

2012-UNAT-251, Xu

UNAT Held or UNDT Pronouncements

UNAT held that UNDT was correct in finding that “consideration” of a candidate for the purposes of ST/AI/2006/3 did not necessarily mean that a candidate can only be meaningfully considered once the relevant assessment tools have been administered to the candidates and the outcome communicated to them. UNAT held that the fact that the Administration invited the 30-day mark candidates to undertake a written test before the assessment of the 15-day mark candidates was completed did not mean that the Appellant was not afforded priority consideration. UNAT noted that the written test had taken place after the Appellant’s interview and after he had been found not to be suitable for the post. UNAT held that the priority candidates such as the Appellant had already been adequately treated and evaluated when the test and interviews of the 30-day mark candidates took place. UNAT held that there was no flaw in the selection process that would warrant the requested compensation. UNAT held that the Appellant had failed to provide evidence in support of his contention that the selection process was biased and unfair. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to select him for a P-4 post. UNDT found that the Applicant had been given priority consideration as a 15-day mark candidate in compliance with the former Staff Regulations and Rules. UNDT found that “consideration” of a candidate for the purpose of ST/AI/2006/3 meant assessing his or her qualifications and skills against the requirements and competencies set out in the relevant vacancy announcement with a view to determining his or her suitability to perform successfully the functions of the post. UNDT found that the test and interviews of the two pools of candidates took place separately and no 30-day mark candidates took part in even the first part of the appraisal process until the interviews of the 15-day mark candidates had been completed. UNDT found that the 15-day mark candidates were therefore considered first, in compliance with ST/AI/2006/3. UNDT emphasised that 15-day mark candidates were only entitled to be granted precedence under ST/AI/2006/3 if they were suitable for the position. UNDT found that a 15-day mark candidate who, after consideration for a position, appeared not to be fit for the position, could claim no further right to priority consideration. UNDT found that the Applicant had been rightfully considered as not suitable for the post because of his failure at the written test as well as his insufficient performance during the interview. UNDT found that the Applicant had failed to submit evidence in support of his contention that the selection process was tainted by bias, discrimination, and improper motive. UNDT dismissed the application.

Legal Principle(s)

As stated in Abbassi (judgment No. 2011-UNAT-110), to overturn a finding of fact by UNDT, UNAT must be satisfied that the finding is not supported by the evidence or that it is unreasonable. Deference should be given to the factual findings of UNDT which, as the court of first instance, is best placed for that task.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Xu

Entity

UNOG

Case Number(s)

2011-272

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Jun 2012

President Judge

Judge Simón

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Discrimination and other improper motives

Bias/favouritism

Staff selection (non-selection/non-promotion)

Interview

Selection decision

Written test

Applicable Law

Administrative Instructions

- ST/AI/2006/3

Related Judgments and Orders

UNDT/2011/171

2011-UNAT-110