

# 2023-UNAT-1345, Antonio Ponce-Gonzalez

## UNAT Held or UNDT Pronouncements

The UNAT dismissed Mr. Ponce-Gonzalez's appeal. The UNAT dismissed Mr. Ponce-Gonzalez's argument of apprehension of partiality of the hiring manager claiming that there was an improper motive to unfairly eliminate him. The Appeals Tribunal found that the mere fact that the hiring manager was involved in two selection exercises in which Mr. Ponce-Gonzalez was not successful did not indicate any partiality, but rather a regular exercise of the Administration's routine of selecting candidates for advertised positions. The UNAT further found that the UNDT did not err in finding no irregularity in the delegation of authority. The UNDT did not err in rejecting Mr. Ponce-Gonzalez's assertions that the Administration had mismanaged the evidence regarding the hiring manager's delegation of authority and in finding that the sub-delegation procedure had been properly followed. The UNAT was satisfied that the UNDT did not err in finding that Mr. Ponce-Gonzalez's candidacy was given full and fair consideration, that there was no evidence of his significant chances of selection over the selected candidate, nor of any procedural irregularities, and that the hiring manager's assessment was proper when comparing the PHPs of the selected candidate and Mr. Ponce-Gonzalez's. The UNAT found that despite Mr. Ponce-Gonzalez's relevant experience and competence in a number of areas as acknowledged by the comparative review in the selection exercise, he was not considered suitable for the position. The Administration did not ignore any previous experience, but rather found that it was not sufficient for the position. Further, the UNAT concluded that there was no evidence that the exercise of discretion in assessing the comparative review was such that the impugned decision was arbitrary, discriminatory or irregular. The UNAT found that there was no room for awarding any compensation, nor for a referral for accountability, and it dismissed the appeal.

## Decision Contested or Judgment/Order Appealed

By Judgment No. UNDT/2022/029, the UNDT dismissed Mr. Ponce-Gonzalez's application challenging the failure to afford full and fair consideration to his candidacy for a P-5 post of Chief, Operations and Resource Manager (CORM) in the United Nations Security Force for Abyei (UNISFA), resulting in his non-selection. The UNDT found that it was within the Administration's discretion to select the successful candidate for the position and that Mr. Ponce-Gonzalez had not demonstrated that he had a significant chance of selection, absent any of the irregularities that he had alleged. The UNDT further held that Mr. Gonzalez's claims concerning the import of various findings made by the UNDT and the UNAT in separate non-selection challenges brought by Mr. Ponce-Gonzalez were not dispositive to this case, that there was no merit in his assertion that the Administration had manipulated the evidence regarding the hiring manager's delegated authority, and that there was no evidence that the vacancy announcement for the job opening had been tailored to exclude his candidacy. Mr. Ponce-Gonzalez appealed.

## Legal Principle(s)

When it comes to the right of appeal, the Appeals Tribunal first recalls its well-established jurisprudence that the appellant has the duty to demonstrate that the UNDT judgment is defective. When the Appeals Tribunal hears an appeal, it does not simply re-try the case. The function of the Appeals Tribunal is to determine if the Dispute Tribunal has made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Statute. The appellant has the burden of satisfying the Appeals Tribunal that the judgment rendered by the Dispute Tribunal is defective. It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective. It is not sufficient for an appellant to state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the Dispute Tribunal. According to the applicable legal framework, the restrictions on possible sub-delegations of authority should be explicitly included in the delegation of authority. This reasoning is in keeping with the general principle that the main purpose of the delegation of authority is to facilitate the decision-making process, rendering it simple and smooth, in a nutshell less bureaucratic. Concerning staff selection, Article 101.1 of the Charter of the United Nations establishes the authority of the Secretary-General to appoint staff under regulations established by the General Assembly. Article 101.3 provides that “[t]he 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 “[d]ue 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 standard of review in matters regarding staff selection, the jurisprudence of this Appeals Tribunal is well-established that, under Article 101.1 of the Charter of the United Nations and Staff Regulations 1.2(c) and 4.1, the Secretary-General has broad discretion to appoint staff. The jurisprudence of the Appeals Tribunal has clarified that in judicially reviewing administrative decisions regarding staff selections, the following factors are considered: (1) whether the procedure as laid down in the Staff Regulations and Rules was followed; (2) whether the staff member was given full and fair consideration; and (3) whether the applicable Regulations and Rules were applied in a fair, transparent and non-discriminatory manner. The Tribunals’ role is not to substitute their decision for that of the Administration.

## Outcome

Appeal dismissed on merits

## Outcome Extra Text

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Antonio Ponce-Gonzalez

## Entity

UNISFA

## Case Number(s)

2022-1694

## 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)

Staff selection (non-selection/non-promotion)

Standard of review (judicial)

## Applicable Law

Administrative Instructions

- ST/AI/2010/3

Secretary-General's bulletins

- ST/SGB/2019/2

#### Staff Regulations

- Regulation 1.2(c)
- Regulation 4.1

#### UN Charter

- Article 101.3

#### UNAT Statute

- Article 2.1

### Related Judgments and Orders

2023-UNAT-1344

2021-UNAT-1142

2019-UNAT-962

2010-UNAT-035

2022-UNAT-1249

2018-UNAT-829

2017-UNAT-802

2018-UNAT-893

UNDT/2022/029