

# **2016-UNAT-640, Diatta**

## **UNAT Held or UNDT Pronouncements**

UNAT held that the Appellant did not address any error of fact or law in the UNDT judgment. UNAT held that the irregularities in the procedure did not amount to a breach of the Appellant's due process rights. UNAT held that it was irrelevant whether the Appellant filed his application before UNDT in the interests of justice or seeking an award of moral damages since there was no evidence of damages. UNAT dismissed the appeal and affirmed the UNDT judgment.

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

The Applicant contested the decision not to select him for a D-2 level post. UNDT issued its judgment, granting the application in part. UNDT found numerous procedural irregularities in the two advertisements issued for the post. UNDT held that the mandatory provisions for the selection process were not followed for the post and that the Applicant's right to be fully and fairly considered for the post was not respected. UNDT, however, rejected the Applicant's claims that the selection decision was tainted by improper motives and bias, that the requirements of the job opening were not respected, and that the candidate lacked a crucial element for the post. UNDT held that even if Applicant had been recommended, he would have had no right to be selected for the post. UNDT rejected the request to set aside the contested decision and to award compensation in-lieu. UNDT found that an express request for moral damages arising from the breach of the Appellant's due process rights was absent.

## **Legal Principle(s)**

UNDT possesses jurisdiction to rescind a selection or promotion process but may do so only under extremely rare circumstances. When candidates have received fair consideration, discrimination and bias are absent, proper procedures have been

followed, and all relevant material has been taken into consideration, UNDT shall uphold the selection/promotion. The Secretary-General has broad discretion in matters of staff selection. The UNAT jurisprudence has clarified that, in reviewing such decisions, it is the role of UNDT or UNAT to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent, and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Diatta

## Entity

DGACM

## Case Number(s)

2015-849

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

24 Mar 2016

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Evidence of harm

Discrimination and other improper motives

Bias/favouritism

Due process

Staff selection (non-selection/non-promotion)

Full and fair consideration

## Applicable Law

Staff Regulations

- Regulation 1.2(c)
- Regulation 4.1

UN Charter

- Article 101.1

UNAT Statute

- Article 2.1

## Related Judgments and Orders

UNDT/2015/054

2011-UNAT-172

2011-UNAT-174

2011-UNAT-175

2012-UNAT-205

2014-UNAT-439

2015-UNAT-496

2011-UNAT-122

2012-UNAT-265

2012-UNAT-216

2010-UNAT-084

2013-UNAT-283