

# UNDT/2020/077, Russo-Got

## UNAT Held or UDT Pronouncements

The irregularities detected in the selection process were of such gravity—not keeping any written record of the contested administrative decision, an undefined decisionmaker, and flawed reasons and justifications—that they cannot be regarded as minor procedural or substantive errors that did not impact the outcome of the non-selection decision. Accordingly, the Respondent was not been able to minimally show that the Applicant's candidature for the post was fully and fairly considered. Four other candidates had been shortlisted for the written test for the relevant post. Had the Applicant joined this field of candidates, his chance of getting selected could therefore be determined as 20 percent (one out of five). In lack of any further information on the length of the possible fixed-term appointment, the Tribunal sets this as one year. The Applicant is to be awarded 20 percent of the net-base salary that he would have obtained had he been selected for the post, including by having his pension adjusted accordingly. Considering that this compensation is set on a hypothetical basis, the Tribunal does not find it necessary to offset any actual income that the Applicant obtained in the period after his nonselection or require him to prove how he mitigated his loss. The moral damage described in the medical record, however, related to separation anxiety, which would indicate his moral injuries were, rather, related to the Applicant's separation from the Organization than the detected irregularities in the selection process. The Applicant has therefore not been able to show the required causality between the illegality and the suffered harm. Related

## Decision Contested or Judgment/Order Appealed

The decision not to select the Applicant for a position of Project Manager.

## 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. Staff rule 9.6(e) solely concerns the situation where a staff member is separated from service because her/his appointment is terminated and not where it is not renewed. 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. A judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decisionmaker's decision. 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 terms of the discretion vested in the Administration under Article 101(1) of the United Nations Charter and Staff Regulations 1.2(c) and 4.1, the SecretaryGeneral has broad discretion in matters of staff selection. In reviewing such decisions, it is the role of the Tribunals to assess whether the applicable regulations and rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection/promotion. To minimally show that an applicant's candidature was given a full and fair consideration, the Respondent must therefore typically, at a minimum, be able to produce a contemporaneous written record to demonstrate that the candidature of the applicant in question, as a matter of fact, received such consideration. A timely reason for a

non-renewal of a fixed-term or temporary appointment must be provided even though such appointment expires automatically at the end of its term, although failure to comply therewith does not by itself render the decision unlawful. The Dispute Tribunal's Statute, subject to evidence, the Tribunal may award pecuniary as well as non-pecuniary damages. No exact formula exists for how to quantify such a loss, but an approach that has been accepted is to determine it as a percentage based on the remaining candidates in the process. It is universally accepted that compensation for harm shall be supported by three elements: the harm itself an illegality and a nexus between both, that if one of these three elements is not established, compensation cannot be awarded, and that the harm be shown to be directly caused by the administrative decision in question.

#### Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Russo-Got

Entity

UNOPS

Case Number(s)

UNDT/NY/2019/027

Tribunal

UNDT

Registry

New York

Date of Judgement

28 May 2020

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Compensation

Loss of chance

Staff selection (non-selection/non-promotion)

Full and fair consideration

Applicable Law

Laws of other entities (rules, regulations etc.)

Staff Rules

- Rule 9.6(e)

UNDT Statute

- Article 10.5(b)

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

2017-UNAT-765

2018-UNAT-876  
2010-UNAT-084  
2017-UNAT-762  
2018-UNAT-829  
2019-UNAT-932  
2012-UNAT-201  
2019-UNAT-960  
2011-UNAT-174  
2019-UNAT-926  
2010-UNAT-095  
2011-UNAT-109  
2011-UNAT-117  
2015-UNAT-496  
2018-UNAT-874