

# **2015-UNAT-603, Niedermayr**

## **UNAT Held or UNDT Pronouncements**

UNAT held that it was disingenuous for UNRWA to suggest that the Appellant's transfer application was considered in the same manner as the two candidates who were selected from the roster. UNAT held that UNRWA DT failed to properly exercise the jurisdiction vested in it and erred in law in failing to have regard to the Appellant's due process entitlements. UNAT held that UNRWA DT erred in law in relying on the authority of the Director of UNRWA Affairs, Lebanon, to reject the Appellant's application for assignment. UNAT did not uphold the contention that the Appellant had a legitimate expectation of succeeding the post. UNAT held that UNRWA DT erred in fact in accepting the private assessment of the Director of UNRWA Affairs, Lebanon, of the Appellant and that this error was such that it led to a manifestly unreasonable decision. UNAT held that it was satisfied that there was merit in the Appellant's submission that UNRWA DT did not inquire into the circumstances which culminated, effectively, in excluding him from consideration for the position, such that the full and fair consideration to which he was entitled did not materialise. UNAT emphasized that the lost chance of being selected, even if slight, and the loss of a better chance of being recommended or included in the roster had material and financial consequences. UNAT upheld the appeal in part and vacated the UNRWA DT judgment. UNAT ordered rescission of the contested decision or, in the alternative, payment of USD 10,000 in compensation for the loss of chance of being considered for the position.

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

The Applicant contested the decision not to consider him for a position. UNRWA DT dismissed the application.

## **Legal Principle(s)**

The Secretary-General has broad discretion in matters of staff selection.

## Outcome

Appeal granted

## Outcome Extra Text

Only financial compensation; Only financial compensation.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Niedermayr

## Entity

UNRWA

## Case Number(s)

2015-700

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

30 Oct 2015

## President Judge

Judge Faherty

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Loss of chance

Due process

Staff selection (non-selection/non-promotion)

Full and fair consideration

## Applicable Law

UNRWA International Staff Regulations

- Regulation 1.2

UNRWA Personnel Directives

## Related Judgments and Orders

2012-UNAT-219

2012-UNAT-205

2015-UNAT-547

2012-UNAT-266

2012-UNAT-265

2012-UNAT-216

2011-UNAT-110

2011-UNAT-122