# UNDT/2019/126, Ross

## UNAT Held or UNDT Pronouncements

Decision 1 – the Tribunal held that the Applicant failed to substantiate his claims of a flawed process and improper motives that led to his separation from service. The Tribunal concluded that the Applicant knowingly assumed the risk of not being able to secure another assignment or position before the expiration of his FTA on 31 March 2016 when he declined the offer to be recommended for the regular budget position in Rabat as well as declined the extension of his temporary assignment. Decision 2 – the Tribunal concluded that the Respondent failed to follow proper procedure for the placement of adverse material in the Applicant's OSF and the notation breached the Applicant's right to equal treatment as other former staff members of UNHCR. The notation was a serious error in judgment but did not show evidence of blacklisting. The Tribunal ordered the immediate removal/deletion of the notation contained in the Applicant's Official Status File and that no annotations not specifically permitted by UNHCR's rules or documented policies be made on the Applicant's file. The Tribunal refused the Applicant's petition for compensation, moral damages, costs and accountability referrals because he failed to substantiate his general allegations of blacklisting, retaliation and harm to warrant the requested awards. Decision 3 – the Tribunal found the application receivable for the following reasons: (i) although the Applicant had been separated, he continued to have a legal relationship with the Respondent for purposes of internally advertised positions. At the time that he applied for JO 14082, the Applicant remained an internal candidate While the Applicant did not have locus standi as any bona fide staff member would under art. 2.1(a) of the UNDT Statute having been earlier separated, he was entitled to a limited protection regarding his right to be informed of his unsuccessful candidacy and to fair consideration of his application to the position as an internal candidate and the Applicant learned of his non-selection unofficially in the middle of February 2018 and filed a management evaluation request on 7 April, thus he was not out of time. On the merits, the Tribunal held that the Respondent failed to show that the Applicant did not meet any valid criteria in the shortlisting process. Thus, the decision to exclude him at an early stage and not allow him to fairly compete

with other internal candidates in the selection process was tainted by procedural error and therefore unlawful. The Respondent did not minimally show that the selection process was fair. The Tribunal ordered rescission of the decision and set the alternative compensation as an amount equal to one-tenth of the net base salary the Applicant would have received at the P-4 level for one year had he been appointed to the post. He was also granted USD2,000 for moral harm. UNAT vacated the DT judgment insofar as it related to the rescission of this non-selection decision for JO 14082 to the amount of compensation in lieu and moral harm.

## Decision Contested or Judgment/Order Appealed

The Applicant filed three applications contesting the decisions: not to renew his fixedterm appointment (FTA) and to separate him from service (Decision 1) to insert adverse material into his online personnel file (Decision 2) and to appoint another candidate to the position of Senior Protection Officer in Tunis, JO 14082 (Decision 3).

## Legal Principle(s)

It is illegal for an Agency or Organization governed by rules and policies to act outside of those rules and policies.

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

Decision 1 - the Tribunal held that the Applicant failed to substantiate his claims. Decision 2 - the Tribunal held that the Respondent failed to follow proper procedure and rescinded the decision but refused to award compensation. Decision 3 – the Tribunal held that the Applicant did not receive fair and full consideration for Job Opening (JO) 14082 that the selection process was tainted by procedural error and was unlawful. The Tribunal ordered rescission, compensation and moral damages.

## Full judgment

Full judgment

## Applicants/Appellants

Ross

## Entity

UNHCR

## Case Number(s)

UNDT/NBI/2016/054
UNDT/NBI/2018/040
UNDT/NBI/2018/083

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

10 Jul 2019

## Duty Judge

Judge Izuako

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Separation from service
Staff selection (non-selection/non-promotion)

## Applicable Law

UNDT Statute
UNAT Statute

- Article 2.1(a)

## Related Judgments and Orders

2020-UNAT-1000