

2012-UNAT-205, Marsh

UNAT Held or UNDT Pronouncements

The Secretary-General appealed and Mr Marsh filed a cross-appeal, challenging the legality of the interview process and the compensation award. With respect to the first issue, UNAT found that the records showed a proper and professional proceeding during the interviews and the report of its outcome was based on evaluations objectively motivated, and Mr Marsh was accorded the objective consideration and equal treatment to which all candidates are entitled. With respect to the second issue, UNAT noted that not every violation of due process will necessarily lead to an award of compensation. UNAT found, however, that in this case the lost chance of being selected and the loss of a better chance of being recommended or included in the roster had material and financial consequences and also deprived Mr Marsh of an opportunity to improve his status within the Organisation. UNAT held that the compensation of 2,500 Euros set by UNDT for material damage did not constitute an error in fact or law. UNAT also held it was not erroneous for UNDT to award a lump sum of 2,500 Euros for moral damage since the particular circumstances of the case supported the conclusion that Mr Marsh in fact was morally prejudiced by the irregularity of the selection process and its outcome. UNAT dismissed the appeal and cross-appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

Mr. Marsh challenged the administrative decision not to promote him to a P-4 position. UNDT determined that there was no flaw in the selection process with regard to the composition of the Interview Panel, but that it was unlawful to consider the candidacy of Mr. Marsh along with another application which was submitted after the 30-day mark. UNDT awarded Mr. Marsh 2,500 Euros for material damage and the same sum for moral damage.

Legal Principle(s)

Due process violations, in and of themselves, do not necessarily warrant an award of compensation; awards of compensation depend on the damages suffered by the individual.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Marsh

Entity

UNODC

Case Number(s)

2011-209

Tribunal

UNAT

Registry

New York

Date of Judgement

16 Mar 2012

President Judge

Judge Simón

Language of Judgment

English
Issuance Type
Judgment
Categories/Subcategories
Compensation
Non-pecuniary (moral) damages
Pecuniary (material) damages
Staff selection (non-selection/non-promotion)
Full and fair consideration
Related Judgments and Orders
UNDT/2011/035
2010-UNAT-042