

# **UNDT/2019/173, Ross**

## **UNAT Held or UNDT Pronouncements**

Nowhere in the UNHCR Policy is using interviews or written test to appraise the competencies and/or qualification of job candidates prohibited or even as much as discouraged. Rather, interviews are mandatory when “the appointment of an external candidate is being considered” as it is stated that in such circumstances “the applicants (external and internal) selected by the manager will be interviewed” (emphasis added). It is further stated that a “[w]ritten test may be required” (see sec. 71). The fact that the UNHCR policies make no specific stipulations about whether skills, competencies and qualifications of job candidates can be tested through interviews and written tests does not mean that such methods cannot be used to assess their suitability for a specific post. This is the only logical conclusion with reference to art. 101.3 of the United Nations Charter and staff regulation 4.3 and the requirement that the highest standards of efficiency, competence, and integrity should be secured— indeed it would appear very difficult, if not impossible to assess skills such as teamwork and emotional intelligence only on the basis of a job application. Or, as stated in the Policy, sec. 79A, “The operational context related to the particular position should be taken into account. The managers’ specific position profile requirements shall be given due consideration.

## **Decision Contested or Judgment/Order Appealed**

The decision to appoint another candidate to the position of Senior Legal Officer, P-4 level, Brussels.

## **Legal Principle(s)**

The Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review. When defining the issues of a case, the Dispute Tribunal may

consider the application as a whole. The role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate. The Dispute Tribunal is not conducting a merit-based review, but a judicial review, and a judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision. Specifically regarding selection and promotion decisions, in light of the Administration's broad discretion in such matters, these types of decisions are governed by the so-called "principle of regularity". This means that if the Respondent is able to even minimally show that an applicant's candidature was given a full and fair consideration, then the presumption of law stands satisfied. To rebut this minimal showing, the applicant must then show through clear and convincing evidence that s/he was denied a fair chance of promotion in order to win the case. In order to assess a job candidate's suitability for a position, the Administration has a certain degree of latitude in deciding on how to do so.

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Ross

## Entity

UNHCR

## Case Number(s)

UNDT/NY/2019/054

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

10 Dec 2019

## Duty Judge

Judge Belle

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Staff selection (non-selection/non-promotion)

Interview

## Applicable Law

Laws of other entities (rules, regulations etc.)

- UNHCR Procedure on Assignments (UNHCR/HCP/2015/2/Rev.1)

Staff Regulations

- Regulation 4.3

UN Charter

- Article 101.3

## Related Judgments and Orders

2017-UNAT-765

2018-UNAT-876

2019-UNAT-926

2017-UNAT-762

2010-UNAT-084

2016-UNAT-652

2016-UNAT-669

2017-UNAT-802