

2017-UNAT-723, Chhikara

UNAT Held or UNDT Pronouncements

As a preliminary issue, Mr Chhikara brought a motion seeking leave to adduce additional evidence in the form of an affidavit setting out his credentials for the post and credentials of the selected candidate, claiming that he was not aware that this information was relevant at the time he made his initial submissions. UNAT refused this motion on the basis that no exceptional circumstances were demonstrated and that Mr Chhikara's explanation that he only realized the relevance of additional evidence after the UNDT decision did not escape the fact that it was known to him at the time. As another preliminary issue, Mr Chhikara brought a motion to adduce additional evidence to challenge the professionalism of one of the interview panel members, which UNAT refused on the basis that: (1) he did not explain why he did not know of this document prior to the UNDT proceedings; (2) had he acted with due diligence, he should have been able to timely produce it to UNDT; and (3) he did not establish any exceptional circumstances. UNAT held that UNDT did not err in concluding that: Mr Chhikara did not receive full and fair consideration of his candidacy; the Panel's assessment of him was unlawful; the impugned selection decision was based on an Interview Assessment Report which was fundamentally flawed and unreliable; and, that such decision was ultimately unlawful. UNAT held that there was a direct link between the procedural irregularities and Mr Chhikara's non-selection and that he would have had a significant chance for selection had it not been for the negative impact of those irregularities. UNAT held that UNDT erred in law and in fact when it declined to order that the impugned selection decision be rescinded and disregarded Mr Chhikara's chances of selection. UNAT held that UNDT erred in not ordering rescission of the impugned selection decision nor in-lieu compensation as an alternative to the rescission. UNAT allowed the appeal and vacated the UNDT judgment, with the exception of the order for payment of moral damages of one US dollar. UNAT rescinded the decision not to roster or select Mr Chhikara for the post and awarded in-lieu compensation of an amount equal to one-fifth of the yearly salary applicable to the post as an alternative to rescission.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to roster or select him for a post. UNDT found that the decision was unlawful, but did not rescind the decision, and awarded one US dollar as moral damages.

Legal Principle(s)

The direct effect of a procedural irregularity will only result in the rescission of the decision not to promote or select a staff member when he or she would have had a significant chance of promotion or selection.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Chhikara

Entity

MONUSCO

Case Number(s)

2016-961

Tribunal

UNAT

Registry

New York

Date of Judgement

31 Mar 2017

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Loss of chance

Remedies

Rescission

Staff selection (non-selection/non-promotion)

Full and fair consideration

Selection decision

Applicable Law

Administrative Instructions

- ST/AI/2010/3

UNAT Statute

- Article 2.5
- Article 9.1(a)

Related Judgments and Orders

UNDT/2016/089