

2022-UNAT-1206, Torek Farhadi

UNAT Held or UNDT Pronouncements

Mr. Farhadi appealed. UNAT dismissed the appeal. UNAT dismissed Mr. Farhadi's contention that the successful candidate had not been subject to the mandatory vetting procedure. The mere indication by the Hiring Manager of the fact that “[b]oth candidates have worked with women and trade previously” under the rubric “Reference check” was not sufficient to conclude that there were no actual reference checks. UNAT held that more importantly, reference checks normally take place only once the selection has been concluded, and in the present case, Mr. Farhadi was not selected. UNAT found that in addition this argument had been raised for the first time on appeal which as such was not admissible. UNAT also dismissed the allegation that the Secretary-General had tampered with evidence; that argument was also raised for the first time on appeal; and in any event, UNAT would be satisfied with the explanation provided by the Secretary-General. UNAT concluded that there was therefore no attempt by the Secretary-General to tamper with evidence, nor was there interference with the integrity of the proceedings before the UNDT, and hence, there was no reason for an investigation to be ordered by the Appeals Tribunal. UNAT found speculative and without merit Mr. Farhadi's contention that a member of the assessment panel had a conflict of interest since he could act as a potential reference of the selected candidate. Based on the facts, UNAT was satisfied that the selection process had proceeded according to the applicable guidelines and policies; the selection panel was properly constituted and there was no evidence of bias or ulterior motive.

Decision Contested or Judgment/Order Appealed

Mr. Farhadi challenged before the UNDT his non-selection for a fixed-term and a temporary position. The UNDT dismissed the application. As to the selection process for the fixed-term position, the UNDT found that, based on the record, Mr. Farhadi was not eligible for this position because he did not meet the required criteria. This was recorded in the electronic selection system and had been communicated to Mr. Farhadi. While Mr. Farhadi disagreed with this assessment of his qualifications, the UNDT found no ground to question the hiring manager's evaluation in that respect. As for the alleged bias against Mr. Farhadi, the UNDT noted that none of the personnel suspected of bias by Mr. Farhadi had been involved in assessing his eligibility. The UNDT found that the claim of bias was unfounded. The UNDT consequently concluded that Mr. Farhadi's candidature had been fully and fairly considered and that the non-selection decision was lawful. Turning to the temporary position, the UNDT reviewed the evidence and considered unsupported Mr. Farhadi's claim of bias on the part of his former second reporting officer (who was part of the assessment panel), the hiring manager for the temporary position, and the Director for the ITC Division (who endorsed the selection recommendation for this position). The UNDT also found that, contrary to Mr. Farhadi's claim, there was no evidence of the absence of a genuine competitive selection process. The UNDT noted that there was no requirement in the internal rules that a minimum number of candidates had to be called to take the written test and the interview. In addition, the assessment of the two candidates was fully documented, and Mr. Farhadi was provided detailed feedback when he requested it. The UNDT noted that Mr. Farhadi got the lowest score on the written test and did not pass the interview. Finally, the UNDT rejected Mr. Farhadi's claim that the selection process was vitiated by procedural shortcomings. The UNDT found no breach of internal rules and no evidence of lack of transparency or procedural irregularities. It also rejected Mr. Farhadi's contention that the subject matter of the written test was such as to favour the selected candidate noting the general nature of the written test's subject matter and the candidates' professional experience.

Legal Principle(s)

The Dispute Tribunal may only rescind a selection or promotion process in “extremely rare circumstances”. When a candidate has received fair consideration, without discrimination or bias, with proper procedures, and when all relevant material has been taken into account, the Dispute Tribunal shall uphold the selection exercise. In reviewing administrative decisions regarding appointments and promotions, the Appeals Tribunal has established the factors to be considered as follows: (a) whether the procedure as laid down in the applicable legal framework was followed; (b) whether the staff member was given fair and adequate consideration; and (c) whether the applicable Regulations and Rules were applied in a fair, transparent and non-discriminatory manner. The Tribunal’s role is not to substitute its decision for that of the Administration. If the Administration is able to show, even minimally, that the applicant’s candidature was given a full and fair consideration, then the presumption of regularity applies and the burden of proof shifts to the applicant who must show through clear and convincing evidence that he or she was denied a fair chance of promotion or selection.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Torek Farhadi

Entity

UN Secretariat

Case Number(s)

2021-1524

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

Staff selection (non-selection/non-promotion)

Applicable Law

Laws of other entities (rules, regulations etc.)

- ITC/AI/2015/07

Related Judgments and Orders

2011-UNAT-122

2016-UNAT-642

2019-UNAT-974

2021-UNAT-1077

2010-UNAT-062

2016-UNAT-694

2022-UNAT-1203