

2011-UNAT-121, Bertucci

UNAT Held or UNDT Pronouncements

UNAT held that the UNDT judge had sufficient grounds to order the production of the documents withheld by the Administration concerning the selection process that led to the contested administrative decision. UNAT stated the principle that UNDT has the right to order the production of any document relevant for the purposes of the fair and expeditious disposal of its proceedings. If the Administration opposes UNDT's order to produce a certain document in its possession, it may, with sufficiently specific and justified reasons, request UNDT to verify the confidentiality of the document in question. Before such verification is completed, the said document may not be transmitted to the other party. If UNDT considers the confidentiality of the document justified, it must remove the document, or part of it, from the case file. UNDT may not subsequently use such a document against a party unless the said party has had an opportunity to examine it. However, UNDT may not exclude a party from its proceedings if that party refuses to execute UNDT's order to produce a document because to do so would run afoul of the principle of respect for the right to a defence and the right to an effective remedy set forth in the Universal Declaration of Human Rights. When a party refuses to execute UNDT's order to produce a document, UNDT is entitled to draw appropriate conclusions from the refusal in its final judgment.

Decision Contested or Judgment/Order Appealed

The staff member contested his non-selection for the post of ASG/DESA. UNDT ruled in his favour. UNDT sanctioned the Administration's refusal to produce the documents relating to the appointment process by excluding its counsel from participating in the proceedings and rendered a default judgment.

Legal Principle(s)

UNDT has discretionary authority in conducting the proceedings and ordering the production of evidence in the interest of justice. This power is conferred to UNDT so that there may be fair and expeditious disposal of the case. UNDT is entitled to order the production of any document relevant to that end and may draw inferences from a party's refusal to disclose documents.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Bertucci

Entity

DESA

Case Number(s)

2010-116

2010-117

Tribunal

UNAT

Registry

New York

Date of Judgement

11 Mar 2011

President Judge

Judge Courtial

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Procedure (first instance and UNAT)

Production of documents

Applicable Law

Administrative Instructions

- ST/AI/2006/3

GA Resolutions

- A/RES/51/226

UNDT RoP

- Article 18.2

UNDT Statute

- Article 9.1

Related Judgments and Orders

UNDT/2010/080

UNDT/2010/117