

UNDT/2021/056, Muc

UNAT Held or UNDT Pronouncements

Non-selection The job responsibilities of the post the Applicant applied for and the post occupied by her spouse, who both report to the same supervisor, are closely related. The Organization reasonably determined that the appointment of the Applicant to the post would create an actual or possible conflict of interest due to her marriage to her spouse. The decision was also procedurally compliant since, contrary to the Applicant's argument, the decision did not require a prior review by the Compliance Review Body and the hiring manager. The decision was not irrational or arbitrary just because the Applicant acted as OIC in the past. Placing a staff member as OIC on an as-needed basis is quite different from appointing the staff member to the post permanently. Further, even if the Administration's prior decisions may seem to contradict the contested decision, that does not bar the Administration from correcting its previous erroneous decisions. The decision was not disproportionate for alleged failure to explore alternative measures to address any potential conflict of interest. There is no such obligation on the Administration. To the contrary, the Administration has an obligation to resolve the conflict of interest in favour of the interests of the Organization under staff regulation 1.2(m). The Applicant argued that she was misled by the Organization since she was never informed that she had no chance of promotion in her office while she performed as OIC numerous times. However, staff members of the United Nations do not have a legitimate expectation of promotion or selection to a particular post. All the Applicant is entitled to is for her applications for posts in the Organization to receive full and fair consideration. Also, under staff rule 3.10(a), all staff members are expected to assume temporarily, as a normal part of their customary work and without extra compensation, the duties and responsibilities of higher level posts. Regarding the Applicant's claim that the contested decision amounts to constructive dismissal, the Applicant has no right to promotion to a particular post and therefore the non-selection for the post can in no way be construed as constructive dismissal. Therefore, the contested decision was lawful. The failure to inform the Applicant of her exclusion There is no requirement that the decision to exclude a candidate from

the selection process should be communicated immediately. To the contrary, the relevant policy provides that it is expected that no information be shared with the candidates until the final approval for the selection has been signed. According to this general policy, the Administration initially decided not to inform the Applicant of the contested decision and yet, upon her inquiry, notified her of the contested decision on an exceptional basis. Therefore, the decision was not unlawful.

Decision Contested or Judgment/Order Appealed

Non-selection Failure to inform the Applicant of the non-selection

Legal Principle(s)

The judicial review of an administrative decision involves a determination of the validity of the contested decision on grounds of legality, reasonableness and procedural fairness. When an actual or possible conflict of interest arises, the Organization has an obligation to mitigate and resolve any such conflict in the interests of the Organization and rather than of the staff member(s) concerned. The interpretation of a rule is made within the context of the hierarchy in which the rule appears and a Staff Rule may not conflict with the Staff Regulation under which it is made. The Administration has a duty to correct its own errors and to deny the Administration's discretion to correct erroneous decisions on a quasi-estoppel basis would be contrary to both the interests of staff members and the Organization. In a case of alleged constructive termination, the actions of the employer must be such that a reasonable person would believe that the employer was 'marching them to the door'.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Muc

Entity

UNDP

Case Number(s)

UNDT/NY/2020/038

Tribunal

UNDT

Registry

New York

Date of Judgement

19 May 2021

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Applicable Law

Laws of other entities (rules, regulations etc.)

- UNDP Policy on Family Relationships

Staff Regulations

- Regulation 1.2(m)

Staff Rules

- Rule 3.10(a)
- Rule 4.7