

# **UNDT/2019/078, Duncan**

## UNAT Held or UNDT Pronouncements

The changes in the composition of the assessment panel constituted a procedural error. The choice was left to the hiring manager between different assessment methods. As the Applicant was shortlisted for the competency-based interview, she suffered no prejudice from the absence of a written test. The Applicant disagreed with the evaluation method elected by the Administration but failed to show that the Administration exceeded its discretion in this respect. It could not be concluded that the Applicant would have obtained a different result had the composition of the panel been the same for all candidates. Therefore, the Applicant failed to show that she had a significant chance of selection.

## Decision Contested or Judgment/Order Appealed

The Applicant's non-selection for a post.

## Legal Principle(s)

The Secretary-General has broad discretion in the selection and appointment of staff. In matters of staff selection, it is the role of the Dispute Tribunal to review the challenged selection process to determine whether the applicable regulations and rules have been applied and whether a candidate has received full and fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration. The Tribunal's role is not to substitute its decision for that of the Administration. The official acts of the Respondent enjoy a presumption of regularity. If the management is able to even minimally show that the applicant's candidature was given a full and fair consideration, then the presumption of law stands satisfied. The burden of proof shifts to the applicant who can rebut the presumption of regularity by showing through clear and convincing evidence that he or she was denied a fair chance of

selection. Even if the Tribunal finds that the procedure was not properly followed, such irregularity will only result in the rescission of a non-selection decision if the candidate would have had a significant chance of selection. An applicant cannot substitute his or her own evaluation method for that of the Administration. An irregularity in a selection process has no impact on the status of a staff member when he or she had no foreseeable chance of promotion or of being included in the roster. However, in a case where a staff member had a significant chance of promotion, the irregularity has a direct impact on the status of that staff member resulting in the rescission of the impugned decision. There must be a link between the irregularity in the procedure and the failure to recommend the Applicant.

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Duncan

## Entity

OIOS

## Case Number(s)

UNDT/NY/2018/017

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

8 May 2019

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Staff selection (non-selection/non-promotion)

Selection decision

## Applicable Law

Administrative Instructions

- ST/AI/2010/3

Staff Regulations

- Regulation 1.2(c)
- Regulation 4.1

UN Charter

- Article 101.1

## Related Judgments and Orders

2011-UNAT-110

2011-UNAT-141

2013-UNAT-286

2011-UNAT-122

UNDT/2012/200

2014-UNAT-397

2015-UNAT-603

2017-UNAT-747

2011-UNAT-172

2011-UNAT-174

2014-UNAT-454

2018-UNAT-878

2016-UNAT-691

2011-UNAT-175

2010-UNAT-094