



JUDGE NASSIB G. ZIADÉ , PRESIDING .

1. Mr. Yonas Negasa contested a decision of the United Nations Department of Operational Support (DOS) not to select him to the Young Professionals Programme (YPP) (contested Decision).
2. By Judgment No. UNDT/2022/107 , the United Nations Dispute Tribunal (UN DT) rescinded the contested Decision, ordered that the Administration had to set a new written assessment to be taken by Mr. Negasa, and awarded compensation in lieu of rescission (impugned Judgment).¹
3. The Secretary-General lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and

in the list of successful candidates in the YPP examinations and thereby not become eligible for subsequent consideration for appointment at the P-1 or P-2 levels in the United Nations Secretariat.⁷

8. On 12 February 2021, Mr. Negasa sought clarification on the breakdown of his results and the YPP Examinations Team explained that some of the questions had been deleted after marking the exams and as such that his remaining answers and scores did not reach the pass mark. No specific breakdown of his scores was given.

9. On 17 February 2021, the YPP Examinations Team provided Mr. Negasa with the following explanation:⁹

We are happy to offer you some further explanation of the process though, as we do understand the confusion as to why your score on the Summary & 3 (m) 3.6 (m)-8.7.4 .12 529 Tw 0.150.02613-2.3 (e3r

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which was lower than the minimum required score of 337.5.¹⁹ Nevertheless, many questions were deleted after the written test, the grading methodology was developed after the test and even the passing grade was determined after the test. Therefore, his candidature was not given full and fair consideration.

19. As to the remedies, the UNDT was of the view that Mr. Negasa could be freshly evaluated on his answers to the questions that were deleted.²⁰ He has to be placed in the same position he would have been in if the illegality had not occurred, that is, he has to be granted an opportunity to be fairly considered. The amount of compensation in lieu of rescission must be set considering the nature of the dispute, the length of service and the chances of success in the selection process. No evidence of moral harm has been offered by him

Procedure before the Appeals Tribunal

20. On 6 December 2022, the Secretary-General filed an appeal of the impugned Judgment with the Appeals Tribunal, to which Mr. Negasa filed an answer on 6 February 2023.

Submissions

The Secretary-General's Appeal

21. The Secretary-General requests the Appeals Tribunal to vacate the impugned Judgment

administered, involuntary bias in the questions may still go unnoticed. Such bias can result in a category of candidates failing a question to a disproportionate extent. This does not mean that other candidates would be widely successful with the same question. The statistical analysis conducted by the Administration is a best practice in the recruitment industry.²¹

24. The Secretary-General submits that the eliminated MCQs were identified as biased. The practice pursued a legitimate interest. The UNDT's findings are speculative. Mr. Negasa has not demonstrated that he was treated any differently from the other candidates and that any of the Administration's actions were to his detriment. The UNDT incorrectly assumed that he had answered all the deleted questions correctly. The UNDT's calculation of, and reasoning on, his score are manifestly erroneous.

25. The Secretary-General contends that the UNDT erred in law by finding that ST/AI/2012/2/Rev.1 did not allow for eliminating questions. The elimination of some questions was not a change of format. Moreover, the UNDT erred in fact and in law by implying that the passing grade should have been determined prior to the written test. It is within the Administration's discretion how to conduct the YPP examination. The determination of the passing grade is informed by the required size of the roster to be filled and, in turn, the anticipated needs of the Organization.

26. The Secretary-General states that the UNDT erred in law by transposing to the YPP context the requirements for competitive processes where candidates are selected for a particular job opening. Instead, the YPP aims to fill rosters in specific work areas and involves thousands of candidates. The facts of the

not been removed. Even if he had been successful in the entire YPP examination, he would have been placed on roster, which does not create an expectancy of selection for a position. However, even if compensation in lieu of rescission was to be awarded, the award of six months' net base salary was excessive, i.e. beyond the economic equivalent of any harm suffered. Furthermore, taking the examination again would not guarantee the same circumstances, competitors, availability of positions or other factors that must be considered when deciding on the remedy.

Mr. Negasa's Answer

28. Mr. Negasa requests that the Appeals Tribunal dismiss the appeal and uphold the impugned Judgment.

29. He argues that the Secretary-General

Specialized Board of Examiners committed an error in calculating the passing score by including the removed questions in the total number of points (500).

32. Mr. Negasa submits that administrative inconvenience should not hamper the

(nc)4.4 (e)-10.d(1) 5.2 (of 4) (i) 0.0 (S) (C) (D) (a) (j) 1.0 (e) (T) 8.7 (e) (t) 6.0 (1 (ng)-5.8 (s) Y8.7 (nP)Tj 0.0P)Tj 0.0(o)-3.5

response guide” and on a “predetermined passing grade”. Accordingly, before a written test is administered, a proper and reasonable grading methodology must be adopted and shared with the graders;

c. If subsequent to the administration of the test, it becomes clear that mistakes were made in this methodology, or the written test turned out t

43. In this regard, the Secretary-General contends that it simply followed “a best practice in the recruitment industry”. The support for that contention is unconvincing and does not establish manifest error by the UNDT. The Handbook upon which the Secretary-General relies, states that while differential item functioning (DIF) “analyses may be particularly useful” in certain circumstances, “DIF findings should be viewed with caution. DIF analyses are not a routine or expected part of the selection procedure development and validation process in employment settings”.³⁴

44. The Secretary-General contends that the *Chhikara* analysis should be disregarded because the present matter involves the use of a test to select a “roster” of candidates from which multiple

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49. The Secretary-General's appeal is disct <</Attached [/Top]/BBox [84.2248 737r5.56 3 0 0.9 ()9 0 e