

2023-UNAT-1405, Yonas Negasa

UNAT Held or UNDT Pronouncements

The UNAT considered an appeal by the Secretary-General.

The UNAT held that the administration of the written security affairs exam in the present case had not met the minimum standards detailed in *Chhikara*. The UNAT noted that the Administration had first administered the test, analyzed the results, and only then had decided that certain questions should be eliminated from consideration. The UNAT found that the unannounced and *ex post* deletion of questions from the written examination, after it had already been marked, on its very face violated the obligation to administer the test in a reasonable, just and transparent manner.

The UNAT agreed that, in order to uphold the non-selection in the instant case, it would be necessary to exclude that, even if the removed questions were replaced, the staff member would not have reached the minimum score. The UNAT maintained that this counterfactual could not be established by the Secretary-General, nor was it the Tribunal's role to engage in speculation. The UNAT held that the unfairness had tainted the results and perforce had adversely affected the staff member.

The UNAT noted that the UNDT's remedial award was consistent with *Sobier* and perceived no substantial reason to overturn it.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2022/107.

Decision Contested or Judgment/Order Appealed

A staff member contested the decision not to select him to the Young Professionals Programme (YPP).

In Judgment No. UNDT/2022/107, the UNDT rescinded the contested decision, ordered that the Administration had to set a new written assessment to be taken by

the staff member, without undue delay, and pay compensation in lieu of rescission at six months' net-base salary. The UNDT found that, as admitted by the Secretary-General, certain questions had been deleted after the written test was administered on the grounds that they statistically advantaged or disadvantaged certain groups of applicants. The UNDT held that the Administrations' actions had been unlawful.

Legal Principle(s)

The Secretary-General is obligated, in employment selection processes, however conducted, to provide full and fair consideration to all applicants.

The Dispute Tribunal has broad discretion under Article 18(1) of its Rules of Procedure to determine the admissibility of any evidence and the weight to be attached to such evidence. The findings of fact made by the UNDT can only be disturbed under Article 2(1)(e) of the Appeals Tribunal Statute when there is an error of fact resulting in a manifestly unreasonable decision.

The presumption of regularity of administrative decisions can be overcome by, *inter alia*, a showing that the applicable Regulations and Rules were either not applied or were applied in a manner which was not fair, transparent and non-discriminatory.

Applicants taking a written exam are entitled to be advised how the examination will be scored. It is incumbent on the Administration, before a written test is administered, to adopt a proper and reasonable grading methodology.

Remedies for irregularities in non-selection decisions are invariably context specific. They are discretionary in nature and should be tailored to the peculiar circumstances of the case.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Yonas Negasa

Entity

UNMISS

Case Number(s)

2022-1764

Tribunal

UNAT

Registry

New York

Date of Judgement

15 Dec 2023

President Judge

Judge Gao

Judge Ziadé

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

In-lieu compensation

Discrimination and other improper motives

Staff selection (non-selection/non-promotion)

Full and fair consideration
Standard of proof
Written test

Applicable Law

Administrative Instructions

- ST/AI/2012/2/Rev. 1

UNAT Statute

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

UNDT RoP

- Article 18.1

Related Judgments and Orders

UNDT/2022/107
2020-UNAT-1014
2017-UNAT-762
2017-UNAT-785
2019-UNAT-950
2021-UNAT-1165
2022-UNAT-1208