

2020-UNAT-1014, Chhikara

UNAT Held or UNDT Pronouncements

UNAT held that the reason upon which UNDT decided not to rescind the contested decision, i. e. the lapse of time, was insufficient justification. UNAT held that, given the grossly negligent illegalities in which the selection process was conducted as found by UNDT, rescission of the contested decision was mandatory and could not be avoided on the basis of the excessive length of time between the filing of the application and the UNDT judgment. UNAT held that allowing the decision not to select the Appellant to remain in effect as if it was correct, despite its clear illegality, was not consistent with the idea of fair justice and reliability of selection processes within the Organisation, nor does it go in harmony with the good practices and the high standards of the Organisation. UNAT held that, given the fact that some compensation for harm had already been set, it found it reasonable to determine the in-lieu compensation in the amount of 3-months' net base salary at the higher level. UNAT upheld the UNDT judgment in part, modified the UNDT judgment by rescinding the non-selection decision and determining an in-lieu compensation amount equivalent to 3-months' net base salary at the D-1 level, and affirmed the UNDT decision in respect of costs and compensation for harm.

Accountability referral: In addition, UNAT noted the UNDT's findings of clear evidence of manipulation of the test results and selection process, which were serious and troubling. UNAT held that this warranted an investigation and referred the matter of the hiring manager's conduct to the Secretary-General for possible action to enforce accountability.

Decision Contested or Judgment/Order Appealed

The Applicant contested his non-selection for a position. In its first judgment (No. UNDT/2017/012), UNDT acknowledged the illegality of the decision but did not order rescission of the non-selection decision on the grounds that it would have been disproportionate. UNDT awarded the Applicant USD 4,000 for procedural violations. Both parties appealed judgment No. UNDT/2017/012 to UNAT. In judgment 2017-

UNAT-792, UNAT remanded the case for an additional finding of fact. In its second judgment No. UNDT/2019/150, UNDT granted the application in part as it found that the Applicant had not been given full and fair consideration in the selection exercise and that, since the rescission of the decision was no longer feasible, ordered the Administration to pay compensation for loss of chance equivalent to 50 percent of the difference between his salary and the salary he would have achieved for two years had he been selected (compensation for harm). UNDT awarded USD 3,000 in costs for manifest abuse of process.

Legal Principle(s)

In matters of compensation, due deference shall be given to the trial judge in exercising his or her discretion in a reasonable way following a principled approach.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Chhikara

Entity

MONUSCO

Case Number(s)

2019-1342

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Jun 2020

President Judge

Judge Raikos
Judge Murphy
Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of process before UNDT/UNAT
Costs
Manifest abuse
Compensation
Pecuniary (material) damages
Referral for accountability
Staff selection (non-selection/non-promotion)
Full and fair consideration
Selection decision

Applicable Law

UNAT Statute

- Article 9.1(a)

- Article 9.5

Related Judgments and Orders

UNDT/2019/150

2013-UNAT-347

2015-UNAT-525

2017-UNAT-712

2017-UNAT-791

2017-UNAT-792