

2014-UNAT-416, Charles

UNAT Held or UNDT Pronouncements

UNAT considered both the two appeals by the Secretary-General and two cross-appeals by Mr Charles in judgment No. 2014-UNAT-416. UNAT held that that Section 9 of ST/AI/2010/3 was clear in giving the head of department/office the discretion to make a selection decision from candidates included in the roster. UNAT held that it was not open to UNDT to conclude that Section 9. 4 required the head of department/office to first review all non-rostered candidates before selecting a rostered candidate. UNAT held that UNDT erred in law in deciding that the appointment of the rostered candidates was contrary to ST/AI/2010/3. UNAT held that there was no violation of Mr Charles' due process rights and set aside the award of damages in his favour. UNAT upheld the appeals by the Secretary-General, dismissed the cross-appeals by Mr Charles, and vacated the UNDT judgments.

Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant presented two applications contesting the decisions not to select him for the posts of Procurement Officer (Team Leader), Field Supply Team, at the P-4 level and of Procurement Officer (Operations) at the P-4 level, respectively. In judgment No. UNDT/2013/040, UNDT granted the application in part and awarded compensation for the breach of his rights and resultant harm. UNDT held that the automatic appointment of a rostered candidate without a selection process that afforded other candidates full and fair consideration was contrary to the requirements of Article 101.3 of the UN Charter and Staff Regulation 4.2 and allowed rostered candidates to be treated as privileged. UNDT held that ST/AI/2010/3 does not provide for priority consideration of rostered candidates. UNDT found that the Applicant had been deprived of his rights to full and fair consideration and suffered some harm. UNDT held that, since the Applicant was only one of the 153 candidates whose names were released to the hiring manager, it would be speculative to attempt an estimate of his chances of success. UNDT dismissed allegations of bias and discrimination and rejected the Applicant's claim that the late response to his

request for management evaluation caused him harm. In judgment No. UNDT/2013/041, UNDT granted the application in part and awarded the Applicant compensation for the breach of his rights and resultant harm. UNDT noted that the parties' submissions in this case in large part repeat their submissions in Case No. UNDT/NY/2013/005, which was disposed of by UNDT in judgment No. UNDT/2013/040 and that the two cases were also similar with respect to the legal and factual issues. UNDT found that, for the reasons stated in judgment No. UNDT/2013/040, the Secretary-General's interpretation of ST/AI/2010/3 was mistaken and that by not giving any consideration to the Applicant's candidacy for the job opening, he had violated the Applicant's rights. UNDT dismissed the Applicant's claims regarding the delayed response to his management evaluation request.

Legal Principle(s)

Pursuant to Section 9.4 of ST/AI/2010/3, the head of a department/office has the discretion to make a selection decision from candidates included in the roster. There is no requirement in Section 9. 4 for the head of department to first review all non-rostered candidates.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Charles

Entity

DM

Case Number(s)

2013-467

2013-468

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Apr 2014

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Due process

Delay

Staff selection (non-selection/non-promotion)

Selection decision

Applicable Law

Administrative Instructions

- ST/AI/2010/3

Staff Regulations

- Regulation 4.2

UN Charter

- Article 101.3

Related Judgments and Orders

UNDT/2013/040

UNDT/2013/041