





8. She requested management evaluation of her non-selection on 1 August 2016 and received a response on 16 September 2016.

9. The Applicant filed an incomplete application by email on 13 December 2016. The UNDT Geneva Registrar responded by return email on 29 December 2016, informing her that the application was deemed incomplete as she had failed to provide a copy of the contested decision.

10. By email of 23 March 2017, the UNDT Geneva Registrar informed the Applicant that failure to complete her electronic case file by 31 March 2017 could result in the dismissal of her case for want of prosecution. By email of 31 March 2017, the Applicant filed an updated and amended application. She stressed in her email that she had not received a written communication informing her of her non-selection.

11. The Applicant's principal contentions are:

a. The application is receivable; as Judge Halfeld held in a partial dissent in *Auda* 2017-UNAT-746, a "staff member's knowledge of a decision is not necessarily the same thing as a staff member receiving notification of a decision." Additionally, though staff rule 11.2(c) does not preclude the notification of an administrative decision verbally, administrative decisions should be notified in writing and with some degree of gravitas;

b. This was not the case in the notification to her of her non-selection, since she merely received a phone call from the Hiring Manager, who was away on mission; she asked for a meeting with the Secretary-General of UNCTAD regarding the subject;

c. On the selection procedure, the Applicant argues, *inter alia*, that the panel lacked impartiality and objectivity as one of its members (the Director, DITC) had constantly discriminated and retaliated against her; and

d. The written assessment was not correctly done and it should not have been eliminatory. Lastly, the UN Women focal point was not involved in the selection exercise, as it should have been.

12. The Respondent's principal contentions are:

a. The application is not receivable *ratione temporis*, since the Applicant did not file it within the deadline of 90 calendar days from the date she received the outcome of the management evaluation as per staff rule 11.4, since the e-mail sent by the Applicant to the Tribunal containing an incomplete application does not meet the requirements of an application according to the Rules of Procedure of the Tribunal;

b. The written assessment was done according to the job opening and it's 90







27. Therefore, and while the Applicant became fully aware of her non-selection on 26 May 2016, the statutory time limit for the request for management evaluation did not start to run on that day and the application is receivable, *ratione*

34. The Tribunal notes that the Applicant failed to successfully pass the written assessment test. Hence, she was not convoked for a competency-based interview. She questions, *inter alia*, the fact that a written assessment was conducted for a D-2 level post at UNCTAD as well as the content of the test. She also contests the content of the job opening where, she argues, two core competencies were not included.

35. In this respect, the Tribunal cannot but recall the broad discretion of the Administration in determining the content of a job opening, as well as the relevant assessment tools, including the conduct of a written test, if any. Absent any element of flagrant unreasonableness, the Tribunal will not interfere with such choices and the content of an assessment.

36. Moreover, the Applicant does not contest the relevance of the questions asked in the written test but, rather, that they only covered technical knowledge relating to one element in the “Professionalism” competency, while they did not cover core responsibilities such as leadership and management skills for the D-2 level, as stated in the vacancy notice.

37. However, according to the evidence on file, the Tribunal recalls that the assessment tools used in the present selection exercise were two-fold: a written assessment and a competency-based interview.

38. Only shortlisted candidates were invited for a written assessment, followed by a competency-based interview for those candidates who passed the pre-established threshold of 70% in the written assessment.

39. As a matter of principle, the Tribunal notes that it is appropriate to test technical skills through a written assessment, and to test core/managerial competencies through a competency-based interview. This is reflected in sec. 7.5 of ST/AI/2010/3, which provides that:

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.

40. Although mindful of its extremely limited scope of judicial review in selection matters and of the fact that it cannot substitute itself to the Administration, the Tribunal, nonetheless, reviewed the questions of the written test and sees no reason to find unreasonable the Respondent's submission that they were directly relevant to the skills expected for the position.

41. The Applicant also questions the composition of the assessment Panel and notes that the three of its members who were staff members of UNCTAD were biased against her. The Tribunal recalls that sec. 1(c) of ST/AI/2010/3 provides the following (emphasis in original):

*Assessment panel:* a panel normally comprised of at least three members, with two being subject matter experts at the same or higher level of the job opening, at least one being female and one being from outside the work unit where the job opening is located, who will undertake the assessment of applicants for a job opening. For D-2 level job openings, the panel shall normally be comprised of at least three members, with two being from outside the department or office, and at least one female.

42. The Tribunal notes that the Panel was composed of four members—instead of the minimum suggested, i.e., three—all of which were at the D-2 level or above, and three of which were from outside the Division on Technology and Logistics. The one female member was external not only to the particular division, but to UNCTAD. The Tribunal is satisfied that the Panel composition complied with the above referenced rule.

43. Further, and relevantly, the Tribunal recalls that the candidates' tests were provided to the Panel members anonymously and finds that the Applicant did not provide any element allowing to conclude that the anonymity of the tests was not respected and/or compromised.

44. On the contrary, the documentary record shows that measures were taken to ensure the anonymity of the tests, which was monitored by the Chief, Human Resources Management Section ("HRMS"), UNCTAD. Indeed, once the tests were received by HRMS, UNCTAD, each of the candidates' first and last name as well as the respective IP address were removed and a process number was assigned to



49. The Tribunal recalls that the burden of proving any allegations of ill motivation or extraneous factors rests with the Applicant (*Asad* 2010-UNAT-021; *Jennings* 2011-UNAT-184; *Azzouni* 2010-UNAT-081; *Obdeijn* 2012-UNAT-201). The Tribunal finds that the Applicant failed failed