

UNDT/2024/049, Oketch

UNAT Held or UNDT Pronouncements

The Applicant failed to establish through clear and convincing evidence that the selection process for the Post was tainted by any unlawful actions or that he suffered any harm as a result of the contested decision. Accordingly, his application was dismissed and his claim for compensation was rejected.

The assertion that the Applicant had a reasonable expectation that his candidacy would receive special consideration since he had performed the functions of the Post for five years was misplaced. He did not seriously dispute the fact that the creation of the Head of Office position was not a reclassification of his position.

Decision Contested or Judgment/Order Appealed

The Applicant contested non-selection “for the position of Senior Humanitarian Affairs Officer/Head of OCHA Liaison Office to the African Union”.

Legal Principle(s)

It is well established in the jurisprudence of the Appeals Tribunal that the Administration has broad discretion in matters of staff selection (see *Nikolarakis*, 2016-UNAT-652, para. 28; citing *Nwuke* 2015-UNAT-506, paras. 48-49). However, this discretion is not unfettered and is subject to judicial review.

In reviewing such decisions, it is not the role of the Dispute Tribunal to substitute its own decision for that of the Administration. Rather, the Dispute Tribunal’s role is to examine “(1) whether the procedure laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration” (*Lemonnier* 2017-UNAT-762, paras. 30-31. See also *Pinto*, 2018-UNAT-878; *Abbassi* 2011-UNAT-110, para. 23; *Majbri* 2012-UNAT-200, para. 35).

The role of the Dispute Tribunal is “to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner” (*Ljungdell* 2012-UNAT-265, para. 30).

In matters of staff selection and appointment, 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 can minimally show that a staff member’s candidature was given full and fair consideration, the burden of proof shifts to the staff member, who must then show through clear and convincing evidence that he or she has been denied a fair chance of promotion (see *Flavio Mirella* 2023-UNAT-1334, para. 61).

Outcome

Dismissed on merits

Outcome Extra Text

Complaints relating to the Applicant’s alleged deprivation of equal pay for equal work fell outside the scope of the present application and were therefore not considered here.

Full judgment

[Full judgment](#)

Applicants/Appellants

Oketch

Entity

OCHA

Case Number(s)

UNDT/NY/2023/023

Tribunal

UNDT

Registry

New York

Date of Judgement

9 Aug 2024

Duty Judge

Judge Tibulya

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Central Review Body

Staff selection (non-selection/non-promotion)

Applicable Law

Administrative Instructions

- ST/AI/2006/3

Related Judgments and Orders

2016-UNAT-652