

# 2015-UNAT-556, Scheepers et al

## UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. On the question of whether UNDT erred in finding that the five years' experience requirement was arbitrary and not based on any proper consideration, UNAT held that, absent any proper legal or factual basis upon which to impugn the five years' experience requirement, UNDT had no function in substituting its judgment for that of the Administration in determining the criteria for the selection of S-3 officers, and in doing so, UNDT erred in law resulting in a manifestly unreasonable decision. UNAT held that UNDT erred in law in deeming the reliance on ST/IC/1993/66/Add. 1 erroneous. UNAT held that the Secretary-General's argument that the UNDT exceeded its competence was not well-founded. UNAT accepted the Secretary-General's argument that UNDT erred in finding that the decision that requisite service had to be accumulated with the Security and Safety Service (SSS) was unlawful because there were no formally promulgated issuances in the Organisation to that effect. UNAT allowed the appeal. UNAT vacated the UNDT judgment in part, namely to the extent that the UNAT found that UNDT erred in law and in fact resulting in a manifestly unreasonable decision in finding that the requirement for an S-2 staff member to serve five years within SSS in order to be eligible for a promotion to the S-3 level was contrary to ST/AI/2010/3, arbitrary, manifestly unreasonable and unlawful, and consequently awarded damages to Mr Paukens. UNAT affirmed the remainder of the UNDT judgment.

## Decision Contested or Judgment/Order Appealed

The Applicants contested the decisions: (i) not to classify their posts at the S-3 level; (ii) not to pay them special post allowance (SPA) at the S-3 level; and (iii) the determination that they were ineligible to participate in a 2010-2011 promotion exercise. UNDT found that the issue of classification of their posts and the non-payment of the SPA were receivable, but without merit and were accordingly rejected. Concerning their challenge to the 2010-2011 promotion exercise, UNDT found that only one of their claims, that of a Mr. Paukens, was receivable and found

for Mr Pauksens, awarding compensation for loss of chance and pecuniary loss.

## Legal Principle(s)

The Tribunals' role is not to substitute their decision for that of the Administration. The Administration is entitled to set minimum experience eligibility criteria for vacancy announcements absent any promulgated issuance on the subject.

## Outcome

Appeal granted in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Scheepers et al

## Entity

DSS

## Case Number(s)

2014-642

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

2 Jul 2015

## President Judge

Judge Faherty

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Staff selection (non-selection/non-promotion)

Eligibility

## Applicable Law

Administrative Instructions

- ST/AI/2006/3
- ST/AI/2010/3

Information Circulars

- ST/IC/1993/66/Add.1

Staff Regulations

- Regulation 4.4

UN Charter

- Article 101.3

## Related Judgments and Orders

UNDT/2014/089

2013-UNAT-284

2011-UNAT-110

