

2014-UNAT-397, Finniss

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that, given the open animosity and ill-feeling between the PCO and the staff member, the Administration should not have included the former in the interview panel. UNAT held that the test for apparent bias applied by UNDT was correct, regardless of whether a fair-minded observer, having considered the facts, would conclude that there was a real possibility that the interview panel was biased. UNAT held that UNDT was best placed to calculate on the evidence the appropriate level of compensation and found no reason to disturb the award of USD 50,000 in moral damages. UNAT dismissed the appeal and affirmed the UNDT judgment.

Accountability Referral: UNAT affirmed the UNDT referral to the Secretary-General for possible action to enforce accountability.

Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant contested his non-selection for various positions. UNDT found that Mr Postica's role as Programme Case Officer (PCO) was vitiated by his bias towards the Applicant; that the evaluation scores accorded to the Applicant by the interview panel did not objectively reflect the facts about his education and work experience; and that the selection exercise was unlawful as it breached ST/AI/2006/3. UNDT found that the Secretary-General had failed to demonstrate to a minimal standard that the selection decision was otherwise made in a regular manner. UNDT awarded the Applicant compensation in lieu of rescission and moral damages. UNDT referred the case to the Secretary-General, pursuant to Article 10. 8 of the UNDT Statute, for appropriate action to be taken to enforce the accountability of those staff members, the members of the interview panel and the ultimate decision-maker, who were responsible for the biased assessment and unlawful non-selection of the Applicant.

Legal Principle(s)

A person called upon to make a decision affecting the rights or duties of other persons subject to his jurisdiction must withdraw in cases in which his impartiality may be open to question on reasonable grounds; it is immaterial that, subjectively, he may consider himself able to take an unprejudiced decision; nor is it enough for the person affected by the decision to suspect its author of prejudice.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Finniss

Entity

OIOS

Case Number(s)

2013-445

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Apr 2014

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Discrimination and other improper motives

Bias/favouritism

Referral for accountability

Staff selection (non-selection/non-promotion)

Full and fair consideration

Interview

Applicable Law

Administrative Instructions

- ST/AI/2006/3

UNAT Statute

- Article 10.8

Related Judgments and Orders

UNDT/2012/200

UNDT/2011/129