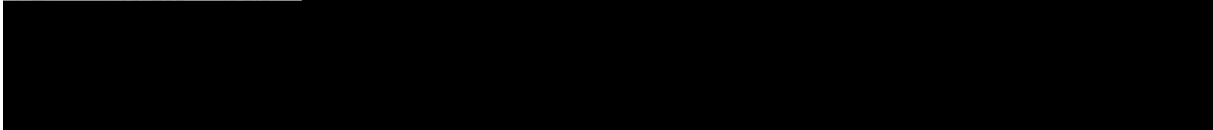




Case No. 2010-175



Counsel for Respondent/Applicant: Claudio A. Realini

Counsel for Appellant/Respondent: Phyllis Hwang

JUDGE INÉS WEINBERG DE ROCA, Presiding.

Synopsis

1. An irregularity in promotion procedures will only result in the rescission of the decision not to promote an appellant when he or she would have had a significant chance for

12. The Secretary-General filed an appeal against the UNDT Judgment on 2 December 2010. Ms. Bofill filed her answer on 20 January 2011.

Submissions

Secretary-General's Appeal

13. The Secretary-General submits that the UNDT

18. The UNDT failed to examine the nature, severity, and relevance of the impugned administrative decision, as well as by concluding that, on the basis of such an irregularity, the decision not to promote Ms. Bofill was unlawful. Where a procedural irregularity is not of such gravity as to adversely affect the contested administrative decision, the unlawfulness of the contested administrative decision is not vitiated by the procedural irregularity. Therefore, the contested administrative decision need not be rescinded.

19. Finally, the Secretary-General points out that the recognition of an entitlement to rescission and compensation in lieu of rescission “would not only hold the Organization to a standard of procedural perfection, but would hold the Organization financially liable in every case where any procedural irregularity can be identified even if such procedural irregularity had no effect on the contested decision”. The Secretary-General requests that the Appeals Tribunal consider the implications of holding the Organization financially liable even in cases where a procedural irregularity has not adversely affected the administrative decision or resulted in any loss to the staff member.

Ms. Bofill’s Answer

20. Ms. Bofill contends that the Secretary-General is misstating the facts when he claims that the number of available slots was determined at the outset seeing that 19, rather than 10, staff members were promoted, and that the UNDT Judgment recognizes that the DHRM could modify the number of promotions.

21. Ms. Bofill submits that UNHCR never established that she would not have had any chances of being promoted had the promotion process not been flawed by irregularities. Rather, Ms. Bofill states that she lost chances of being promoted.

22. Ms. Bofill contends that it is false to say that allowing her to receive compensation for the irregularities in the promotion process would be akin to setting a standard of procedural perfection. To the contrary, the Appeals Tribunal should recognize the deficiencies of the current process and the financial consequences that resulted from the promotion of non-eligible staff members. Furthermore, Ms. Bofill’s compensation award should be maintained as she suffered financially from the vitiated promotion process and her case should serve as an example so that the Organization ceases to promote non-eligible staff members.

23. Ms. Bofill requests that the Appeals Tribunal dismiss the Secretary-General's appeal in its entirety or, in the alternative, confirm Judgment No. UNDT/2010/190 or remand the case back

29. Although there was a flaw in the procedure to select non-eligible candidates, there was none in not promoting Ms. Bofill. For this reason, an award of compensation in lieu of rescission is reversed.

30. The UNDT should not have rescinded the decision not to promote Ms. Bofill, nor awarded compensation.

Judgment

31. We grant the appeal and reverse the UNDT Judgment.

Original and authoritative version: English

Dated this 21st day of October 2011 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Painter

Entered in the Register on this 2nd day of December 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar