



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2017-UNAT-802



**Riecan
(Respondent/Applicant)**

v.

Secretary-General of the United Nations

Counsel for Mr. Riecan:

Marisa MacLennan, OSLA

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2017-UNAT-802

3. On 26 April 2017, the UNDT issued its Judgment finding that Mr. Riecan was not given full and fair consideration in his candidacy for the position and awarded Mr. Riecan three months' net base salary with interest, but refused Mr. Riecan's request for rescission of the

UNDT's finding that an e-PAS must be considered. To the contrary, the Simmons ruling supports the proposition that candidates can be required to demonstrate competencies through an interview.

6. There is also no legal requirement to consider performance documents in the Administrative Instruction on Staff Selection (ST/AI/2010/3). The UNDT, therefore, erred in inserting a step into the assessment process that is not required under the staff selection system.

7. Lastly, the Secretary-General argues that the UNDT erred in law in awarding

9. Mr. Riecan also argues that the UNDT did not contravene the jurisprudence of the Appeals Tribunal as the UNDT Judgment is not at odds with *Nikolarakis*, wherein the Appeals Tribunal found that the UNDT erred in requiring additional weight be given to a candidate's e-PAS. In the instant matter, the UNDT correctly found the panel's failure to even consider an e-PAS was material. The Judgment is also congruent with *Abbassi*,⁴ wherein the Appeals Tribunal upheld the UNDT in its finding that where an inconsistency exists between an assessment panel's views of what was required for the post and the opinion of the candidate's supervisor, it was reasonable for the panel to prefer its own views. The impugned Judgment leaves the finding in *Abbassi* undisturbed as it does not render the e-PAS supreme over the panel, but merely finds there is a duty to consider it.

10. Lastly, Mr. Riecan argues that the UNDT did not err in law in awarding him compensation as the UNDT is best situated to determine the remedy. The fact that Mr. Riecan was not selected and that he did no progress past the interview stage is the harm he suffered. The UNDT Statute does not require a doctor's reports or financial loss. The awarded compensation is low and is not manifestly unreasonable. Relying on *Andersson*⁵ and *Asariotis*⁶ a procedural violation could, in and of itself, give rise to an award of compensation. Thus, his award of compensation is supported on multiple grounds.

Considerations

11. In the instant case, the UNDT did not correctly apply the law in considering Mr. Riecan's challenge to the selection process for the post. As discussed in more detail below, the UNDT made errors of law and fact in accepting Mr. Riecan's application.

12.

that, in reviewing such decisions, it is the role of the UNDT or the Appeals Tribunal to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent, and non-discriminatory manner. It is not the Tribunals' role to substitute their decision for that of the Administration.⁷

14. We have also stated:⁸

... The Dispute Tribunal possesses jurisdiction to rescind a selection or promotion process, but may do so only under extremely rare circumstances. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection/promotion.

... All candidates before an interview panel have the right to full and fair consideration. A candidate challenging the denial of promotion must prove through clear and convincing evidence that procedure was violated, the members of the panel exhibited bias, irrelevant material was considered or relevant material ignored. There may be other grounds as well. It would depend on the facts of each individual case.

... There is always a presumption that official acts have been regularly performed. This is called a presumption of regularity. But this presumption is a vide2(ed-tio)ide2(nll. I n

16. With regard to this specific issue, the UNDT held that:⁹

... both ST/AI/2010/3 and the pronouncements of UNAT affirm that where the e-PAS reports of a staff member are available to an assessment panel in the course of a selection process, the panel has a duty to consider the e-PAS reports and reflect that consideration in its own assessment report.

... This duty becomes even more critical in a situation like that of the Applicant where his e-PAS reports show that for three out of the past five reporting cycles, he was rated as outstanding for professionalism by different reporting officers whereas the interview panel rated him as only partially meeting the requirements.

17.

20. First, the UNDT does not make any reference to a specific provision of ST/AI/2010/3, or any other authority, providing for a duty of the assessment panel in the course of a selection process to consider the e-PAS reports of the candidate staff member and reflect that consideration in its own assessment report.

21. Second, in applying the above principles of our jurisprudence, we find that the mere fact that the interview panel did not take into consideration Mr. Riecan's e-PAS reports, which were available to them, while relying on their own assessment of his competencies during the competency-based interview, does not render the selection process unreasonable or unfair. Nor does the failure of the interview panel to address Mr. Riecan's e-PAS reports especially in the context of the disparity between its ratings and those of his reporting officers on the same competencies.

22. As already alluded to, the Administration has wide discretion to choose the best evaluation method in order to assess which candidates are most qualified for selection.¹² In the instant case, the UNDT erred on a matter of law and exceeded its competence by ruling that the interview panel was under a duty to consider Mr. Riecan's e-PAS reports and reflect that consideration in its own assessment report, even after Mr. Riecan had failed the interview. In finding so, the UNDT improperly assumed the role of deciding which evaluation method should have been used and adopted an approach which is not institutionalized in the existing staff selection system established under the Staff Regulations and Rules.

23. The UNDT's reliance on the ratio of Simmons¹³ to conclude that where the e-PAS reports of a staff member are available to an assessment panel in the course of a selection process, the panel has a duty to consider the e-PAS reports and reflect that consideration in its own assessment report is incorrect. In that case, the Appeals Tribunal solely addressed the issue of delays in completing the e-PAS reports of the staff member and the compensation awarded to her in the context of a selection process. In the course of its Judgment, this Tribunal offered obiter dicta on the importance of annual e-PAS reports for the staff member's professional career development and the aid they provide to interview panels when the staff member is being

¹² Nikolarakis v. Secretary-General of the United Nations , Judgment No. 2016-UNAT-652, paras. 30-31; Dhanjee v. Secretary-General of the United Nations , Judgment No. 2015-UNAT-527, para. 29.

¹³ Simmons v. Secretary-General of the United Nations , Judgment No. 2012-UNAT-222.

Judgment

26. The appeal is granted and Judgment No. UNDT/2017/029 is hereby vacated.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Knierim

Entered in the Register on this 8th day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar