

# **2014-UNAT-439, Gusarova**

## **UNAT Held or UNDT Pronouncements**

UNAT considered an appeal by the staff member and a cross-appeal by the Secretary-General. Regarding the cross-appeal of the Secretary-General on material damages, UNAT held that UNDT was the body best placed to assess a candidate's chance of selection for placement on the roster. UNAT held that the fact that there were several candidates selected from the roster in the months following the roster approval was sufficient to underpin UNDT's assessment that the staff member's chances were not in the realm of the speculative. UNAT held that there was no merit in the Secretary-General's cross-appeal and dismissed it accordingly. Regarding the staff member's appeal on material damages, UNAT held that UNDT was the forum best placed to assess the compensation and that it would not trespass upon the UNDT's function in this regard. However, UNAT held that UNDT had not paid due regard or attached sufficient weight to the fact that several candidates were selected following the roster approval and accordingly, UNAT substituted the sum of USD 3,000 with an award of two months' net base salary. Regarding the staff member's appeal on moral damages, UNAT held that there was no merit to her claim of procedural unfairness. UNAT held that the extensive case the staff member presented on appeal had not been presented before UNDT and that there was no error of law on the part of UNDT in finding the claim for mental distress as not substantiated. UNAT dismissed the claim for moral damages. UNAT upheld the staff member's appeal in part, dismissed the Secretary-General's cross-appeal and vacated the UNDT judgment in part to substitute the amount awarded for material damages for two months' net base salary, with interest at the US Prime Rate accruing from the date of the UNDT judgment.

## **Decision Contested or Judgment/Order Appealed**

UNDT Judgment: The Applicant contested the decision that deemed her ineligible for P-5 positions advertised under a generic vacancy announcement. UNDT found that the application was receivable. UNDT found that the Administration's conclusion that

the Applicant was ineligible to apply for a post two grades higher than her personal grade amounted to discrimination against the Applicant vis-à-vis male applicants in the same contractual situation. UNDT rescinded the contested decision. UNDT found that by deeming her ineligible, after she had successfully passed the written test, and by denying her the possibility to pass the interview, the Applicant had lost a chance of being selected for inclusion on the roster and ultimately to be selected for a P-5 position. UNDT found that she also had lost a chance to considerably improve her status within the Organisation at the material time. UNDT awarded compensation of USD 3,000 for the material damages sustained by Applicant. UNDT, however, concluded that the Applicant had not established any entitlement to moral damages, finding that she had not substantiated her claim in this regard and had not provided evidence to support it.

## Legal Principle(s)

Where a loss of chance becomes speculative, including, but not limited to, being a less than a ten per cent chance, damages should not be awarded. On the issue of what damages should be awarded where an infringement of a staff member's rights is established, UNAT has stated that UNDT is the forum best placed to assess monetary compensation.

## Outcome

Appeal granted in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Gusarova

## Entity

UNFCCC

## Case Number(s)

2013-503

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

27 Jun 2014

## President Judge

Judge Faherty

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Pecuniary (material) damages

Staff selection (non-selection/non-promotion)

Eligibility

Selection decision

## Applicable Law

## Administrative Instructions

- ST/AI/2010/3

## Related Judgments and Orders

UNDT/2013/072

2013-UNAT-346

2013-UNAT-379

2012-UNAT-245

2012-UNAT-219

2010-UNAT-076

2012-UNAT-228

2011-UNAT-109