

2016-UNAT-669, Kuchеров

UNAT Held or UNDT Pronouncements

UNAT considered the Secretary-General's appeal. UNAT held that Mr Kuchеров did receive full and fair consideration for the post which was finally filled by another candidate. UNAT found no flaw in the competitive selection procedure and agreed with the Secretary-General that the UNDT judgment contained errors of fact and law. UNAT noted that Section 7. 5 of ST/AI/2010/3, as amended, does not require a job opening to identify the specific assessment method to be used for the evaluation of technical skills. Rather, it provides that it may include a competency-based interview and/or other appropriate evaluation methods. Nor was a written test a mandatory assessment method required in this case, because under ST/AI/2000/1, once a candidate has been successful in a language competitive examination and put on the corresponding roster, there is no need to repeat the test. UNAT held that the two short-listed candidates were in that position, thus, UNDT erred on these two issues. UNAT also held that UNDT erred in considering the fact that the selection panel did not include an expert on Russian language or a non-voting member representing the Assistant Secretary-General of the Office of Human Resource Management, as a procedural error. Moreover, UNDT erred in finding that the scoring system used by the selection panel did not accurately reflect the candidates' performance during the interview. UNAT noted that the common method applied was within the Administration's discretion, and UNDT overstepped its role to the extent that it selected the scoring system that should have been applied, requiring something which the applicable norms did not require. UNAT further held that UNDT erred in finding that the selection decision was made before the Central Review Bodies' mandatory review and did not contain the reasons for the selection. UNAT noted that a justification for why the recommended candidate is selected is only required when an external candidate is selected in accordance with Section 9. 3 of ST/AI/2010/3, which was not the case here. UNAT upheld the Secretary-General's appeal and vacated UNDT's judgment.

Decision Contested or Judgment/Order Appealed

Mr Kuchеров requested recession of the contested decision and an order that a new recruitment process be initiated or, alternatively, that he be awarded two years' net base salary as compensation for the violation of his rights, for stress and suffering as well as for the loss in salary and pension benefits caused by his non-selection. UNDT found that the Applicant's right to be fully and fairly considered for the Post was not respected due to procedural irregularities. A non-promotion decision has no legal effect such as forcing the non-selected candidate to work in a different unit. UNDT rejected Mr Kuchеров's request for rescission because although he had a significant chance of selection, the recession would make the Applicant worse off, removing him from the roster for the role. (The Applicant had also been moved to a different department shortly afterwards). UNDT also denied Mr Kuchеров's request for alternative relief, stating that he did not have a right to be selected and, therefore, was not entitled to receive compensation for the violation of his right to be fully and fairly considered. UNDT awarded Mr Kuchеров USD 3,000 in moral damages as reasonable and sufficient compensation for the moral damages resulting from substantial procedural errors.

Legal Principle(s)

The judicial review of selection and promotion decisions is limited to the determination as to whether or not a candidate received full and fair consideration. In reviewing the selection process, it is not the role of the UNDT or UNAT to substitute its own decision for that of the Administration regarding its outcome.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Kuchеров

Entity

DGACM

Case Number(s)

2016-880

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Jun 2016

President Judge

Judge Simón

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Full and fair consideration

Selection decision

Applicable Law

Administrative Instructions

- ST/AI/1998/7/Amend.1
- ST/AI/2000/1
- ST/AI/2010/3
- ST/AI/2010/3/Section 7.5
- ST/AI/2010/3/Section 9.3

Staff Regulations

- Annex IV

Staff Rules

- Chapter IV

Related Judgments and Orders

UNDT/2015/106

2015-UNAT-511

2015-UNAT-537

2015-UNAT-603

2012-UNAT-265

2011-UNAT-110

2011-UNAT-122