reviewing selection decisions, the role of the Tribunals is to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent, and non-discriminatory manner. It is not the Tribunals' role to substitute their decision for

that of the Administration.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal concluded that MINUSMA failed to accord to the Applicant full and fair consideration and ordered rescission of the impugned decision or that the Respondent pay the Applicant three months' net base salary as compensation in lieu of rescission.

Full judgment

[Full judgment](#)

Applicants/Appellants

Ndahigeze

Entity

MINUSMA

Case Number(s)

UNDT/NBI/2016/079

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

30 May 2018

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Full and fair consideration

Applicable Law

Administrative Instructions

- ST/AI/2010/3

Other UN issuances (guidelines, policies etc.)

- Manual for the Hiring Manager