

Tr</MI

3. The Dispute Tribunal delivered Judgment No. UNDT/2009/040 on 16 October 2009. The Dispute Tribunal examined the procedure followed by the Appointments, Postings and Promotions Board, which had drawn up a list of staff members considered for promotion. It rejected the appellant's argument that on the one hand, the Board had not followed the Methodological Approach during the 2007

10. Mr. Ardisson contends that if the Secretary-General refuses to promote him, he is owed appropriate compensation. He states that the compensation should be determined as a sum equal to the net financial advantage that he would have accrued if the procedure had been properly followed. He evaluates the loss at \$10,000 per annum over 16 years.

11. Mr. Ardisson requests that the Appeals Tribunal order the Secretary-General to promote him retroactively to the P-5 level. Should the Secretary-General refuse to do so, he requests adequate compensation. In that regard, he requests the Appeals Tribunal to order the payment of \$69,749 in compensation for loss of income and \$160,000 in compensation for loss of pension rights. He further requests the Appeals Tribunal to order the payment of at least \$50,000 in compensation for the moral prejudice suffered as a result of the grossly irregular actions of the Administration, and the payment of at least \$15,000 with interest for the cost of the proceedings, on the grounds that he was not in a position to consult the Office of Staff Legal Assistance.

Respondent

12. The respondent contends that the appeal is not receivable. It was filed by Mr. Ardisson on 22 February 2010, whereas the deadline for appeals in accordance with the Statute of the Appeals Tribunal, article 7, paragraph 1 (c), was 8 February 2010.

13. Should the Appeals Tribunal decide that the appeal is receivable, the respondent contends that contrary to article 8, paragraph 2 (a), the appellant did not specify the legal basis or motive of his appeal, but merely reiterated the arguments submitted to the Joint Appeals Board and considered by the Dispute Tribunal.

14. The respondent contends that Mr. Ardisson is wrong to claim that he would have been promoted if the selection process had not been tainted. Even assuming that the Appointments, Postings and Promotions Board would indeed have recommended Mr. Ardisson's promotion, the High Commissioner has discretionary power in taking final decisions, and would not have been obliged to comply with the recommendation.

15. The respondent contends that Mr. Ardisson has not identified any error of law or fact on the part of the Dispute Tribunal. The respondent argues that the decision of the Dispute Tribunal is in conformity with its Statute and the Charter of the United Nations, which unambiguously grant the Secretary-General alone discretionary power to appoint staff members. The Dispute Tribunal rightly concluded that the judge was not authorized to stand in the shoes of the Administration and to declare that the applicant should be promoted.

16. The respondent maintains that the Dispute Tribunal made a fair evaluation of the compensation amount. The respondent adds that if the High Commissioner were to act on the rescission of the administrative decision not to promote Mr. Ardisson, a new selection process would have to be organized, without any guarantee of ultimate promotion. Article 10, paragraph 5 (b), of the Statute of the Dispute Tribunal provides that compensation shall not normally exceed the equivalent of two years' net base salary, and that a higher compensation may be ordered only in exceptional cases. The applicant has not alleged, let alone demonstrated, any exceptional circumstances. The respondent notes that in most cases of denied

that the Appeals Tribunal should order the respondent to promote him to the P-5 level retroactively can only be rejected.

22. Mr. Ardisson maintains that the amount of compensation that the respondent may choose to pay as an alternative to the rescission of the contested administrative decision was set at too low a level by the Dispute Tribunal. He states that adequate compensation should include the loss of salary resulting from the denial of promotion to P-5 since 1 November 2007 and, later on, the corresponding loss of pension.

23. As stated above, the Statutes of the Dispute Tribunal and the Appeals Tribunal have provided that the compensation shall not normally exceed the equivalent of two years' net base salary of the applicant.

24. We believe that in determining compensation, the Dispute Tribunal should bear in mind two considerations. The first is the nature of the irregularity that led to the rescission of the contested administrative decision. The second is an assessment of the staff member's genuine prospects for promotion if the procedure had been regular.

25. In this case, the Dispute Tribunal first of all found no grounds for Mr. Ardisson's contention that the 2007 promotion session had been tainted by several irregularities. It was considered that the system established for the 2007 promotion session aiming at promoting (at) -Td [(reney(sess4-d)2(inted Brof sal)2()-6(th(t of)he)of)hwp

Judgment

29. Mr. Ardisson's appeal is rejected. Dated this 1st day of July 2010 in New York, United States.

(Signed
Judge Courtial, Presiding

(Signed
Judge Garewal

(Signed
Judge Boyko

Entered in the Register on this 16th day of August in New York, United States

(Signed
Weicheng Lin, Registrar, UNAT
