

# **2018-UNAT-878, Pinto**

## UNAT Held or UNDT Pronouncements

UNAT held that UNDT erred in finding the Hiring Manuals binding on the Administration, nonetheless, confirming that the Hiring Manager's reliance on the shortlist prepared by the CSS/OSU constituted a procedural irregularity in terms of Section 7.4 of ST/AI/2010/3, which undisputedly enjoys binding legal authority. UNAT held that such irregularities only result in the rescission of a non-selection decision or of the decision not to shortlist a candidate in case the candidate had a significant chance, which could not be verified in this case, the same logic being applicable to compensation for material damages due to a loss of a "chance". UNAT held that UNDT erred in awarding moral damages to Ms. Pinto, given the absence of concrete evidence of harm. UNAT upheld the appeal and vacated the UNDT judgment.

## Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant contested the evaluation process which led to UNOG's decision not to consider her for an assessment test and interview following the application to the Job Opening. UNDT found that the Applicant had not been given full and fair consideration. UNDT ordered rescission of the decision not to shortlist the Applicant and awarded her compensation for moral damages.

## Legal Principle(s)

The Secretary-General has broad discretion in making decisions regarding promotions and appointments. It is not the role of UNDT and UNAT to substitute the Secretary-General's decision regarding the selection processes. The burden of proof lies on the candidate that challenges the selection process. The proof must show clear and convincing evidence that he or she did not receive full and fair consideration of his or her candidacy, the applicable procedures were not followed,

the members of the panel exhibited bias, or irrelevant material was considered, or relevant material ignored. The Hiring Manuals are not binding on the Administration. According to the established UNAT jurisprudence, “rules, policies or procedures intended for general application may only be established by duly promulgated SG’s bulletins and administrative issuances”. An irregularity in the selection procedure set out in ST/AI/2010/3 only results in the rescission of a non-selection decision or a decision not to shortlist the candidate if the candidate would have had a significant chance of selection. The same logic applies to compensation for material damages due to a loss of a “chance” of selection which, according to the UNAT jurisprudence, becomes too speculative where the chance is less than ten percent. A mere procedural violation is not sufficient to warrant moral damages in the absence of concrete evidence of harm.

## Outcome

Appeal granted

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Pinto

## Entity

UNOG

## Case Number(s)

2018-1171

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

26 Oct 2018

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Evidence of harm

Staff selection (non-selection/non-promotion)

Eligibility

Full and fair consideration

Selection decision

## Applicable Law

Administrative Instructions

- ST/AI/2010/3

UNDT Statute

- Article 10.5(b)

## Related Judgments and Orders

UNDT/2018/020