
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/010
Judgment No.: UNDT/2022/130
Date: 8 December 2022
Original: English

Before: Judge Eleanor Donaldson-Honeywell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

CHAWLA

Case No. UNDT/NBI/2022/010

~~Judgment~~ ~~SECRET~~

Case No.

UNDT/NBI/

37. The Respondent also relied on the Staff Selection System Manual¹¹ as supporting the regularity of the panel constitution of four members for all other interviews despite the absence by recusal of one member from the Applicant's CBI. The Manual provides as follows:

The assessment panel normally comprises the same members throughout the evaluation process. However, the panel membership may differ between assessments (e.g., technical experts may grade the written assessment, while other members conduct CBI). There may also be instances where for reasons of availability of panel members, or conflict of interest, panel membership must be adjusted. The hiring manager must in all cases ensure consistency in process and equitable treatment of candidates, and document any variations or substitutions.

38. The "Final Transmittal Memo to the Central Review Body"¹² used by the hiring manager on 6 October 2021 after the CBIs appears to be a standard form. It includes a field to be filled as follows: "The description below explains any situation in which the above assessment panel may have been modified". Under this field, the hiring manager disclosed that "Mr. Clark Toes recused himself from the interview process of

Case No. UNDT/NBI/2022/010

Judgment No. UNDT/2022/130

43. The Tribunal notes that in this case the irregularity in maintaining consistency

decision was based on the presence of the FRO on the panel for her interview. On the other hand, the Panel Members who were all sworn witnesses for the Respondent gave cogent and clear testimony as to their assessments of the candidates' performances in the CBI's.

48. All candidates except the Applicant achieved ratings of successfully meets the requirements or exceeds the requirements in all five competencies being assessed. The Applicant did not achieve a rating of exceeds requirements in any of

Case No.

UNDT/NBI/2022/010

made to favour or disadvantage improperly the person affected by the decision. ...

30. ... However difficult in practice it may be to make an accurate assessment of the subjective mind of the decision-maker to determine whether a decision was infected by bias, an objective consideration of all other relevant factors may nevertheless bring the tribunal to the decision that bias was established.

31. An ill-motivated decision includes not only one in which the decision-maker is deliberately motivated to maliciously deprive the staff member of what would otherwise have been the staff member's entitlement: ... "ill-motivated" can include moral wrongfulness, it can also include what might be called innocent or mistaken or negligent wrongfulness. The important element is wrongfulness, not the subjective attribution to the decision-maker's motive for its occurrence.

57. The onus is on the applicant to prove the alleged bias.

58.

Case No. UNDT/NBI/2022/010

Judgment No. UNDT/2022/130

the technical assessment by video, which was eventually waived

Case No.

UNDT/

Case No. UNDT/NBI/2022/010

Judgment No. UNDT/2022/130

Conclusion

72. In view of the foregoing the Tribunal DECIDES to reject the application.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 8th day of December 2022

Entered in the Register on this 8th day of December 2022

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi