



Judgment No. 2017-UNAT-778



Counsel for Ms. Faust: Self-represented

Counsel for Secretary-General: Rupa Mitra

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal

... Each test was color-coded, without the names, for each candidate, and sent to Ms. Ho for assessment/scoring. She returned the results of the written test/assessment to HRU, UNFCCC, on 11 September 2014. Thereafter, HRU, n0ga133 Tc.723966 Tw

on 19 November 2014, and the Executive Director, UNFCCC, appointed the recommended candidate to the position.

... The Applicant was informed that she had not been selected for the advertised position by memorandum dated 25 November 2014.

... On 18 January 2015, the Applicant filed a complaint for harassment and abuse of authority against Ms. Taylor and the Director, SDM. On 4 December 2015, upon the completion of an investigation, the Executive Secretary, UNFCCC, informed the Applicant that she had concluded that the reported conduct did not constitute a violation of the provisions of ST/SGB/2008/5, and that she had decided to close the case. The Applicant filed an appeal against this decision, which the [Dispute] Tribunal rejected as not receivable in Judgment *Faust* UNDT/2016/018. The Appeals Tribunal dismissed the appeal and affirmed the UNDT judgment during its 21st session in New York from 17 to 28 October 2016.^[2]

3. On 13 June 2015, Ms. Faust filed an application with the UNDT contesting the decision not to select her for the P-2 post of Associate Programme Officer at the UNFCCC on the ground that she was not afforded a full, fair and objective assessment in the selection procedure. The Secretary-General filed his reply on 16 July 2015.

4. On 6 December 2016, the UNDT issued its Judgment. The UNDT concluded that the contested decision not to select Ms. Faust had been lawfully taken.

5. The UNDT held that in the contested selection process, the design, conduct and evaluation of the written test, did not constitute a violation of Ms. Faust's right to full and fair consideration. The Dispute Tribunal noted that, under the UNFCCC Secretariat Recruitment and Selection Standard Operating Procedure, the Hiring Manager is responsible for designing questions for technical assessment but that the direct supervisor of the position had designed the written test and it was not clear whether the Hiring Manager had formally delegated that task to her. However, the UNDT ultimately found that the question of who had prepared the written test was not linked to the non-selection decision.

6. Turning to Ms. Faust's contention that the interview panel was improperly constituted because its members were not experts in finance, the UNDT in particular considered the qualifications of two of the panel members who had been deemed subject-matter experts for the purpose of the interviews. The UNDT recalled that under the jurisprudence of the UNDT and the

expert for the purposes of an interview panel. Against this standard, and having considered the panel members' qualifications, the UNDT was satisfied that the subject-matter experts were properly present on the panel. The UNDT also rejected Ms. Faust's contention that the composition of the panel showed bias against her. In reaching its conclusion, the UNDT took note of the fact that, although Ms. Faust had claimed that there were personal issues among her and both the Hiring Manager and the direct supervisor of the position, she did not contest the composition of the panel or filed for recusal when she learned of it.

7. Finally, with regard to the conduct of the interview itself, the UNDT held that the panel's evaluation of Ms. Faust's technical expertise was made in accordance with its mandate. The UNDT noted that the relevant legal framework provided for an assessment that could focus on the competencies required for the vacancy as well as technical expertise.

8. The UNDT rejected Ms. Faust's request for compensation and dismissed her application in its entirety.

Submissions

Ms. Faust's Appeal

9. The UNDT erred in fact and law and failed to exercise its jurisdiction in reaching its Judgment.

10. Ms. Faust challenges the UNDT's findings regarding the design, conduct and assessment of the written test. She contends that the UNDT based its Judgment on "a hypothetical situation and not on actual facts", i.e. that the Hiring Manager did not fulfil her role and responsibilities, and concluded that, since it did not matter who the Hiring Manager was, Ms. Faust was afforded full and fair consideration. She also submits that the UNDT failed to address and consider that the test "was not designed in accordance with applicable rules"; "was not comprehensive as required by the applicable rules"; the "[t]est schedule was advantageous to one candidate"; and, the "[t]est was not evaluated in accordance with the applicable rules". The UNDT incorrectly found that "the above matters are basically not appealable, because of the very broad discretion the Administration has in a recruitment process".

11. As to the UNDT's conclusions on the composition of the interview panel, Ms. Faust *inter alia* contends that the UNDT failed to consider that at the time of the recruitment process, the SDM/finance team, including Ms. Faust, was undergoing "team counseling with a board-certified [p]sychotherapist" and the resulting conflict of interest in the direct supervisor of the position being a panelist in Ms. Faust's interview; that the UNDT erred in finding that the panel was correctly established given the "broad discretion" of the Administration in establishing panels; that the UNDT erred in suggesting that Ms. Faust should have asked for the recusal of the panel members, despite the fact that Ms. Faust was not aware of the panel composition prior to the interview; and that the UNDT contradicted itself by stating that the presence at the interview of "experts in the same field of work" was not required, but that it was acceptable that two "non-finance, non-expert panelists" and one panelist with a conflict of interest could make an "expert judgement" that Ms. Faust had no expert knowledge in finance. The UNDT also failed to consider that the panel did not consider her performance appraisals in its assessment of her suitability for the post.

12. Ms. Faust makes a number of other contentions, including that the UNDT failed to consider the UNFCCC Review Board's failure to "intervene or at least question this recruitment process"; that the UNDT reached the conclusion that no harassment against her existed while she did not raise any harassment claims before the UNDT and, in accordance with the Appeals Tribunal's jurisprudence, the UNDT is not competent to make any findings on harassment; and that the UNDT failed to "review and consider the letter by the UNFCCC Executive Secretary dated 4 December 2015 in which substantial issues in the team, as a result of Ms. Ho's behavior and actions, were admitted" and "which supported and further evidenced [her] case and arguments".

13. Ms. Faust requests compensation in the amount of 24 months' net base salary.

The Secretary-General's Answer

14. The UNDT correctly upheld the contested decision not to select Ms. Faust. The UNDT considered the applicable legal framework, including Administrative Guideline AG/2011/3 (UNFCCC Staff Selection System), as well as the evidence regarding the selection process, including the evaluation methods used, the composition of the interview panel, the role of the Hiring Manager, and the role of the Review Board in a selection process.

15. The UNDT properly found that the written test had no impact on the non-selection decision. In her appeal, Ms. Faust merely repeats a number of her claims with regard to the written test and fails to identify any error in the UNDT's conclusions. Her claims are irrelevant in light of the fact that she passed the written test and was invited to an interview on that basis. She was ultimately not recommended because the interview panel found that she had not fully demonstrated all of the four competencies required for the position, a reason that had nothing to do with the written test.

16. The UNDT correctly found that the interview panel had been properly composed. Ms. Faust simply disagrees with the UNDT regarding the qualifications of the experts, asserting that "the panel only consisted of one person with some relevant technical knowledge" without providing any supporting detail as to why the UNDT's reasoning was in error.

19. In light of the above, the UNDT correctly dismissed Ms. Faust's application, finding that she had not only failed to show that the selection process was unlawful, but also provided no relevant evidence of harm as required by Article 10(5)(b) of the UNDT Statute. The Secretary-General therefore requests that the Appeals Tribunal affirm the UNDT Judgment and dismiss the appeal.

Considerations

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administrative issuance and that she had therefore decided to close the case. Ms. Faust filed an application to the UNDT contesting that decision. The UNDT found that her application was not receivable, as she had failed to request management evaluation. She appealed to the Appeals Tribunal, which affirmed the decision of the UNDT.³

25. In her present appeal, Ms. Faust repeats an argument that she put to the UNDT, namely, that the written test should have been prepared by the Hiring Manager, but instead was prepared by Ms. Ho, who was the direct supervisor of the position. She claims that the UNDT failed to consider that the test was not prepared in accordance with the applicable

33. Ms. Faust's appeal raises a number of other assertions alleging errors by the UNDT without providing any grounds for saying so. Such assertions by themselves are not capable of persuading us that the UNDT's Judgment was erroneous in any way.

34. We find that the UNDT was fully supported by the law and the facts when it concluded:⁶

... In the present case, the Applicant did not show that the procedure was biased against her, or that her right to full and fair consideration was violated through any procedural flaws.

Judgment

36. The appeal is dismissed and Judgment No. UNDT/2016/213 is affirmed.

