

2022-UNAT-1285, Khalid Younis

UNAT Held or UNDT Pronouncements

Mr. Younis appealed. The UNAT found that after perusing the PHP submitted by Mr. Younis, the UNDT had held that the suitability review was correct. The PHP confirmed the Administration's assessment of Mr. Younis' work experience. The total number of years of his experience for the two criteria had been properly arrived at by first determining if the nature of his work experience fulfilled the relevant criteria and then the number of years for which he had served in relevant roles was computed for both criteria. The UNAT held that even if Mr. Younis was given the benefit of the doubt on the second criterion, the fact remained that he had not shown that the UNDT had erred in its finding on the first criterion. Accordingly, any error the UNDT may have made in relation to the second criterion would not be an error of fact that resulted in a manifestly unreasonable decision—as required in terms of Article 2(1)(e) of the Statute of the UNAT. The finding that Mr. Younis did not meet the temporal requirements of the first criterion is indisputably in accordance with the evidence and without error. Accordingly, any error in relation to the second criterion would not change the result and the ultimate outcome would remain the same. Mr. Younis did not meet all the requirements for appointment and hence the non-selection decision was both lawful and reasonable. In addition, Mr. Younis, being unqualified for the position, has no direct or substantial interest in the question of whether the selected candidate met the appointment criteria. The UNAT found that there was no evidence that Mr. Younis' appointment had been affected by staff reduction as he had not been notified of a decision to abolish his post or to terminate his appointment at the time he applied for the position. Staff Rule 9.6(e) was not triggered merely by the anticipated closure of UNAMID. There needed to be a final decision to abolish the post or to reduce staff, which directly affected Mr. Younis' appointment. That was not the case when Mr. Younis applied for the vacant position at UNSOS. In any event, Mr. Younis had been subjected to a suitability review that concluded he was not suitable for the position. Even had Staff Rule 9.6(e) applied in the present case, it probably would not have benefited Mr. Younis as he failed to meet the position's requirements. The UNAT dismissed the appeal.

and affirmed Judgment No. UNDT/2021/159.

Decision Contested or Judgment/Order Appealed

Mr. Younis challenged the decision not to select him for the position of Chief of Section, Transport, P-5, with the United Nations Support Office in Somalia (UNSOS). By Judgment No. UNDT/2021/159 of 21 December 2021, the UNDT dismissed his application.

Legal Principle(s)

Under Article 2(1)(e) of its Statute, UNAT is competent to hear and pass judgment on an appeal filed against a judgment rendered by the UNDT in which it is asserted that the UNDT has erred on a question of fact, resulting in a manifestly unreasonable decision. The Organization shall make reasonable efforts to retain staff members where there has been a decision to terminate staff members' appointments due to the abolition of posts or the reduction of staff, subject to the availability of suitable posts in which (having regard inter alia to competence) their services can be effectively utilized. Where the impugned selection decision is based on the information in the Personal History Profile, the ultimate question is whether the decision of the hiring manager is a decision that a reasonable decision-maker could have taken on the information before him at the time he took it. A candidate who is unqualified for a position has no direct or substantial interest in the question of whether the selected candidate met the appointment criteria.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Khalid Younis

Entity

UNSOS

Case Number(s)

2022-UNAT-1285

Tribunal

UNAT

Registry

New York

Date of Judgement

9 Dec 2022

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Oral hearings

Eligibility

Procedure (first instance and UNAT)

Staff selection (non-selection/non-promotion)

Applicable Law

Staff Rules

- Rule 9.6(e)

UNAT Statute

- Article 2.1(e)

Related Judgments and Orders

2018-UNAT-847