

UNDT/2019/048, Krioutchkov

UNAT Held or UNDT Pronouncements

The Tribunal found that the main issues for determination in this matter were 1) whether a temporary job opening limited to “local recruitment only” is lawful, and 2) if the Applicant’s candidature was given full and fair consideration. On the first issue, the Tribunal found that the Respondent’s argument that pursuant to section 1.1 of ST/AI/2010/4 Rev.1 (Administration of temporary appointments) the Organization may limit temporary job openings to local recruitment cannot stand. It also found that there were no legal grounds for the Respondent’s assertion that limiting temporary recruitments to locally based candidates is a “vested right”, and that explicitly limiting applications to temporary job openings at the professional level to local staff makes geographical location of a candidate the paramount consideration, which is contrary the Charter and the applicable rules. Finally, the Tribunal also concluded that considerations of time and budgetary constraints cannot override the existing rule of law within the Organization. Consequently, the Tribunal found it unlawful to use geographical location of candidates as an eliminatory eligibility criterion for temporary openings at the professional level, as was the case for the temporary job opening at stake. On the second issue, the Tribunal found that limiting a temporary job opening at the professional level to local recruitment is illegal, and that the application of an unlawful “eligibility criterion” prevented the Applicant from moving to the short list of candidates. It also found that the Respondent failed to minimally show that the Applicant was given full and fair consideration during the selection exercise and thus concluded that the Applicant’s candidacy was not afforded full and fair consideration and that the contested decision had to be rescinded. Remedies Considering inter alia the limited duration of the advertised temporary position, and compensation in lieu generally awarded in cases of non-promotion/selection, the Tribunal found it appropriate to set the amount of alternative compensation in lieu of rescission at USD3,000. The Applicant did not submit or suggest any evidence in respect of moral damages but only asserted in his application that he had suffered morally. Whilst the Tribunal appreciated the position of the Applicant, it found that a mere assertion in the

application is not sufficient and that it is bound to act only on the evidence before it. The Tribunal concluded that it was not in a position to make an award in respect of the moral damage asserted by the Applicant.

Decision Contested or Judgment/Order Appealed

The Applicant filed an application contesting the decision not to consider/select him for a temporary job opening.

Legal Principle(s)

The authority to render a judgment gives the judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested. The burden of proof in matters of non-selection rests on the Applicant, who has to show through clear and convincing evidence that he was denied a fair chance at promotion. The determination of the “compensation in lieu” must be done on a case-by-case basis (see Valentine UNDT/2017/004) and ultimately carries a certain degree of empiricism (see Mwamsaku 2011-UNAT-265). “[T]here is no set way for a trial court to set damages for loss of chance of promotion, and ... each case must turn on its facts” (Sprauten 2012UNAT-219, para. 22 see also Niedermayr 2015-UNAT-603). In calculating such compensation, the Tribunal has to assess the probability for an Applicant to be appointed to a post but for the procedural breach.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Krioutchkov

Entity

ESCAP

Case Number(s)

UNDT/GVA/2017/025

Tribunal

UNDT

Registry

Geneva

Date of Judgement

27 Mar 2019

Duty Judge

Judge Downing

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Temporary appointment

Staff selection (non-selection/non-promotion)

Full and fair consideration

Applicable Law

Administrative Instructions

- ST/AI/2010/4/Rev.1

Secretary-General's bulletins

- ST/SGB/2016/1

Staff Rules

- Rule 4.4
- Rule 4.5

UN Charter

- Article 101.3

UNDT Statute

- Article 10.5

Related Judgments and Orders

2012-UNAT-238

2015-UNAT-591

2016-UNAT-611

UNDT/2017/004

2012-UNAT-219

2015-UNAT-603

2010-UNAT-092

2012-UNAT-254

2018-UNAT-874