

2018-UNAT-876, Cardwell

UNAT Held or UNDT Pronouncements

UNAT considered the receivability of the issue of non-renewal and whether UNDT erred in rejecting the Appellant's claim that his candidacy for the relevant post had not been given full and fair consideration. UNAT referenced Staff Rule 11. 2(a), which provides that it is an established principle that a request for management evaluation is the first step in the appeal process of an administrative decision. UNAT further noted that UNDT has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of review. UNAT found no fault with UNDT's reasoning in this regard and upheld UNDT's finding that the issue of the non-renewal of the Appellant's fixed-term contract was not receivable *ratione materiae*. UNAT agreed with UNDT that the burden of proof had shifted to the Appellant to prove his allegations, and there was no evidence forthcoming from the Appellant to corroborate his contention of bias. The Appellant was not permitted to and could not raise arguments on appeal which he did not raise before the UNDT. UNAT upheld UNDT's judgment and dismissed the appeal.

Decision Contested or Judgment/Order Appealed

The Applicant contested his non-selection in the retention exercise and the non-renewal of this fixed-term contract. UNDT found that the Applicant had failed to request management evaluation of the decision not to renew his fixed-term contract and, as such, his claim in this regard was not receivable. UNDT held that the Secretary-General at least minimally demonstrated that the Applicant had received full and fair consideration for the post in question. UNDT further held that, accordingly, the burden of proof shifted to the Applicant to show through clear and convincing evidence that the selection process was motivated by bias in favour of an external candidate. UNDT held that the Applicant provided no evidence to support this contention. UNDT held that the Applicant's appeal against the decision not to renew his fixed-term contract was not receivable *ratione materiae* and he had failed to show that his candidacy did not receive full and fair consideration. UNDT

dismissed the Applicant's application.

Legal Principle(s)

The burden is on the candidate challenging the selection process to prove through clear and convincing evidence that they did not receive full and fair consideration of their candidacy, the applicable procedures were not followed, the members of the panel exhibited bias, irrelevant material was considered, or relevant material was ignored. Arguments in support of a case that are available at the time when the application is made at the UNDT must be advanced at the hearing of the case before that Tribunal and not at the Appeals Tribunal. The Appeals Tribunal will not hear and/or entertain new grounds for appeal which were in an applicant's knowledge and were not raised or argued before UNDT.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Cardwell

Entity

UNDP

Case Number(s)

2018-1169

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Oct 2018

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Subject matter (ratione materiae)

Non-renewal

Burden of proof

Staff selection (non-selection/non-promotion)

Full and fair consideration

Applicable Law

Staff Rules

- Rule 11.2(a)

Related Judgments and Orders

UNDT/2018/030