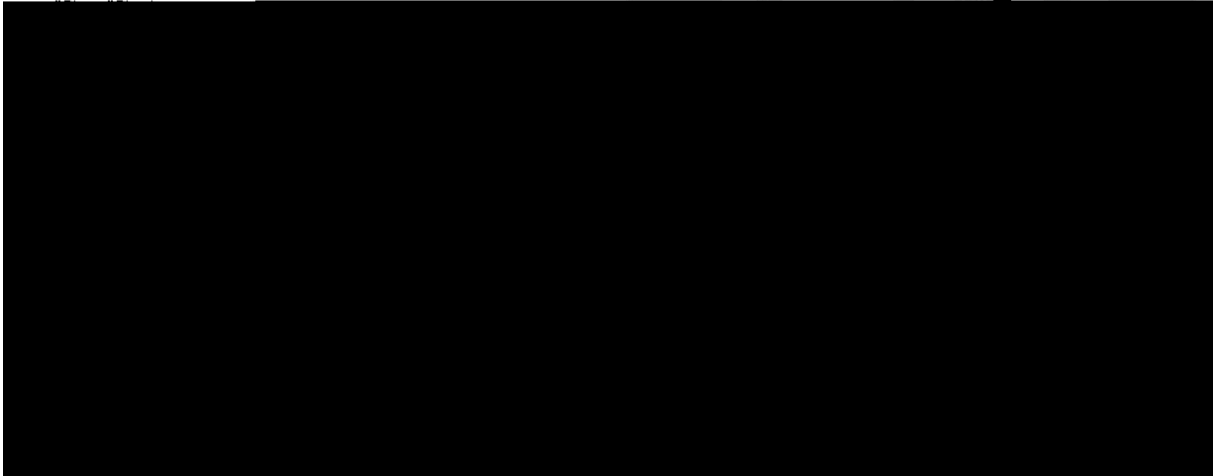




Judgment No. 2015-UNAT-547



Counsel for Mr. Staedtler: Self-represented

Counsel for Secretary-General: Amy Wood



b) Candidate 2 (the Applicant) was assessed as having fully met one of the requirements, partially meeting one of the requirements and not meeting the other three requirements. In the overall assessment of the Applicant the Panel noted:

Whilst the interview validated the PHP assessment by the panel, it was clear

... The OIC advised that she could not share the identity of the members of the CRB on posts he was [a] candidate for as the information was kept confidential to maintain their independence.

... On 13 July 2013, the Applicant requested management evaluation of the decision not to provide information of the process leading to and supporting the administrative decision not to include him in the roster; and not to disclose the membership of the CRB.

... Following a review by the Management Evaluation Unit (MEU) the contested decisions were upheld by the Under-Secretary-General for Management.

3. Mr. Staedtler appealed. In Judgment No. UNDT/2014/058, the Dispute Tribunal dismissed Mr. Staedtler's application. It found that the selection process for the Fukuoka post had been properly and lawfully conducted, and that Mr. Staedtler had failed to substantiate his claims of improper motives and procedural errors. The Dispute Tribunal refused to entertain Mr. Staedtler's claims regarding the production of certain documents, as, in its view, such matters were not appealable administrative decisions, but rather ancillary matters, and they were resolved by the Dispute Tribunal during the course of the proceedings.

### **Submissions**

#### **Mr. Staedtler's Appeal**

4. The Dispute Tribunal exceeded its competence and committed an error in procedure subjecting the parties to disparate treatment. For instance, it granted five working days to the Respondent to produce certain documents while it gave Mr. Staedtler only two working days to analyse, and respond to, them. It was an error in fact and in law on the part of the Dispute Tribunal when it failed to draw the necessary inference from the Respondent's failure to produce the documents requested by Mr. Staedtler and the Respondent's refusal to disclose the membership of the CRB.

5. The Dispute Tribunal erred in fact and in law when it failed to find that the interview questions "illegitimately deviated from their standard description" and thus unlawfully favoured the two recommended candidates and discriminated against Mr. Staedtler. That panel'26.6(a)MIndi-Muh60p

6. The Dispute Tribunal erred in fact and in law when it found that the Respondent had satisfied the requirement of making a minimum showing of regularity, and that the selection process had complied with the applicable procedures. He has proved with a preponderance of evidence that the interview and selection procedures were not respected, the members of the Panel were biased, and relevant material was ignored and irrelevant material was considered.

7. Mr. Staedtler requests that the Appeals Tribunal vacate the Impugned Judgment and order the review of his case by a different UNDT judge in case of a remand.

**The Secretary-General's Answer**

8. The UNDT correctly held that the selection process was lawful in all respects. The Dispute Tribunal found that the Administration had followed the same structured approach in respect of its evaluation of the four shortlisted candidates in full accord with Administrative Instruction ST/AI/2010/3 (Staff selection system).

9. The UNDT also considered Mr. Staedtler's claims of bias and procedural errors against the Panel, but rejected them as unfounded. In this regard, the Secretary-General notes that Mr. Staedtler's claims in respect of the number or description of the competencies listed in the VA or the manner in which the competencies were evaluated by the Panel were not raised in either his request for management evaluation or his UNDT application. Mr. Staedtler should not be permitted to raise these claims at this stage of the proceedings. In any event, not only are these claims not properly before the Appeals Tribunal, but they are without merit.

10. Mr. Staedtler has failed to establish any error, factual, legal or procedural, on the part of the Dispute Tribunal warranting reversal of the Judgment.

11. Mr. Staedtler has failed to establish that the Dispute Tribunal committed any error concerning t1

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Judge hearing the case has an appreciation of all of the issues for determination and the evidence before the UNDT.<sup>4</sup>

18. Regarding the non-disclosure of the membership of the CRB, we find Mr. Staedtler's submission frivolous. We recall our jurisprudence in *Asariotis* that:<sup>5</sup>

[The] interview process was governed by Administrative Instruction ST/AI/2010/3, Section 7.5 of which provides:

... Shortlisted candidates shall be assessed to determine whether they meet the technical requirements and competencies of the job opening. The assessment may include a competency-based interview and/or other appropriate evaluation mechanisms, such as, for example, written tests, work sample tests or assessment centres.

... This instrument does not impose an obligation on the Administration to inform the staff member of the composition of the interview panel prior to the interview.

... In the absence of any such statutory obligation, the UNDT's reliance on the Manual<sup>6</sup>

21. From the foregoing, we hold that the Dispute Tribunal did not commit any errors of procedure to warrant a reversal of the Judgment.

Errors of facts and law

22. Mr. Staedtler submits that the Dispute Tribunal committed numerous errors of fact and law relating primarily to the manner in which the required competencies for the post were described and assessed by the Panel and thus favoured the two recommended candidates and discriminated against him. He based his arguments on the Manual.

23. The Secretary-General responds that Mr. Staedtler's claims in respect of the number or description of the competencies listed in the VA or the manner in which the competencies were evaluated by the Panel were not raised in either his request for management evaluation or his UNDT application.

24. The Secretary-General correctly stated: "[Mr. Staedtler] should not be permitted to introduce new arguments at this stage of the proceedings, and furthermore, [...] it is not reasonable for [Mr. Staedtler] to assert that the UNDT erred on questions of fact or law with respect to allegations, which were not raised before the Pn



and fair consideration, then the presumption of law stands satisfied. Thereafter the burden of proof shifts to the Appellant who must show through clear and convincing evidence that she was denied a fair chance of promotion.

In Fröhler , the Appeals Tribunal held:<sup>9</sup>

... [I]t is not the function, of the Dispute Tribunal, or indeed of this Tribunal, to take on the substantive role with which the interview panel was charged, even in situations where elements of that procedure have been impugned. The jurisdiction vested in the Dispute Tribunal is to review alleged procedural deficiencies, and if same are established then, by the application of the statutory remedy it deems appropriate in all the circumstances, rectify such irregularity or deficiency as may have been found.

28. The Dispute Tribunal properly applied the foregoing principles in considering Mr. Staedtler's claim. The UNDT stated:<sup>10</sup>

The Tribunal [...] has considered the Applicant's extensive submissions (some of which are reproduced in this Judgment) on the Panel's competency based deliberations. It finds that the Panel objectively assessed the Applicant and the other shortlisted candidates on the basis of their submitted documentation and against the required competencies. The Panel did not import different or new competencies from those stipulated. The assessment of each candidate against each of the competencies was documented in the report of the Panel. The Applicant did not meet three of these competencies. The reference to his work experience was an additional relevant factor outside the competencies which was considered by the Panel for each of the candidates. The CRB also took into account geographical representation.

Consequently, the Dispute Tribunal did not make any errors of law or fact in denying Mr. Staedtler's application and concluding that:<sup>11</sup>

[T]he selection exercise for the Fukuoka post was properly conducted in accordance with the requirements and provisions of ST/AI/2010/3 and that the Applicant was given full and fair consideration by the Panel.

29.

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not succeed in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by the Appeals Tribunal.

31. Accordingly, Mr. Staedtler's complaints are rejected.

Allegation of Bias

32. Mr. Staedtler further submits that the non-disclosure of the members of the CRB was evidence of bias and discrimination against him and was interlinked with other cases pending before the Dispute Tribunal in respect of his claim of institutional retaliation campaign against him following his reports of prohibited activities at UN-Habitat.

33. Allegations of bias and discrimination are very serious charges which should not be lightly made. They have to be established on the balance of probability by the person alleging same.<sup>15</sup>

34. We note that the Dispute Tribunal properly considered all aspects of Mr. Staedtler's claim of bias but did not find it substantiated. The Dispute Tribunal found that:<sup>16</sup>

... The Applicant's repeated allegations of bias are unfounded. The so-called evidence of bias is no more than the Applicant's disagreement with the assessments of his competencies by the Panel. His further assertion that the findings of the Panel "amounts to criminal acting" is unfounded. In the absence of any evidence to support such serious allegations they are irresponsible and reprehensible.

...

... The Tribunal finds no evidence to support the Applicant's contention that his past experience while working in Libya gave rise to a presumption of irregularity. While the Applicant has expressed strong views about the justness of his treatment while in Libya there is no evidence of a factual nexus between the events he describes in 2011 and the selection processes in 2012 and 2013.

We find no errors of fact and law by the Dispute Tribunal in reaching these conclusions.

35. From the foregoing, we hold that Mr. Staedtler has failed to establish that the Dispute Tribunal committed errors in procedures or on questions of facts and law such as to

36. Accordingly, the appeal fails.

**Judgment**

37. The appeal is dismissed and Judgment No. UNDT/2014/058 is affirmed.

