

2017-UNAT-762, Lemmonier

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. On the issue of receivability, contrary to Mr Lemmonier's contention that the Secretary-General's appeal is not receivable because the impugned judgment did not award him any damages and was mere "a moral victory", UNAT held that success before UNDT depends on whether the staff member's application is granted, in whole or in part, not on the remedy afforded to the staff member, and that the staff member may prevail or succeed on his claim(s) without receiving an award of damages. According to UNAT, as the unsuccessful party before UNDT, the Secretary-General had a real or concrete interest in assuring that the impugned judgment did not remain valid. UNAT thus determined that the appeal was receivable. UNAT held that UNDT made several errors of law in reaching its conclusions, apart from confusing eligibility for a position (being on a roster) with having the qualifications for the position. UNAT held that UNDT applied the wrong standard of proof (balance of evidence) in weighing the evidence. UNAT held that it was the staff member's burden to prove by clear and convincing evidence that the Administration did not give his candidacy full and fair consideration and that Mr Lemmonier did not meet his burden. UNAT held that UNDT erroneously concluded that Mr Lemmonier had rebutted the presumption of regularity and shifted the burden back to the Administration to respond based on selected candidate's LinkedIn page which was outside the record considered by the Administration in making the impugned decision. UNAT held that UNDT improperly replaced the Administration in the selection process. UNAT held that UNDT erred in law and fact when it concluded that the Administration unlawfully found Mr Lemmonier was not eligible and did not select him for the position. On the UNDT's conclusion that Mr Lemmonier was not afforded proper priority consideration under Staff Rule 9.6(e), UNAT held that this was premised upon the erroneous factual finding that Mr Lemmonier was qualified for the position. UNAT held that the conclusion that the Administration unlawfully failed to apply Staff Rule 9.6(e) to his candidacy was manifestly unreasonable. UNAT granted the appeal and reversed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

Mr Lemonnier contested the decision not to select him for a position. UNDT found that the decision was unlawful.

Legal Principle(s)

Judicial review of a staff selection decision is not for the purpose of substituting UNDT's selection decision for that of the Administration. The role of UNDT is 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 starting point for judicial review is the presumption of regularity, which is a rebuttable presumption that official acts have been regularly performed. The Secretary-General is considered the unsuccessful party before UNDT for the purposes of receivability of his appeal before UNAT, even if UNDT awarded no damages to the applicant. That is because success before UNDT depends on whether the staff member's application is granted, in whole or in part; not on the remedy afforded to the staff member.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Lemmonier

Entity

MINUSTAH

Case Number(s)

2016-1039

Tribunal

UNAT

Registry

New York

Date of Judgement

14 Jul 2017

President Judge

Judge Chapman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Jurisdiction / receivability (UNAT)

Appeal

Staff selection (non-selection/non-promotion)

Eligibility

Full and fair consideration

Applicable Law

Administrative Instructions

- ST/AI/2010/3/Amend. 1

Staff Regulations

- Regulation 1.2(c)
- Regulation 4.1

Staff Rules

- Rule 9.6(e)

UN Charter

- Article 101.1

UNDT RoP

- Article 18.1

UNDT Statute

- Article 9.1
- Article 9.2

Related Judgments and Orders

UNDT/2016/187