

Judgment No. 2021-UNAT-1135



Counsel for Appellant: Self-represented

Counsel for Respondent:

4. Mr. Hossain argued, among other things, that his supervisor was biased against him and had assessed his performance with the aim of “ousting” him from the post. Days after his supervisor’s assessment, his contract (presumably expiring on 20 February 2017) was extended for only six months instead of the one year he had expected. He also alleged that his post was set to be abolished with effect from 31 December 2017. (The TW.3(T); T.001 Td((3g5(d)224t03T(r)4B7

seas §(2g(Ek)T.703Tc0.336(3))y5.5v(t)18 (2736(d))h-2.3

United Nations, but it is unclear why, whether through non-renewal, abolition of post, or his own resignation that he had not disclosed any such vacancies, h-3.1 (e)92t6Tw 5.874 0 Td()Tj0.005 Tc -0.005

or discuss anything pertaining to how the decision impacted on his career.

11. Fourth, the Appellant asserts that the UNDT did not allow him to present evidence of his non-selections to several positions, by denying him an oral hearing. He provides on appeal annexures containing documents related to his applications for: a position as a P-5 Finance Manager in Kuala Lumpur; a P-4 Finance Specialist with UNDP in Liberia for which he was being considered as a finalist and in which his performance appraisals were requested, including 2016; and the Roster for the Deputy Resident Representative which required 3 consecutive years of demonstrated strong performance, but due to his 2016 rating he was not included in the assessment process. He says the 2016 appraisal has affected his selection to posts and his career.

12. Finally, the Appellant requests this Tribunal to: 1) ensure justice by providing him the opportunity for his case to be heard; 2) issue an order to re-

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non-appointment to it. In another case, an e-mail records his non-appointment to another role. In neither case, however, do the documents record why he failed to be appointed, at least in effect beyond the rather bland advice that a better candidate was appointed.

20. While, therefore, these documents, had they been in evidence before the UNDT would probably have established the proof (which the UNDT commented was absent) that the Appellant had applied and been rejected for other roles, they could not in themselves have created the necessary third ingredient expected by the Dispute Tribunal, namely the causative link between the partially satisfactory assessment and the failure to be appointed.

21. Mr. Hossain's primary complaint, however, is that the UNDT improperly denied him a hearing at which he might either himself have called the evidence of the relevant hiring managers about why he was unsuccessful, or at least have persuaded the UNDT to have exercised its power to itself call for that evidence. While the UNDT has a very broad discretion, at least in non-disciplinary cases, to decide whether to conduct a hearing at which evidence is called orally or at which submissions can be made by parties on documents produced to the Tribunal, this is not an unlimited discretion. It must be exercised according to principle and be supported by reasons which can withstand scrutiny.

22. The UNDT's reasons for declining Mr. Hossain's request, as an unrepresented litigant, for an oral hearing were set out at paragraph 21 of the impugned Judgment and were as follows.

The UNDT cited Article 2(e) o6 (1)-2.78-0.6 (T)-(A)-2..4 (MO Tcfc 0.001 p)-3.8 (ugne)-4.3-3.1 (o)-3.8 (o)4.4

28. The appeal succeeds, the UNDT's Judgment No. UNDT/2020/127