

UNDT/2021/025, Hilzinger

UNAT Held or UNDT Pronouncements

The interview questions were reasonable and that the panel's report was comprehensive, well-structured and thorough, and with reference to Sanwidi, the decision not to recommend the Applicant was therefore not "absurd or perverse" It is uncontested that the Applicant passed the written test, which was administered by the technical panel, whose composition he is now challenging. Accordingly, this composition evidently did not result in any concrete negative consequence(s) for the Applicant in the challenged selection process, but as a general matter, the Tribunal cannot exclude that a situation could occur where an irregularity in a process is so fundamental that it would render it void from its beginning (ab initio).

Decision Contested or Judgment/Order Appealed

The decision not to select the Applicant for the post of P-5 Senior Information Systems Officer with the United Nations Joint Staff Pension Fund.

Legal Principle(s)

The Appeals Tribunal has consistently held that the Dispute Tribunal's judicial review is limited as per Sanwidi 2010-UNAT-084 It follows from the consistent jurisprudence of the Appeals Tribunal that the Applicant bears the burden of proving any allegation on ulterior motives. Specifically, regarding promotion (and selection) cases, the Appeals Tribunal has adopted the principle of regularity by which 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" where after the applicant "must show through clear and convincing evidence that [s/he] was denied a fair chance of promotion" in order to win the case. It falls within the discretion of the Administration to decide how to compose an appropriate technical panel with the required experts. An assessment panel has no duty to consider the performance

reports and reflect that consideration in its own assessment.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Hilzinger

Entity

UNJSPF

Case Number(s)

UNDT/NY/2020/011

Tribunal

UNDT

Registry

New York

Date of Judgement

19 Mar 2021

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Discrimination and other improper motives

Staff selection (non-selection/non-promotion)

Interview

Written test

Standard of review (judicial)

Applicable Law

Administrative Instructions

- ST/AI/2010/3