

2024-UNAT-1484, Kamini Devi Balram

UNAT Held or UNDT Pronouncements

The UNAT held that the President of the Council of ICAO, in taking the decision not to approve the appointment of the staff member to the post, had regard to relevant considerations: the staff member was negatively assessed by the interview panel and the assessment centre, and had serious weaknesses in areas of vision and other competencies which were critical skills for ICAO. The UNAT found that the reasons provided by the President accorded with the facts.

The UNAT was of the view that, although the President discussed the matter with some members of the panel, these discussions had not influenced the outcome of the recruitment process. The UNAT found that the fact that the President had shared information with the staff member gave credence to the integrity of the decision.

The UNAT held that no basis existed to support the allegation that the President had been biased. The UNAT concluded that the facts showed that the staff member's candidature had been given full and fair consideration, and there was no support for the contention that ICAO had not acted fairly, justly or transparently in taking the contested decision.

The UNAT noted that the staff member was not entitled to in-lieu compensation or an award of moral damages. The UNAT was satisfied that regard was had to her procedural rights and the delay in the Appeals Board receiving comments from the Organization had not caused prejudice.

The UNAT held that since there was no abuse, let alone a manifest abuse, by the Secretary General of the appeals process in any way, there existed no basis on which to award costs against the Secretary General in this matter.

The UNAT granted the Secretary-General's appeal, dismissed the staff member's cross-appeal and reversed the ICAO Appeals Board's Decision.

Decision Contested or Judgment/Order Appealed

A staff member contested a decision not to appoint her to the position of Deputy Director, D-1, Human Resources, Bureau of Administration and Services, International Civil Aviation Organization.

In Decision No. ICAO/2023/004, the ICAO Appeals Board rescinded the contested decision, awarded compensation in lieu of rescission and dismissed the staff member's other requests for compensation.

The Secretary General of ICAO appealed and the staff member cross-appealed.

Legal Principle(s)

The Administration of ICAO has broad discretion in matters of staff selection, with the appointment and promotion of staff members to be undertaken on a competitive basis.

An administrative decision not to appoint, promote or transfer can be challenged on review on the grounds that the Administration has not acted fairly, justly or transparently. In undertaking such a review, the Appeals Tribunal is required to assess whether the applicable Regulations and Rules have been applied in a fair,

transparent and non-discriminatory manner.

A rebuttable presumption exists that official acts have been regularly performed. If the Administration is able to show that the staff member's candidature was given full and fair consideration, the burden of proof shifts to the staff member who must show through clear and convincing evidence that the Administration has not acted fairly, justly or transparently in taking its decision.

The ICAO Service Code gives the President a veto power, in the sense that he is granted the authority and discretion to approve or reject D-1 and D-2 candidates. This power is not unfettered and must be exercised reasonably and rationally, having regard to all relevant considerations.

An order for the payment of costs is rarely made and usually only after the party has been fairly warned of that consequence if the party's abuse of process continues.

Outcome

Appeal granted, Cross-appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Kamini Devi Balram

Entity

ICAO

Case Number(s)

2023-1865

Tribunal

UNAT

Registry

New York

Date of Judgement

20 Nov 2024

President Judge

Judge Savage

Judge Colgan

Judge Gao

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of process before UNDT/UNAT

Non-disciplinary

Bias/favouritism

Full and fair consideration

Burden of proof

Discrimination and other improper motives

Staff selection (non-selection/non-promotion)

Applicable Law

ICAO Staff Regulations

UNAT Statute

- Article 9.2

Related Judgments and Orders

2023-UNAT-1374

2011-UNAT-165

2016-UNAT-674

2020-UNAT-1034

2022-UNAT-1306

2017-UNAT-782