

2016-UNAT-691, Krioutchkov

UNAT Held or UNDT Pronouncements

UNAT considered Mr Krioutchkov's appeal as well as the Secretary-General's cross-appeal. UNAT preliminarily denied Mr Krioutchkov's request for an oral hearing after finding that it would not assist in the expeditious and fair disposal of the case. UNAT held that Mr Krioutchkov's application was receivable by UNDT and noted that, in order to trigger the statutory time limits for each selection decision, it is necessary for the Administration to notify the unsuccessful candidates of the issuance of each of such decisions. To that end, Mr Krioutchkov only learned at the beginning of February 2014 that an administrative decision regarding his non-selection for the second post had been made, as neither the advertisement under JO 25120 nor the e-mail of 23 May 2013 revealed that there was a second post or that a second selection had taken place. UNAT further found that Mr. Krioutchkov was entitled to rescission, as there was a significant chance of a promotion at stake. UNAT cited *Bofill v. Secretary-General of the United Nations* (judgment No. 2011-UNAT-174), which held: "The direct effect of an irregularity will only result in the rescission of the decision not to promote a staff member when he or she would have had a significant chance for promotion. " Moreover, UNAT found no fault with UNDT's award of compensation of USD \$1,000. UNAT noted that UNDT was in the best position to decide on the level of compensation given its appreciation of the case and that UNDT considered the chances of success and well as the income associated with the potential promotion. However, UNAT held that UNDT erred in awarding moral damages since Mr Krioutchkov did not present evidence to sustain an award of moral damages, as required by the amended Statute. UNAT dismissed Mr Krioutchkov's appeal, the Secretary-General's cross-appeal of receivability, and the Secretary-General's cross-appeal of the merits. UNAT granted the Secretary-General's cross-appeal of the award of moral damages. UNAT affirmed UNDT's judgment, with the exception of the award of moral damages which was vacated.

Decision Contested or Judgment/Order Appealed

Mr Krioutchkov contested his non-selection, based on the non-advertisement of a second post under JO 25120, and the selection of a candidate without any competition under the said Job Opening (JO). UNDT found that this was an appealable administrative decision, that Mr Krioutchkov did not miss the time limits for the formal contestation of that decision when he filed his request for management evaluation on 29 March 2014, and that the lack of announcement of two posts under one JO was a fundamental irregularity that vitiated the recruitment process and the resulting selection decision as regards the second post. UNDT ordered rescission of the “severely flawed” decision to fill the second post under JO 25120, or in the alternative, compensation to Mr Krioutchkov in the sum of USD 5,000: USD 1,000 as the alternative compensation in lieu of rescission and USD 4,000 as non-pecuniary damages.

Legal Principle(s)

A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested. The time limits only start to run as of the moment where all relevant facts for a particular decision were known or should have reasonably been known. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General. The direct effect of an irregularity will only result in the rescission of the decision not to promote a staff member when he or she would have had a significant chance for promotion. Thus, where the irregularity has no impact on the status of a staff member, because he or she had no foreseeable chance for promotion, he or she is not entitled to rescission or compensation. Compensation must be set by UNDT following a principled approach and on a case-by-case basis. UNDT is in the best position to decide on the level of compensation given its appreciation of the case. Compensation may only be awarded for harm when supported by evidence

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Krioutchkov

Entity

DCM

Case Number(s)

2016-921

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Oct 2016

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

In-lieu compensation

Non-pecuniary (moral) damages
Jurisdiction / receivability (UNDT or first instance)
Temporal (ratione temporis)
Remedies
Rescission

Applicable Law

UNDT Statute

- Article 10.5
- Article 8.1

Related Judgments and Orders

UNDT/2016/013
2016-UNAT-684
2011-UNAT-131
2015-UNAT-528
2010-UNAT-044
2011-UNAT-109
2011-UNAT-149
2011-UNAT-174
2011-UNAT-172
2014-UNAT-406
2013-UNAT-378
2012-UNAT-273
2013-UNAT-368
2015-UNAT-547
2010-UNAT-051
2014-UNAT-458
2016-UNAT-638