

2022-UNAT-1302, Seyed Muhammad Hilmy Moulana

UNAT Held or UNDT Pronouncements

Mr. Moulana appealed the UNDT judgment.

UNAT noted that the UNDT dismissed Mr. Moulana's application on the grounds of insufficient evidence, whereas he had not been afforded the opportunity to provide the evidence. UNAT held that the UNDT, by failing to address the Appellant's requests for the production of documents, including ignoring his motion, violated the Appellant's due process rights and deprived him of the opportunity to have his motion assessed and possibly granted, following which he could have submitted the pieces of evidence which the UNDT found he failed to provide. Therefore, the UNAT held that the Appellant did not have the opportunity to rebut the presumption of regularity and show through clear and convincing evidence that he was denied a fair chance of selection. Finally, UNAT also concluded that the UNDT erred on a question of fact by deciding that another candidate had been endorsed for roaster membership by the Central Review Body (CRB) based on a mere assumption with no minimal evidence supporting the actual endorsement by the CRB.

In sum, the UNAT held that the UNDT committed an error of procedure, as contemplated in Article 2(1)(d) of the UNAT Statute, and that this error was consequential in that it denied Mr. Moulana the opportunity to present fully his case to the UNDT.

Decision Contested or Judgment/Order Appealed

The Appellant, Mr. Moulana, contested the decision not to select him for the position of Requestions Officer, advertised through Job Opening (JO) No. 136259. During the proceedings before the UNDT, the Appellant filed a motion for production of specific documents, which was never ruled upon. In Judgment No. UNDT/2021/115, the UNDT

dismissed the Appellant's application on the basis that his candidature had received full and fair consideration and there was an absence of bias or procedural breach in the selection process.

Legal Principle(s)

In reviewing administrative decisions regarding appointments and promotions, the jurisprudence has established these factors to be considered: (a) whether the procedure as laid down in the Staff Regulations and Rules 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 even minimally show that the applicant's candidature was given 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.

The decision not to appoint is made by the Administration and the information supporting that decision is all under the control of the Administration. That may be ameliorated by the disclosure of that information by the Administration as part of the preparation of the challenge for hearing in the UNDT. However, that process is not either one of full disclosure in all cases and is under the control of the UNDT. While it is true that UNDT has broad discretion with respect to case management, it is also the incumbent upon a party to discharge his or her burden of proof. Ignoring a motion for production of additional evidence related to the selection process is a substantial error of procedure and a denial of due process.

Outcome

Appeal granted; Case remanded

Outcome Extra Text

The case is remanded to the UNDT for determination de novo and ab initio by another Judge.

Full judgment

[Full judgment](#)

Applicants/Appellants

Seyed Muhammad Hilmy Moulana

Entity

UNMISS

Case Number(s)

2021-1640

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Dec 2022

President Judge

Judge Colgan

Judge Sandhu

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Burden of proof
Non-disciplinary
Due process
Evidence
Procedure (first instance and UNAT)
Production of documents
Staff selection (non-selection/non-promotion)
Central Review Body
Selection decision
Standard of proof
Full and fair consideration

Applicable Law

Administrative Instructions

- ST/AI/2010/3

Secretary-General's bulletins

- ST/SGB/2011/7

UNAT Statute

- Article 2.1
- Article 2.1(d)
- Article 2.3

Related Judgments and Orders

2011-UNAT-122
2016-UNAT-642
2017-UNAT-780
2020-UNAT-1063
2015-UNAT-529
2011-UNAT-110
2014-UNAT-423

