

UNDT/2018/091, Mashayekhi

UNAT Held or UNDT Pronouncements

Receivability While staff rule 11.2(c) does not explicitly require written notification, sec. 10.1 of ST/AI/2010/3 does so in cases of non-selection for candidates that had been convoked for assessment. Since the Applicant was convoked for assessment— i.e. she was invited to take the written test—and she was not successful, she had to be notified in writing. Therefore, and although the Applicant became fully aware of her non-selection on 26 May 2016, the Tribunal found that the statutory time limit for the request for management evaluation did not start to run on that day and the application was found receivable. **Merits** The Tribunal noted that it was appropriate to test technical skills through a written assessment, and to test core/managerial competencies through a competency-based interview. The Tribunal reviewed the questions of the written test and saw no reason to find unreasonable the Respondent's submission that they were directly relevant to the skills expected for the position. It was also satisfied that the Panel composition complied with sec.1(c) of ST/AI/2010/3. The Tribunal recalled that the candidates' tests were provided to the Panel members anonymously and found that the Applicant did not provide any element allowing to conclude that the anonymity of the tests was not respected and/or compromised. The Tribunal noted the Applicant was rated below the passing threshold of 70% by all of the Panel members and obtained an average score of 60.3%. The Tribunal was satisfied that the tests of all candidates were evaluated in accordance with pre-established criteria applied by all the Panel members. While the Applicant also questioned the determination of the passing threshold at 70%, the Tribunal considered that such was not subject to judicial review but felt entirely under the Administration's discretion. The Tribunal found that what was determining is that the threshold, as well as the evaluation criteria, had been pre-established and were applied by the Panel members. In light of the foregoing, the Tribunal was satisfied that the recruitment process was conducted in accordance with ST/AI/2010/3 and that the Applicant's candidature was given full and fair consideration.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision not to select her for the position of Director, Division on Technology and Logistics at the D-2 level in UNCTAD.

Legal Principle(s)

The decisive moment of notification for the purpose of staff rule 11.2(c) is when "all relevant facts ... were known or should have reasonably been known" by the staff member (Auda 2017-UNAT-746). In selection and appointment matters, the Administration enjoys broad discretion and that it is not the role of the Tribunal to substitute its own decision for that of the Secretary-General regarding the outcome of a selection process (Fröhler 2011-UNAT-141, Ljungdell 2012-UNAT-265). The Tribunal's examination is limited to whether the procedure laid down in the Staff Regulations and Rules was followed, and whether the staff member was given full and fair consideration (Abbassi 2011 UNAT-110). In non-selection cases, official acts are presumed to have been regularly performed (Rolland 2011-UNAT-122). The burden of proving improper motives such as abuse of authority, discrimination, retaliation or harassment rests on the person making the allegations (Nwuke 2015-UNAT-056, Jennings 2011-UNAT-184). The burden of proving any allegations of ill motivation or extraneous factors rests with the Applicant (Asad 2010-UNAT-021, Jennings 2011-UNAT-184, Azzouni 2010-UNAT-081, Obdeijn 2012-UNAT-201).

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Mashayekhi

Entity

UNCTAD

Case Number(s)

UNDT/GVA/2016/113

Tribunal

UNDT

Registry

Geneva

Date of Judgement

20 Sep 2018

Duty Judge

Judge Bravo

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

Staff Rules

- Rule 11.2(c)
- Rule 11.4

Related Judgments and Orders

2017-UNAT-746

2011-UNAT-141

2012-UNAT-265

2011-UNAT-110

2011-UNAT-122

2010-UNAT-021

2010-UNAT-081

2012-UNAT-201

2011-UNAT-184