

2016-UNAT-652, Nikolarakis

UNAT Held or UNDT Pronouncements

UNAT addressed the Secretary-General's appeal. UNAT agreed with the Secretary-General that UNDT erred on a question of law in substituting its own decision for that of the Administration regarding how the selection process should have been conducted. UNAT held that UNDT had improperly relied on "logic" to insert a step into the assessment process that was not required under the staff selection system established under the Staff Regulations and Rules. UNAT held that UNDT had clearly erred on a matter of law and had exceeded its competence by deciding that the DSS/SSS management lacked discretion to require all candidates to pass the competency-based interview; and, by ruling that additional weight had to be given to the staff member's individual competency ratings in his performance evaluations even after he had failed the interview. UNAT upheld the appeal and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to promote him to the S-3 level in the Security and Safety Service (SSS), Department of Safety and Security (DSS). UNDT found that those within the SSS/DSS who designed and implemented the promotion exercise had acted in good faith. UNDT, however, found that the hiring manager had acted based on a flawed understanding of the role of competency-based interviews under ST/AI/2010/3 when he fettered his discretion by declining to recommend the Applicant for promotion based solely on the result of his competency-based interview. UNDT awarded the Applicant compensation for moral damages for the procedural error and unfairness to which he was subjected.

Legal Principle(s)

Under Article 101. 1 of the UN Charter and Staff Regulations 1. 2(c) and 4. 1, the Secretary-General has broad discretion in matters of staff selection. The jurisprudence of UNAT 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 granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Nikolarakis

Entity

Not indicated

Case Number(s)

2015-859

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Jun 2016

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Full and fair consideration

Interview

Applicable Law

Staff Regulations

- Regulation 1.2(c)
- Regulation 4.1

UN Charter

- Article 101.1

Related Judgments and Orders

UNDT/2015/071

2011-UNAT-110

2013-UNAT-309

2015-UNAT-506

2012-UNAT-265