

2022-UNAT-1248, Vladislav Krioutchkov

UNAT Held or UNDT Pronouncements

Mr. Krioutchkov appealed. UNAT found that the UNDT correctly held that the timing of the written test was justifiable in that holding the test at a set hour worldwide was a rational way of avoiding leaks of the test materials. The inconvenience to the Administration of accommodating different test schedules outweighed the inconvenience of Mr. Krioutchkov being required to adjust his schedule. The scheduling decision was accordingly reasonable. Moreover, having refused to participate in the written examination, Mr. Krioutchkov was estopped from challenging the non-selection decision. UNAT found that Mr. Krioutchkov's allegation of unfair discrimination was equally unmeritorious. The differential treatment of Mr. Krioutchkov was rationally based on his failure to take the test which "failed to get him out of the starting blocks in an unfair discrimination case". Mr. Krioutchkov's own conduct resulted in the differential consideration of his candidature being rational, fair and non-discriminatory. Finally, UNAT held that the UNDT did not err in concluding that Mr. Krioutchkov's motion seeking production of evidence was unsustainable on grounds of the evidence sought being irrelevant and beyond the scope of his case. UNAT dismissed the appeal.

Decision Contested or Judgment/Order Appealed

Mr. Krioutchkov contested before the UNDT the decision not to select him for one of four positions of Russian Reviser, P-4, that had been advertised by DGACM in New York. Mr. Krioutchkov also sought leave to file a motion requesting that the UNDT order the production of accurate statistics and information on how many internal candidates based outside of New York had been promoted in the last 10 years from P-3 Russian translator to P-4 Russian translator posts. In Judgment No. UNDT/2021/052, the UNDT dismissed the application. The UNDT recalled that Mr. Krioutchkov had been invited to sit a written assessment; and that that test was to

take place at the same time for all shortlisted candidates, irrespective of their location. Mr. Krioutchkov, based in Bangkok, had requested that the time for the written test be adjusted to regular office time in Bangkok; and the Administration replied that the time of the assessment was synchronized with other candidates and was not negotiable. Mr. Krioutchkov then chose not to participate in the assessment. The UNDT found that the Administration's reason for not accommodating different schedules was fair and reasonable. The scheduling of the exam at a set hour for all applicants was necessary to avoid leaks of the testing materials. The UNDT held further that Mr. Krioutchkov's decision not to participate in the selection process was his own and that, consequently, he was estopped from contesting the outcome of the process. The UNDT also dismissed Mr. Krioutchkov's motion seeking the production of evidence.

Legal Principle(s)

The Administration has a broad discretion in staff selection matters. In review of any selection decision the standard of review is one of rationality. The decision must be supported by the information before the decision-maker and the reasons given for it. The question to be asked is whether there is a rational and justifiable connection between the information available to the administrative decision-maker and the conclusion he or she eventually arrived at. A staff member will be estopped from challenging a non-selection decision should he or she refuse to participate in an interview. The principle applies with equal force where a candidate refuses to submit to a compulsory written examination as part of the selection exercise. Where a candidate refuses or fails to comply with a preliminary prerequisite without reasonable justification, there is no obligation on the Administration to give his or her application further consideration. The candidate in such circumstances disqualifies his or her application and waives his or her right to full consideration. Discrimination involves differentiation on illegitimate grounds. Not every differentiation is illegitimate. In determining whether a differentiation has an unfair impact, regard must be had to the nature of the differentiating decision and the purpose sought to be achieved by it. An important consideration always will be whether the primary purpose of the impugned decision sought to achieve a worthy and important organizational goal. The requirements of selection and promotion of staff of the Organization, including written examinations for the purposes of assessment, are the appropriate means of giving effect to Article 101.3 of the

Charter of the United Nations (and the Staff Regulations and Rules enacted to give effect to it) which provides that the paramount consideration in the employment of staff shall be the necessity of securing the highest standards of efficiency, competence and integrity. The UNDT's power to order discovery is subject to the principles of relevance and the probative value of the documents sought to be discovered.

Outcome

Dismissed on merits

Outcome Extra Text

The appeal is dismissed, and Judgment No. UNDT/2021/052 is upheld.

Full judgment

[Full judgment](#)

Applicants/Appellants

Vladislav Krioutchkov

Entity

UN Secretariat

Case Number(s)

2021-1575

Tribunal

UNAT

Registry

New York

Date of Judgement

11 Aug 2022

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Production of evidence

Written test

Evidence

Staff selection (non-selection/non-promotion)

Applicable Law

UN Charter

- Article 101.3

Administrative Instructions

- ST/AI/2010/3

Related Judgments and Orders

2018-UNAT-836