

2023-UNAT-1404 , Alan George Blythe

UNAT Held or UNDT Pronouncements

The UNAT considered an appeal by the staff member.

The UNAT found that the recommendation report did not provide any explanation to understand the rationale of the non-selection decision. The UNAT noted that no information had been given in the course of the judicial proceedings either as to why the external candidate was the most suitable candidate. The UNAT held that, for the sake of reasonableness, fairness and transparency, it was expected from the Administration to give relevant and true reasons supporting its ultimate choice. The UNAT found that the UNDT had made an error of fact, resulting in a manifestly unreasonable decision, and of law when it had upheld the presumption of regularity of the non-selection decision.

The UNAT was of the view that rescission was not a practical or a proportionate remedy in this case as it would generate adverse consequences for third parties.

The UNAT was not satisfied that the loss of the favorable administrative decision had an economic impact on the staff member and did not award in-lieu compensation.

The UNAT found that the UNDT had made no error when it had considered that the speedy action of the Administration was taken in good faith to cope with a situation of urgency, and when it had determined that the reassignment decision was lawful.

The UNAT granted the appeal in part and modified Judgment No. UNDT/2022/120 so that the staff member's request for compensation for moral harm was granted in the amount of USD 15,000. The UNAT dismissed the remainder of the appeal.

Decision Contested or Judgment/Order Appealed

A staff member contested the decision not to select him for the post of Secretary of the Board of the United Nations Joint Staff Pension Fund, and a subsequent decision to reassign him to the temporary post of Principal Finance Officer in the Department of Management, Strategy, Policy and Compliance.

In Judgment No. UNDT/2022/120, the UNDT dismissed the application. The UNDT held that the non-selection decision was lawful, noting that the staff member had presented no evidence of improper motive and that he had been afforded full and fair consideration. The UNDT found that his professional skills were transferable to the role he was reassigned to, and that the reassignment had been made in good faith.

Legal Principle(s)

The UNDT enjoys a wide discretionary power to evaluate the different elements provided by the Applicant in his application for judicial review and subsequently to identify the contested decision(s).

Arguing against the lawfulness of a prior administrative decision to attack a subsequent administrative decision is a challenge of the prior administrative decision. For such challenge to be reviewed, all relevant rules and procedures shall apply, including the time limits for management evaluation and judicial review.

Regulatory decisions are not subject to judicial review, unlike individual administrative decisions.

According to the principle of plain meaning for statutory interpretation, when the language used in the respective disposition is plain, common and causes no comprehension problems, the text of the rule must be interpreted upon its own reading, without further investigation.

Internal candidates must be allowed to apply for vacancies without any disadvantage during the selection process. Their applications must be fully considered by the Administration to verify if they have the requisite qualifications and experience, and potentially to select and appoint them if they are found to be the most suitable for the position.

To assess whether an internal candidate received the fullest regard, the Tribunal reviews the whole selection process in light of the written record of the case.

If the candidate would have had a significant chance of selection, an irregularity will normally result in the rescission of a non-selection decision.

To order compensation for harm, three tests must be satisfied cumulatively: (i) an unlawful administrative decision; (ii) harm; (iii) and a nexus between the harm and the unlawful decision.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Alan George Blythe

Entity

UN Secretariat

Case Number(s)

2023-1771

Tribunal

UNAT

Registry

New York

Date of Judgement

15 Dec 2023

President Judge

Judge Sandhu

Judge Ziadé

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Reasons

Compensation

Evidence of harm

Non-pecuniary (moral) damages

Discretionary authority

Subject matter (ratione materiae)

Jurisdiction / receivability (UNDT or first instance)

Procedure (first instance and UNAT)

Case management

Reassignment or transfer

Remedies

Rescission

Staff selection (non-selection/non-promotion)

Full and fair consideration

Selection decision

Jurisdiction / receivability (UNAT)

Applicable Law

GA Resolutions

- A/RES/74/263

Staff Regulations

- Regulation 4.2
- Regulation 4.3
- Regulation 4.4

UN Charter

- Article 101.3

UNAT Statute

- Article 2.1
- Article 9.1
- Article 9.1(a)
- Article 9.1(b)

Related Judgments and Orders

UNDT/2022/120

2012-UNAT-238

2020-UNAT-1022

2019-UNAT-917

2018-UNAT-840

2012-UNAT-225

2011-UNAT-122

2019-UNAT-932

2021-UNAT-1097

2019-UNAT-926

2017-UNAT-724

2018-UNAT-849

2021-UNAT-1118

2018-UNAT-874

2013-UNAT-309