



Judgment No. 2022-UNAT-1248



Counsel for Appellant: Dorota Banaszewska

Counsel for Secretary-General: Angélique Trouche

JUDGE JOHN RAYMOND MURPHY , PRESIDING .

1. Mr. Vladislav Krioutchko v contested before the U003 Tcd75u1 T -0.001 Tw 106005 0 Td niUB

Administration replied that the time of the assessment was synchronized with other candidates and was not negotiable.

8. On 20 March 2019, the Tribunal (2019-00001) found that the Tribunal (2019-00001) on 4.2.2019 of

15. On 4 May 2021, six days before the UNDT issued its judgment, Mr. Krioutchkov sought leave to file a motion requesting that the UNDT order the production of accurate statistics and information on how many internal candidates based outside of New York had been promoted in the last 10 years from P-3 Russian translator to P-4 Russian translator posts (the motion).

16. On 10 May 2021, the UNDT issued Judgment No. UNDT/2021/052 in which it dismissed the application. The UNDT held that the Administration's reason for not accommodating different schedules was fair and reasonable. The scheduling of the exam at a

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requested information, he argues, is relevant and necessary to prove his contention of discrimination; and the failure to have ordered its discovery and production led to a failure to establish the relevant facts, and thus the UNDT erred on a question of fact resulting in a manifestly unreasonable decision.

21. Mr. Krioutchkov contends that the timing of the written test was unreasonably late.

Considerations

28. The point of departure in this appeal is to recognise that the Administration has a broad discretion in staff selection matters. In review of any selection decision the standard of review is one of rationality. The decision must be supported by the information before the decision-maker and the reasons given for it. The question to be asked is whether there is a rational and justifiable connection between the information available to the administrative decision-maker and the conclusion he or she eventually arrived at.

29. The reason Mr. Krioutchkov was not selected for one of the vacant positions was he failed or refused to write the prescribed qualifying test. As a consequence, the Administration gave his application no further consideration.

32. Mr. Krioutchkov's allegation of unfair discrimination is equally unmeritorious. Discrimination involves differentiation on illegitimate grounds. Not every differentiation is illegitimate. In order to constitute discrimination, the non-selection decision would have to have been based on unfair grounds impacting his dignity or employment status disproportionately. Therefore, in determining whether the differentiation experienced by Mr. Krioutchkov (his non-selection in this specific instance) had an unfair impact, regard must be had to the nature of the differentiating decision and the purpose sought to be achieved by it. An important consideration always will be whether the primary purpose of the impugned decision sought to achieve a worthy and important organizational goal.

33. The requirements of selection and promotion of staff of the Organization, including written examinations for the purposes of assessment, are the appropriate means of giving effect to Article 101.3 of the Charter of the United Nations (and the Staff Regulations and Rules enacted to give effect to it) which provides that the paramount consideration in the employment of staff shall be the necessity of securing the highest standards of efficiency, competence and integrity.

34. The evidence in this case is indisputable. The differential treatment of Mr. Krioutchkov was rationally based on his failure to take the test. Had he taken the test and passed it, and was then not selected, he would then have been on firmer ground to challenge his non-selection as discriminatory on the ground he alleges. That is not to say there is any factual or legal merit in the ground of discrimination he alleges. The point rather is that his refusal to write the exam failed to get him out of the starting blocks in an unfair discrimination case. Mr. Krioutchkov's lack of success was therefore the result of his own choice of not participating in the written test. His own conduct resulted in the differential consideration of his candidature being rationally based on his failure to take the test.

Judgment

36. The appeal is dismissed, and Judgment No. UNDT/2021 / 052 is upheld.

Original and Authoritative Version: English

Decision dated this 1st day of July