

UNDT/2021/070, Toson

UNAT Held or UNDT Pronouncements

The Applicant's supervisor did not participate in the selection process for the four Representative positions in Uzbekistan, Ukraine, Bolivia and Nigeria, and for the position of Chief Gender and Human Rights. The Applicant's Supervisor's participation in the selection process for the Palestine position did not affect the integrity of the selection process. The Applicant was given full and fair consideration. The fact that the Rotation exercise and selection decisions for the positions in Uzbekistan, Ukraine, Nigeria and Palestine and the relevant Ethics Units determination and recommendation preceded the occurrence of the retaliatory conduct renders the application moot. Even if the Applicant's supervisor had participated in the selection process, there would be no basis for impugning its integrity since the retaliatory conduct which the Applicant is complaining about, and the Ethics Unit's recommendation arose way after the selection process had ended. The Ethics Unit's recommendations could not be applied retrospectively. The burden of proving any allegations of ill motivation or extraneous factors rested with the Applicant. There was evidence that the Applicant's candidature for six positions (in Uzbekistan, Ukraine, Bolivia, Nigeria, Palestine and for position of Chief Gender and Human Rights at the HQ) was given a full and fair consideration. The Applicant failed to discharge the evidentiary burden.

Decision Contested or Judgment/Order Appealed

The Applicant was challenging what he described as: 1) decisions to be considered for reassignment to another duty station in 2020 Rotation cycle, practically, effecting his non-selection for any post in rotation cycle of 2019 and 2) non-selection for 9 posts in Rotation 2019.

Legal Principle(s)

The standard of review adopted in the Appeals Tribunal jurisprudence mandates the following issues for consideration: a) whether the procedure laid down in the staff regulations and rules was followed; b) whether the staff member received full and fair consideration and; c) whether the applicable Regulations and Rules were applied in a fair, transparent and non-discriminatory manner. The Tribunal's role is not to substitute its decision for that of the Administration. There is always a rebuttable presumption that official acts have been regularly performed. If the management can even minimally show that an appellant's candidature was given full and fair consideration, then the presumption of law stands satisfied. Thereafter the burden of proof shifts to the appellant who must show through clear and convincing evidence that he/she was denied a fair chance of promotion or selection.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Toson

Entity

UNFPA

Case Number(s)

UNDT/NBI/2020/006

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

18 Jun 2021

Duty Judge

Judge Tibulya

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Full and fair consideration

Selection decision

Applicable Law

Laws of other entities (rules, regulations etc.)

- UNFPA's Policies and Procedures Manual