

# 2022-UNAT-1209, Edoardo Gianotti

## UNAT Held or UNDT Pronouncements

UNAT held the UNDT was correct to find the application non-receivable *ratione materiae*. At the time of the UNDT Judgment, there was no final administrative decision that had direct legal consequences on the Appellant's terms of employment. In addition, in the intervening time, the Appellant has been selected for the post, and therefore, he has received that which he had sought originally, making his request for rescission of the contested decision moot. Regarding the request for compensation for the pay differential for 17 months, the Tribunal found because there was no appealable administrative decision, a remedy such as rescission or specific performance or compensation for harm pursuant to Article 9 of the Statute was not available to the Appellant.

## Decision Contested or Judgment/Order Appealed

A staff member challenged the alleged decision of the Administration to reject his successful candidacy for a P-4 level post, after he was recommended by the Hiring Manager and endorsed by the CRB. The Administration rejected the recommendation of the staff member for the post on two occasions and asked the Hiring Manager to pursue a full recruitment to make sure a female applicant is included in the list of recommended candidates. Before the recruitment was finalized, the staff member appealed the decision of the Administration to reject his successful candidacy twice. The UNDT dismissed the application finding it non-receivable *ratione materiae*. The UNDT held the recruitment process for the P-4 post had not yet concluded, and in the absence of a final selection decision, the application was not receivable. Notably, at no point was the staff member eliminated in the selection process. After the appeal was fully briefed, the staff member was eventually selected for the post. He asks UNAT for a pay differential from the time he was recommended on the second occasion until he was promoted, which was in effect 17 months.

## Legal Principle(s)

Where a staff member has not been excluded from the recruitment process and where there has not been a final administrative decision in regards to selection, an appeal regarding an interim rejection of a candidate is not an appealable administrative decision. This is because the interim rejection is an intervening step and not a final selection or non-selection decision. In the absence of an appealable administrative decision, a staff member cannot be granted a remedy such as rescission or compensation for harm.

## Outcome

Dismissed on merits

## Outcome Extra Text

The appeal is dismissed, and Judgment No. UNDT/2021/013 is upheld.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Edoardo Gianotti

## Entity

ECOSOC

## Case Number(s)

2021-1540

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

18 Mar 2022

## President Judge

Judge Sandhu

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Definition

Bias/favouritism

Gender

Subject matter (ratione materiae)

Full and fair consideration

Selection decision

Administrative decision

Discrimination and other improper motives

Jurisdiction / receivability (UNDT or first instance)

Staff selection (non-selection/non-promotion)

## Applicable Law

UNAT Statute

- Article 2.1
- Article 9.1

## UNDT Statute

- Article 2.1

## Related Judgments and Orders

2010-UNAT-058

2014-UNAT-460

2010-UNAT-051