

UNDT/2024/043, Santambrogio

UNAT Held or UNDT Pronouncements

Receivability

The Tribunal found that to the extent the Applicant challenged the legal framework of UNHCR, and requested the removal of a part of para. 34 of the Recruitment and Assignments Policy, her application was not receivable *ratione materiae*. The application was only receivable concerning the decision not to select the Applicant for the G-7 position of Senior Resource Management Associate, Addressing SEA and SH.

Merits

Whether the applicable procedures were properly followed

First, the Tribunal addressed the Applicant's argument concerning the alleged forgery of the document containing the evaluation criteria. The Tribunal determined that the evidence did not support a finding that the scoring criteria document was forged, or that the evaluation of the written tests was flawed. On the contrary, the evidence on record demonstrated that all candidates, including the Applicant, were given a fair opportunity to compete.

Second, the Tribunal examined the Applicant's claim that the scoring criteria were poorly written. After reviewing the "Criteria for Exam Grading" prepared by the Hiring Manager, the Tribunal found that they are not arbitrary, discriminatory, or irregular.

Although the quality of the drafting of the scoring criteria may not be free from criticism, the evidence on record concerning the selection process indicated that said evaluation criteria had no fundamental defects.

Third, the Tribunal addressed the Applicant's argument that the interview panel was non-compliant with paras. 55b) and c) of the Administrative Instruction on Recruitment and Assignment of Locally Recruited Staff ("RALS"). The Tribunal determined that neither the inclusion of a representative from HR/Admin nor the diversity in terms of function and gender was mandatory as the RALS reads "whenever possible" and "when possible".

Whether the Applicant was given full and fair consideration

The Tribunal reviewed the selection process and found that the Applicant was given full and fair consideration.

Whether the decision was tainted by any bias or extraneous factors

Since the Applicant failed to provide evidence to substantiate her allegation that the panelists were biased against her, the Tribunal found that her claim had no merit.

In light of the above, the Tribunal concluded that the Applicant failed to demonstrate that the contested decision was unlawful. It thus followed that the Applicant was not entitled to any remedies. The application was rejected in its entirety.

Decision Contested or Judgment/Order Appealed

Non-selection for the G-7 position of Senior Resource Management Associate, Addressing Sexual Exploitation, Abuse and Sexual Harassment (“Addressing SEA and SH”) in Geneva.

Legal Principle(s)

The Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review (see Fasanella 2017-UNAT-765, para. 20).

Making recommendations for legislative amendments is a clear excess of the Tribunal’s jurisdiction (see Latimer 2019-UNAT-901, para. 51).

The Secretary-General has broad discretion in matters of appointment and promotions. In reviewing such decisions, it is not the role of the Tribunal to substitute its own decision for that of the Administration (see Lemonnier 2017-UNAT-762, paras. 30-31).

The Tribunal’s role is limited to examine (1) whether the procedures as laid down in the Staff Regulations and Rules were followed; and (2) whether the staff member was given fair and adequate consideration (see Abbassi 2011-UNAT-110, para. 23; Majbri 2012-UNAT-200, para. 35; Ljungdell 2012-UNAT-265, para. 30).

In selection and appointment matters, there is a presumption of regularity concerning the performance of official acts (see Krioutchkov 2021-UNAT-1103, para. 29; Rolland 2011-UNAT-122, para. 26). Accordingly, in a recruitment procedure, if the Administration minimally shows that a staff member’s candidature was given full and fair consideration, the burden of proof shifts to the candidate, who must then be able to show through clear and convincing evidence to have been denied a fair chance of promotion (see Flavio Mirella 2023-UNAT-1334, para. 61).

The determination of whether the Applicant was denied procedural fairness must rest upon the nature of any procedural irregularity and its impact (see Sarwar 2017-UNAT-757, para. 87).

The Administration has wide discretion to choose the best evaluation method to assess which candidates are most qualified for selection (see Recan 2017-UNAT-802, para. 22).

The mere fact that [a candidate] disagrees with the evaluation method and his personal grade does not mean that the evaluation method applied by the interview panel was unreasonable and unfair. [A candidate] cannot substitute his own evaluation method for that of the Administration (see Wang 2014-UNAT-454, para. 42).

Absent any element of flagrant unreasonableness, the Tribunal will not interfere with such choices and the content of an assessment (see Mashayekhi, UNDT/2018/091, para. 35).

Non-compliance with directory provisions as in the present case normally will not result in illegality (see Sarwar 2017-UNAT-757, para. 87).

It is for a party who alleges that ulterior motives tainted a decision to substantiate this claim by way of evidence (see Ross 2019 UNAT-944, para. 25; Morsy 2013-UNAT-298, para. 23).

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Santambrogio

Entity
UNHCR
Case Number(s)
UNDT/GVA/2023/028
Tribunal
UNDT
Registry
Geneva
Date of Judgement
12 Jul 2024
Duty Judge
Judge Sun
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Full and fair consideration
Staff selection (non-selection/non-promotion)
Applicable Law
Laws of other entities (rules, regulations etc.)

- UNHCR/AI/2020/1/Rev.2 (Administrative Instruction on Recruitment and Assignment of Locally Recruited Staff (“RALS”))
- UNHCR/HCP/2022/07 (Recruitment and Assignments Policy)

Related Judgments and Orders

2017-UNAT-765
2019-UNAT-901
2017-UNAT-762
2011-UNAT-110
2012-UNAT-200
2012-UNAT-265
2021-UNAT-1103
2011-UNAT-122
2023-UNAT-1334
2017-UNAT-757
2017-UNAT-802
2014-UNAT-454
UNDT/2018/091
2013-UNAT-298
2019-UNAT-944