

2024-UNAT-1497, Leonid Dolgopolov

UNAT Held or UNDT Pronouncements

The UNAT found that the decision not to select the staff member for TJO 161651 was lawful. It held that since the staff member did not challenge the cancellation of TJO 14924, under which the Administration initially advertised the position of Administrative Officer, that cancellation decision was not part of the contested decision under review. In any event, the UNAT determined that the Administration had the discretion to cancel TJO 149241 and re-advertise the position under TJO 161651 after the selected candidate withdrew her candidature. It was under no obligation to invite the second-ranking candidate to accept the position, nor to complete the initial recruitment process. The UNAT also highlighted that TJO 161651 was a new job opening with its own requirements and for which the Administration was called upon to make a fresh decision after examining all candidates.

The UNAT concluded that the Secretary-General met his minimal burden of demonstrating that the staff member's candidature was given full and fair consideration by: informing him of the re-advertised TJO; shortlisting him and three other candidates from a pool of 60 applicants; applying a comparative analysis to score all four shortlisted candidates; recommending him as the second choice based on the ranking scores; and selecting the candidate with the highest score for the position, based on this comparative analysis.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2023/086.

Decision Contested or Judgment/Order Appealed

A staff member with the Department of Operational Support (DOS) contested the decision not to select him for the position of Administrative Officer at the P-3 level with the United Nations Human Settlements Programme (UN-Habitat) in Nairobi, Kenya, advertised under Temporary Job Opening 161651 (TJO 161651).

In its Judgment No. UNDT/2023/086, the UNDT concluded that the contested decision was lawful, as the staff member's candidature was given full and fair consideration and dismissed his application.

Staff member appealed.

Legal Principle(s)

The appellant bears the burden of proving that the UNDT judgment is defective. An appeal is not an opportunity for the parties to reargue their case or merely repeat the arguments submitted before the first instance tribunal.

The Secretary-General has broad discretion in matters of staff selection, which includes the discretion to choose the best evaluation method. The assessment of candidates' competencies for temporary positions are primarily done through comparative analysis of candidatures; competency-based interviews or other evaluation mechanisms are optional. Furthermore, the cancellation and re-advertisement of a vacancy fall within the Administration's broad discretion.

In non-selection cases, all official acts are presumed to have been regularly performed. This presumption is satisfied if the Administration can minimally show that the staff member's candidature was given full and fair consideration.

Thereafter, the burden shifts to the staff member, who must show by clear and convincing evidence that he/she was denied a fair chance of selection by demonstrating any of the following grounds: that the interview and selection procedures were violated; that the members of the panel were biased; that the panel discriminated against an interviewee; that relevant material was ignored or irrelevant material was considered; and potentially other grounds depending on the facts of each case.

Complaints of general discrimination cannot constitute evidence capable of overturning a non-selection decision.

It is the role of the UNDT or the UNAT to assess whether the Staff Regulations and Rules were applied in a fair, transparent, and non-discriminatory manner, without substituting their own decision for that of the Administration.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Leonid Dolgopolov

Entity

DOS

Case Number(s)

2023-1861

Tribunal

UNAT

Registry

New York

Date of Judgement

9 Dec 2024

President Judge

Judge Forbang

Judge Colgan

Judge Ziadé

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Temporary appointment
Full and fair consideration
Appointment (type)
Staff selection (non-selection/non-promotion)

Applicable Law

Administrative Instructions

- ST/AI/2010/3
- ST/AI/2010/4/Rev.1
- ST/AI/2020/5

Staff Regulations

- Regulation 1.2(c)

UN Charter

- Article 101.1

UNAT Statute

- Article 2.1

Related Judgments and Orders

UNDT/2023/086
2010-UNAT-051
2010-UNAT-096
2014-UNAT-458
2016-UNAT-652
2017-UNAT-802
2017-UNAT-771
2011-UNAT-122
2012-UNAT-200
2019-UNAT-932

2015-UNAT-540

2011-UNAT-179

2013-UNAT-340

2014-UNAT-491

2013-UNAT-321

2020-UNAT-1000

2018-UNAT-893