

# 2020-UNAT-1063, Noberasco

## UNAT Held or UNDT Pronouncements

UNAT held that the Appellant's identity was probably known by the assessment panel at the time her test was marked. UNAT held that the Appellant's test was graded by the assessment panel after it had sent the transmittal memorandum to the Central Review Panel (CRP), creating the additional burden for the Appellant of having to persuade the assessment panel to change its original recommendation in the transmittal memorandum. UNAT held that, as the candidates recommended in the transmittal memorandum did not have this additional burden, it could not be said that all candidates received equal consideration. UNAT held that the way the Appellant's irregular disqualification was managed gave rise to a reasonable apprehension of partiality, which was normally sufficient to vitiate a decision. UNAT held that the CRP was denied the opportunity to fulfil its function to assess, in light of the procedural irregularity, whether the recommendations had been made fairly, impartially, and in accordance with due process. UNAT held that a mandatory and material procedure or condition precedent prescribed by the relevant empowering provisions (ST/AI/2010/3 and ST/SGB/2011/7) was not complied with; and thus, the non-selection decision was unlawful. UNAT held that the Appellant was not given full and fair consideration. UNAT held that UNDT erred in concluding that the Appellant's non-selection was lawful. UNAT held that, based on her experience, skills, and qualifications, the Appellant had a significant and foreseeable chance of being selected. UNAT upheld the appeal, reversed the UNDT judgment, and awarded the Appellant USD10,000 for loss of chance of promotion.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to select her for the post. UNDT identified a series of errors in the recruitment and selection process. UNDT concluded that none of the irregularities were of such a nature that they rendered the process, including the non-selection decision, unlawful. UNDT dismissed the application.

## Legal Principle(s)

While the Secretary-General has broad discretion in matters of staff selection and promotion decisions are to be presumed regular, the Administration is required as a first step to make a minimal showing that a staff member's candidature was given due consideration. The presumption of regularity is rebuttable. Reasonable apprehension of partiality is normally sufficient to vitiate a decision; there is no need for an applicant to show ulterior motive, bad faith, or actual bias.

## Outcome

Appeal granted

Outcome Extra Text

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Full judgment

[Full judgment](#)

Applicants/Appellants

Noberasco

Entity

UNOG

Case Number(s)

2020-1375

Tribunal  
UNAT  
Registry  
New York  
Date of Judgement  
30 Oct 2020  
President Judge  
Judge Murphy  
Language of Judgment  
English  
Issuance Type  
Judgment  
Categories/Subcategories  
Compensation  
Pecuniary (material) damages  
Staff selection (non-selection/non-promotion)  
Selection decision  
Written test  
Applicable Law  
Administrative Instructions

- ST/AI/2010/3

Secretary-General's bulletins

- ST/SGB/2011/7

Related Judgments and Orders  
UNDT/2020/003