

2023-UNAT-1334, Flavio Mirella

UNAT Held or UNDT Pronouncements

The UNAT agreed with the UNDT that the Administration had shown that Mr. Mirella's candidature was given full and fair consideration which satisfies the presumption of regularity, and that Mr. Mirella has not proven through clear and convincing evidence that he was denied a fair chance. The UNAT reviewed Mr. Mirella's contention that the UNDT erred in finding that his exclusion from the shortlist was in compliance with Section 7.4 of ST/AI/2010/3 (Staff selection system). Specifically, the UNAT evaluated Mr. Mirella's argument that the Hiring Manager erroneously found that he did not meet the requirement of a minimum of 15 years of progressively responsible professional experience. The UNAT held that this criterion had both a quantitative component (the number of years) and a qualitative component ("progressively responsible" experience). While the formal aspect of this criterion may be assessed by HR, the UNAT found no fault in the Hiring Manager's decision to closely review the quality of the candidates' work experience, in terms of assessing whether it reflected "progressively responsible" experience, and to only put those candidates on the shortlist who fulfilled the criterion in this respect. The UNAT reaffirmed that the Hiring Manager has broad discretionary power to exercise a preliminary evaluation of the job applicants in order to establish the shortlist, and that identifying the "most qualified or promising" candidates necessarily requires the exercise of judgment, with which the UNAT would not easily interfere. The UNAT concluded that it was lawful and reasonable for the Hiring Manager to closely review the quality of Mr. Mirella's professional experience, and that he had not shown that his experience equaled or exceeded that of another candidate whom the Hiring Manager had preferred and placed on the shortlist. The UNAT also rejected Mr. Mirella's argument that because he was subsequently rostered for a different D-1 position, that this undermined the contested selection decision in this case. The UNAT dismissed the appeal, and affirmed the UNDT Judgment.

Decision Contested or Judgment/Order Appealed

In his application to the UNDT, Mr. Mirella contested his non-selection for a Deputy Director position in UNODC, at the D-1 level. The UNDT rejected his application in Judgment No. UNDT/2021/143, after concluding that the Hiring Manager had assessed Mr. Mirella's candidacy within the proper framework and against the criteria of the job opening, and thus had afforded him full and fair consideration. Mr. Mirella appealed.

Legal Principle(s)

The Secretary-General has broad discretion in making decisions regarding promotions and appointments and it is not the role of the UNDT or the Appeals Tribunal to substitute its own decision for that of the Secretary-General regarding the outcome of the selection process. Given the narrow parameters of judicial review, while the Dispute Tribunal possesses jurisdiction to rescind a selection or promotion process, it may do so only under extremely rare circumstances. When candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection or promotion decision. In matters of staff selection, the Appeals Tribunal applies the principle of a presumption of regularity. In evaluating and deciding which candidates appear most qualified for the job opening, a hiring manager has broad discretion.

Outcome

Appeal dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Flavio Mirella

Entity

UNODC

Case Number(s)

2022-1657

Tribunal

UNAT

Registry

New York

Date of Judgement

2 May 2023

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Full and fair consideration

Selection decision

Staff selection (non-selection/non-promotion)

Applicable Law

Administrative Instructions

- ST/AI/2010/3

Related Judgments and Orders

2015-UNAT-527

2020-UNAT-985

2016-UNAT-669

2011-UNAT-110

2018-UNAT-829

2019-UNAT-947

2011-UNAT-122

UNDT/2021/143