

2012-UNAT-265, Ljungdell

UNAT Held or UNDT Pronouncements

Regarding the allegations that UNDT erred in law, fact, and procedure and failed to exercise its jurisdiction in relation to her allegations of discrimination, UNAT held that the burden was on the Appellant to establish that the oral and documentary evidence, if admitted, would have led to different findings of fact, and changed the outcome of the case. UNAT held that UNDT had not erred in rejecting the Appellant's allegations that she had been subjected to discrimination on the grounds of gender or based on her family responsibilities and her expressed desire to work part-time. Regarding the Appellant's allegation that UNDT erred in law in accepting the Director's assessment that her managerial skills and resettlement experience were insufficient for the Geneva post, UNAT held that UNDT correctly exercised its discretion. Regarding the Appellant's allegation that UNDT erred in fact by not considering that her claim for compensation for educational expenses resulted from the Administration's failure to assign her to one of the posts advertised in the September 2009 compendium after the abolition of the Malaysia post, UNAT held that the claim for the first year was not receivable as the Appellant's request for management evaluation of the decision to cancel the Malaysia post had been untimely. UNAT held that UNDT had correctly considered the amount of compensation awarded adequate and dismissed the Appellant's requests for a higher amount and for moral damages. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decisions: 1) not to select her for the post of Senior Resettlement Coordinator in Geneva; 2) to rescind her appointment to the post of Deputy Representative in Malaysia; and 3) not to select her for the posts in Sri Lanka and India. UNDT found that it could only adjudicate the decision not to select the Applicant for the Geneva post since she had not requested management evaluation of the other decisions. With respect to the financial compensation claimed for education expenses, UNDT found that this issue was linked to the rescission of the Applicant's appointment to the post in Malaysia and that, consequently, it could not be reviewed as part of the case. With respect to the Geneva post, UNDT noted that the Secretary-General had acknowledged that procedural errors had occurred in the selection process and that, as a result, the Applicant had not been given full and fair consideration. UNDT found that the three months' compensation that the Applicant had already received was adequate. UNDT found that the Applicant had not demonstrated that she had received assurances from management that she would be the recommended candidate. UNDT found that the Applicant did not suffer any material damage as a result of the contested decision since she was currently performing at the same level (P-5). UNDT dismissed the application.

Legal Principle(s)

UNDT has broad discretion to determine the admissibility of any evidence. The Secretary-General has broad discretion in matters of staff selection. In reviewing staff selection decisions, it is the role of UNDT or UNAT to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. It is not the role of the Tribunals to substitute their decision for that of the Administration. A staff member should be compensated for real and incurred expenses; such claims should be directly related to the damages resulting from a breach of his or her contractual rights.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Ljungdell

Entity

UNHCR

Case Number(s)

2012-287

Tribunal

UNAT

Registry

New York

Date of Judgement

1 Nov 2012

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Evidence

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Temporal (ratione temporis)

Staff selection (non-selection/non-promotion)

Full and fair consideration

Applicable Law

Staff Regulations

- Regulation 1.2(c)
- Regulation 4.1

UN Charter

- Article 101.1

UNDT RoP

- Article 18.1

Related Judgments and Orders

UNDT/2011/208

2012-UNAT-216

2010-UNAT-084