

2023-UNAT-1344, Antonio Ponce-Gonzalez

UNAT Held or UNDT Pronouncements

The UNAT dismissed the appeal. It held that the UNDT erred in its consideration of the Administration's assessment of Mr. Ponce-Gonzalez's experience against the evaluation criteria; the UNDT also erred when it rescinded the cancellation of the selection process, invalidating the reason then given that "none of the rostered candidates had met all of the required and desirable criteria of the job opening", and concluding that "at least one of the rostered candidates (the Applicant) met and exceeded all criteria". In so doing, the UNDT improperly appropriated the discretion of the Secretary-General and imposed its own promotion decision. Furthermore, the UNAT found that the UNDT erred in finding procedural irregularities in the selection process and in finding that the hiring manager acted without authority and had a conflict of interest. The UNAT concluded that since no unlawfulness was found in the contested decision to cancel the selection exercise after having afforded Mr. Ponce-Gonzalez's candidacy full and fair consideration, the remedies ordered by the UNDT should be set aside.

Decision Contested or Judgment/Order Appealed

By Judgment No. UNDT/2021/161, the UNDT granted Mr. Ponce-Gonzalez's application challenging the Administration's failure to afford full and fair consideration to his candidacy for the post of P-5 Chief, Operations and Resource Management (CORM), advertised under Recruit-from-Roster (RFR) exercise number 104637 and abuse of authority in cancelling the RFR in violation of the applicable rules following his unlawful disqualification. The UNDT ordered the rescission of the contested decision, in-lieu compensation, as well as damages for loss of opportunity. The Secretary-General appealed.

Legal Principle(s)

Concerning staff selection, Article 101.1 of the Charter of the United Nations establishes the authority of the Secretary-General to appoint staff under Staff Regulations established by the General Assembly. Article 101.3 provides that “the paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity”, and that due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible. The power of the Secretary-General to appoint staff members is reiterated in Staff Regulation 4.1. With regard to the cancellation of recruitment processes, the jurisprudence of the Appeals Tribunal holds that the Administration is not under an obligation to pursue a recruitment procedure once such process has begun. It is within the discretionary authority of the Administration to cancel a recruitment procedure on rational grounds on account of irregularities occurring in the recruitment process or for reasons connected with the interests of the service. In general terms, a tribunal ought not to interfere with the discretion to cancel a recruitment exercise for rational reasons, even when a candidate has been recommended but not yet appointed. There is a significant difference between eligibility and suitability. While the eligibility deals with whether a certain candidate for a position can perform the tasks of the job, that is, fulfil the necessary conditions and “minimum requirements” for the position, the suitability relates to the ability of a certain candidate to perform the same tasks, that is possession of the desirable skills, attitudes, motivation, behaviour, talents, interests and values for the post. In other words, the responsible person or panel for the selection will evaluate which person fits best for the position. While not fulfilling eligibility criteria will normally eliminate the candidate based on lack of qualification, experience or necessary skill as objective motives, the assessment of the candidate’s suitability will relate to the question of whether the candidate concerned is right for a certain position. This exercise often involves the examination of soft skills, for example, whether the feedback any candidate receives from their colleagues is normally positive or whether they improve the atmosphere in their work environment. In short, while the eligibility criteria are a condition necessary for the success of the candidacy, their fulfillment does not mean that the candidate will be suitable for the vacant position.

Outcome

Appeal granted

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Antonio Ponce-Gonzalez

Entity

UNISFA

Case Number(s)

2022-1669

Tribunal

UNAT

Registry

New York

Date of Judgement

11 May 2023

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

Administrative Instructions

- ST/AI/2010/3
- ST/AI/2010/4

Secretary-General's bulletins

- ST/SGB/2019/2

Former Staff Regulations

- Regulation 4.1

UN Charter

- Article 101.1
- Article 101.3

Related Judgments and Orders

2021-UNAT-1099

2022-UNAT-1250

2019-UNAT-932

2021-UNAT-1134

2016-UNAT-669

2015-UNAT-603

2012-UNAT-265

2011-UNAT-110

2011-UNAT-122

UNDT/2021/161