

2021-UNAT-1125, Secretary-General of UN

UNAT Held or UNDT Pronouncements

The Dispute Tribunal committed an error in procedure by relying on ex parte evidence in the form of three doctors' notes, of which the Secretary-General received the translated copies only two days before the issuance of the impugned Judgment, in violation of audi alteram partem. The Dispute Tribunal failed to consider the "checks and balances to ensure transparency" instituted in established procedures as outlined in the Guidelines and the ability of the Applicant to raise timely concerns about potential bias after the interview. As there is no obligation to provide the names of the assessors prior to the interview and the Administration has minimally shown that the Applicant's candidature was given a full and fair consideration by following the established procedures in the Staff Regulations and Rules, the burden of proof is on the Applicant to show through clear and convincing evidence that he was denied a fair and adequate consideration in the selection process. UNAT found that the failure to provide the assessors' names prior to the interview and any resulting inference does not meet this threshold.

Decision Contested or Judgment/Order Appealed

UNDT/2020/110, in which UNDT found that Mr. Amineddine had not been fully and fairly considered for a job opening and awarded him in-lieu compensation as well as moral damages.

Legal Principle(s)

Section 7.5 of ST/AI/2010/3 governs the interview process, and this instrument does not impose an obligation on the Administration to inform the staff member of the composition of the assessors prior to the interview. If the Administration has no

obligation in established procedures or accepted practice to provide the names and if the circumstances do not raise a legitimate expectation, the lack of response to the Applicant's request alone cannot raise an inference of impropriety or unlawfulness. The applicant's general statement alleging a general "promise" to staff cannot raise a legitimate expectation to this individual staff member for this particular selection process. The Dispute Tribunal may only rescind a selection or promotion process in "extremely rare circumstances". Generally, when a candidate has received fair consideration, absent discrimination and bias, with proper procedures, and when all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection. The burden of proof is on the candidate challenging the non-selection to prove with "clear and convincing evidence" that this has not occurred.

Outcome

Appeal granted; Cross-appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Secretary-General of UN

Entity

UNTSO

Case Number(s)

2020-1443

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Jun 2021

President Judge

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Applicable Law

Administrative Instructions

- ST/AI/2010/3

Related Judgments and Orders

2011-UNAT-122

2015-UNAT-496

2016-UNAT-642