

UNDT/2018/108, Ross

UNAT Held or UNDT Pronouncements

The Tribunal found that the Applicant had not received the fullest regard due to him as an internal candidate. The Tribunal found it appropriate in this case to award USD5,000 as compensation for the loss of opportunity and USD4,000 for moral damages. Related

Decision Contested or Judgment/Order Appealed

The Applicant contested the UNHCR High Commissioner's decision to appoint an external candidate to the position of P-4 Senior Legal Officer, (Administration of Justice) Nairobi.

Legal Principle(s)

There is always a rebuttable presumption that official acts have been regularly performed. If the management can even minimally show that an appellant's candidature was given full and fair consideration, then the presumption of law stands satisfied. Thereafter the burden of proof shifts to the appellant who must show through clear and convincing evidence that he/she was denied a fair chance of promotion or selection. The standard of review adopted in the Appeals Tribunal jurisprudence mandates the following issues for consideration: (a) whether the procedure as laid down in the [applicable rules] was followed (b) whether the Applicant was given fair and adequate consideration and (c) whether the applicable Regulations and Rules were applied in a fair, transparent and non-discriminatory manner. An internal candidate has the right to be given the "fullest consideration". He or she, however, has no right to have external candidates excluded from the competition, no matter the nature of the job advertised. A mere availability of "suitable" internal candidates does not bar the Organization's seeking the best candidates available internally and externally. Regarding the "fullest regard" under

staff regulation 4.4 and para. 7I of the PPA, as affirmed recently by the Appeals Tribunal, it is not an entitlement of the staff member solely by virtue of being an internal candidate to be given priority consideration for a post. “Fullest regard” will rather denote an obligation to consider the internal candidate in the selection process by default, until she or he has been firmly disqualified from further competition. An appointment of a candidate who does not meet the fundamental condition for an appointment is invalid.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Ross

Entity

UNHCR

Case Number(s)

UNDT/NBI/2016/009

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

2 Nov 2018

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Due process

Staff selection (non-selection/non-promotion)

Full and fair consideration

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNHCR Policy and Procedures on Assignments and Promotions (PPAP)

Staff Regulations

- Regulation 4.4

Related Judgments and Orders

2019-UNAT-926