

UNDT/2021/161, Ponce-Gonzalez

UNAT Held or UNDT Pronouncements

The Tribunal found that the Applicant was wrongly evaluated against unpublished criteria, discretionary authority to cancel the RFR job opening was misused and abused and the Applicant was not afforded a fair chance at adequate and impartial consideration, the Tribunal finds that the applicable Regulations and Rules were not applied in a fair, transparent and non-discriminatory manner. The Applicant met and exceeded the requirements for the JO but the RFR was improperly cancelled. The Tribunal found that the presumption of regularity of the hiring manager's actions has been rebutted and that the Applicant's candidacy did not receive full and fair consideration. Established jurisprudence requires that the applicant's evidence should be corroborated by independent evidence (expert or otherwise) affirming that non-pecuniary harm has indeed occurred, but there was no such evidence in this case. The Tribunal held that the exercise of the power of referral for accountability in terms of art. 10.8 of the UNDT Statute must be exercised sparingly and only where the breach or conduct in question exhibits serious flaws. The wrongdoing in this case was primarily that the hiring manager committed various errors in the recruitment process which resulted in the Applicant's loss of an opportunity of promotion at a critical stage of his career. The Applicant had suffered serious prejudice, but the Tribunal was not convinced that the circumstances of the case took it in the ambit of one which should call for a referral to the Secretary-General.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the failure to afford full and fair consideration to his candidacy for the post of P-5 Chief, Operations and Resource Management, advertised under Recruit from Roster ("RFR") exercise number 104637 and abuse of authority in cancelling the RFR in violation of the applicable rules following his unlawful disqualification.

Legal Principle(s)

The Tribunal's role is not to substitute its decision for that of the Administration. Official acts are presumed to have been regularly performed, but that presumption is rebuttable. If management is able to show that an applicant's candidature was given full and fair consideration, then the presumption of law stands satisfied. Thereafter, the evidentiary burden of proof shifts to the applicant who must show through clear and convincing evidence that he/she was denied a fair chance of promotion. A candidate challenging denial of promotion must therefore prove that proper grounds of review exist to rebut the presumption of regularity. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the selection or promotion should be upheld.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal rescinded the contested decision and awarded the Applicant compensation.

Full judgment

[Full judgment](#)

Applicants/Appellants

Ponce-Gonzalez

Entity

UNISFA

Case Number(s)

UNDT/NBI/2019/113/R1

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

23 Dec 2021

Duty Judge

Judge Tibulya

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Evidence of harm

In-lieu compensation

Loss of chance

Referral for accountability

Staff selection (non-selection/non-promotion)

Full and fair consideration

Applicable Law

Administrative Instructions

- ST/AI/2010/3