

2019-UNAT-966, Krioutchkov

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that UNDT erred in law when it held that Staff Rules 4.4 and 4.5 established different recruitment regimes for professional and general service staff, clarifying that they establish different allowances and benefits regimes for local and international recruitment. UNAT held that UNDT erred in law when it found that it was illegal to restrict a temporary job opening at the professional level to local recruitment. UNAT held that UNDT contradicted UNAT's jurisprudence on the wide inherent discretion conferred upon the Secretary-General to determine eligibility criteria for temporary appointments. UNAT held that the Administration was not prohibited from imposing a restriction limiting recruitment for a temporary position to staff members at a particular duty station or mission. UNAT held that the Appellant bore the burden of proof with regards to his claim of not having been given full and fair consideration in the selection exercise and that he did not produce any evidence to support his allegation. Noting that cost and convenience were paramount, UNAT held that the decision to include and apply the restrictive eligibility criteria (local recruitment) was reasonable and lawful. UNAT upheld the appeal and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested his non-selection for a temporary job opening. He was not short-listed on account of not meeting a minimum eligibility requirement of already being located at the same duty station as the advertised post. UNDT found that this was an unlawful requirement, rescinded the decision, and awarded compensation.

Legal Principle(s)

If the Administration can even minimally show that the staff member's candidacy was given full and fair consideration, then the presumption of lawfulness is satisfied;

thereafter, the burden of proof shifts to the staff members, who must show through clear and convincing evidence that they were denied a fair chance of appointment.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Krioutchkov

Entity

ESCAP

Case Number(s)

2019-1266

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Oct 2019

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Temporary appointment

Burden of proof

Non-disciplinary

Staff selection (non-selection/non-promotion)

Eligibility

Full and fair consideration

Selection decision

Applicable Law

Administrative Instructions

- ST/AI/2010/4/Rev.1

GA Resolutions

- A/RES/53/221
- A/RES/55/258
- A/RES/63/250

Staff Rules

- Rule 3.13
- Rule 3.14
- Rule 3.15
- Rule 4.2
- Rule 4.4
- Rule 4.4(a)
- Rule 4.4(b)
- Rule 4.5
- Rule 4.5(b)
- Rule 4.5(c)
- Rule 4.6

UN Charter

- Article 101.1

Related Judgments and Orders

UNDT/2019/048

2017-UNAT-785

2015-UNAT-547

2011-UNAT-122

2015-UNAT-527

2015-UNAT-556

2016-UNAT-652

2016-UNAT-642

2010-UNAT-084