

# 2022-UNAT-1197, Antonio Ponce-Gonzalez

## UNAT Held or UNDT Pronouncements

UNAT held that UNDT was correct when it found that the Appellant should not have been treated differently from other candidates without justification and that proceeding in the manner suggested by him would have breached the other shortlisted candidates' rights to fair and full consideration. UNAT held that the only logical conclusion to be drawn was that UNDT was correct in its finding that there was a regrettable error in the temporary job opening when it exempted the previously rostered candidates from any further assessment, and that this error was later rectified when all short-listed candidates were invited to a competency-based interview for assessment. UNAT held that the UNDT did not err in law by validating such an assessment method, even though further assessment had been excluded in the job opening. UNAT held that bias or improper motive on the part of the Hiring Manager had not been affirmed by its previous Judgment on receivability. UNAT held that the Appellant had not satisfied his burden of proof in establishing that there was improper motive. UNAT held that the Appellant was afforded full and fair consideration and his candidacy could not be evaluated because he failed to attend his interview. UNAT held that the UNDT correctly found that the Appellant failed to establish any bias by the members of the interview panel, the onus for which was on him. UNAT held that, although rebuttable, the presumption of regularity of the selection exercise in the present case remained intact and the UNDT did not err in fact by finding that the Appellant was not entitled to, and showed no legal basis for, his exemption from the interview. UNAT held that the UNDT did not err in fact in stating that a correction of error in order to introduce interviews as a method of assessment was not prejudicial to the Appellant's right to full and fair consideration. UNAT held that the Appellant did not establish that UNDT, in rendering its judgment, exceeded its jurisdiction or competence, failed to exercise jurisdiction vested in it, erred on a question of law, committed an error in procedure such as to affect the decision of the case, or erred on a question of fact resulting in a manifestly unreasonable decision. UNAT dismissed the appeal and affirmed the UNDT Judgment.

## Decision Contested or Judgment/Order Appealed

The Appellant contested his non-selection for a temporary position on the basis that he did not receive full and fair consideration. UNDT dismissed his application.

## Legal Principle(s)

Being on a roster does not create any expectancy or entitlement to selection. The participation of a hiring manager who previously excluded a candidate from another selection exercise does not in itself give rise to any substantive allegation of bias or discrimination, even in the more serious circumstance of the first selection exercise having been cancelled. To exclude a panel member from a selection exercise, there must be reasonable grounds and/or evidence of extraneous or improper motives.

## Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Antonio Ponce-Gonzalez

Entity

UNISFA

Case Number(s)

2021-1558

Tribunal  
UNAT  
Registry  
New York  
Date of Judgement  
18 Mar 2022  
President Judge  
Judge Halfeld  
Language of Judgment  
English  
Issuance Type  
Judgment  
Categories/Subcategories  
Full and fair consideration  
Interview  
Staff selection (non-selection/non-promotion)  
Applicable Law  
Administrative Instructions

- ST/AI/2010/3

#### GA Resolutions

- A/RES/63/250

#### Related Judgments and Orders

UNDT/2019/042  
2014-UNAT-416  
2016-UNAT-707  
2019-UNAT-961  
2018-UNAT-836