

2015-UNAT-527, Dhanjee

UNAT Held or UNDT Pronouncements

UNAT upheld the Secretary-General's claim that the Hiring Manager more than minimally demonstrated that she gave the Appellant's candidature full and fair consideration. UNAT held that UNDT properly applied the standard of judicial review to determine whether the Hiring Manager's decision that the Appellant was not among the most qualified for the post was reasonable. UNAT held there was no reason to reverse the findings of UNDT. UNAT noted that the Appellant merely repeated the arguments he made before UNDT and expressed his disagreement with the findings of the Hiring Manager. UNAT held that UNDT did not err on a question of law with respect to the discretion of the Hiring Manager, and the UNDT correctly upheld the decision not to shortlist the Appellant for interview. UNAT did not find any merit in the Appellant's submissions that UNDT erred on a question of fact resulting in a manifestly unreasonable decision in finding that the decision not to convoke him for an interview was not unreasonable, improperly motivated or procedurally flawed and UNAT held that the appeal failed on this ground. On the Appellant's submission that UNDT committed an error in procedure in deciding it to be unnecessary to hear witnesses in the case or to order production of further evidence given that such information would have affected the decision in the case, UNAT held that UNDT lawfully exercised its discretion on matters of procedure and the appeal failed on this ground. UNAT held that there was no evidence that there was any procedural irregularity or that the decision not to select the Appellant failed to consider relevant material or was unreasonable or tainted by extraneous motive, bias or discrimination towards him. UNAT held that there was not any evidence that UNDT exercised its discretion unreasonably in disallowing further testimony and production of evidence. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested his non-selection for a position. UNDT dismissed the application.

Legal Principle(s)

In reviewing administrative decisions regarding appointments and promotions, UNDT examines the following: (1) whether the procedure as laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration. The Secretary-General has broad discretion in making decisions regarding promotions and appointments. There is always a presumption that official acts have been regularly performed, but it is a rebuttable presumption; and if the management is able to even minimally show that the appellant's candidature was given full and fair consideration, then the presumption of law is satisfied and the burden of proof shifts to the appellant to show by clear and convincing evidence that she or he denied a fair chance of promotion.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Dhanjee

Entity

UNCTAD

Case Number(s)

2014-604

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Feb 2015

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Eligibility

Full and fair consideration

Applicable Law

Administrative Instructions

- ST/AI/2010/3

UNDT RoP

- Article 17.1
- Article 17.6
- Article 18.5

Related Judgments and Orders

UNDT/2014/029

2013-UNAT-383

2011-UNAT-122

