



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2014-UNAT-401

Zeid

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

JUDGMENT

Counsel for Respondent/Applicant:

Duke Danquah

Counsel for Appellant/Respondent:

Zarqaa Chohan

JUDGE ROSALYN CHAPMAN , PRESIDING .

1. On 17 January 2013, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York issued Judgment No. UNDT/2013/005, in the case of *Zeid v. Secretary General of the United Nations*. On 18 March 2013, the Secretary General of the United Nations filed an appeal of the Judgment to the United Nations Appeals Tribunal (Appeals Tribunal), and on 20 May 2013, Mr. Galal Zeid filed his answer.

Facts and Procedure

2. Mr. Zeid was given a probationary appointment at the P-2 level as an Associate Interpreter in June 1984. Subsequently, he was promoted to the position of Interpreter at the P-4 level. He was later reassigned at this level as an Interpreter in the Arabic Interpretation Section in New York.

3. The facts of this case are almost identical to the ones established in *Kamal*,¹ which considered the same selection exercise for P-5 Arabic interpreters that we consider in the present case. Ms. Kamal and Mr. Zeid were candidates for promotion in the same selection process, which each challenged, and both were, and are, represented by the same counsel before the UNDT and the Appeals Tribunal.

4. The Appeals Tribunal adopts the following findings made by the Dispute Tribunal:²

... In April and September 2004, respectively, two vacancy announcements were issued for the post of Senior Interpreter (Arabic) at the P- 5 level for the Interpretation Section, Department for General Assembly and Conference Management (“DGACM”). The Applicant was not among those recommended. These vacancy announcements were cancelled in April 2005 when it was established, following complaints by two staff members, including Mr. Zeid, that the evaluation criteria were not consistent with ST/AI/2002/4 (Staff selection system).

... On 14 April 2005, a single vacancy announcement for the two posts was re-issued. As a result of the selection process that followed, the Applicant and Ms. Kamal were recommended for appointment. The recommendations were forwarded to the CRB [Central Review Body] in October 2005.

¹ *Kamal v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-204.

² Impugned Judgment, paras. 12-15, 17-19, 21, 23, 25-29, 33, 35 and 38.

... On 17 October 2005, a group of interpreters sent a written complaint to the President of the Staff Union, expressing their concern about the procedures and recommendations and asking for a suspension of the process and the setting up of a joint staff-management working group.

... On 20 October 2005, the Staff Council adopted Resolution No. 66, proposing

... On 5 December 2006, the Applicant received a letter from the Assistant Secretary-General proposing to re-advertise the vacancy announcement. The Applicant was provided with a copy of the working group's report.

... On 12 December 2006, the Applicant submitted his detailed comments to the Assistant Secretary-General for DGACM on the note of 5 December 2006, on the report of the working group, and on the proposal to re-advertise the vacancy.

...

... On 12 July 2007 ...a third vacancy announcement was advertised. The Applicant applied. As a result of this third selection exercise, he and Ms. Kamal were once more recommended for selection.

...

... On 26 December 2007, the Applicant was informed of his selection. In January 2008, it was decided to promote the Applicant to the P-5 level retroactively, effective 14 April 2005 (the date of the posting of the second vacancy announcement),

Submissions

the Organization was required to pay him. If his selection had proceeded to the CRB, the earliest he could have been promoted would have been November 2005. Thus, the UNDT erred in awarding compensation for moral damages.

11. The Secretary-General seeks to vacate the award of compensation to Mr. Zeid.

Mr. Zeid's Answer

12. The UNDT correctly determined that there were excessive delays by the Administration in completing the promotion exercise within a reasonable time. These delays were substantially caused by the Administration ignoring Mr. Zeid's repeated complaints. Although there was no rule requiring notice within a certain period, it was an abuse of power and maladministration to fail to respond to Mr. Zeid's requests for information.

13. The UNDT correctly determined that the Administration failed to acknowledge or reply to Mr. Zeid's inquiries concerning the delays. Mr. Zeid made numerous inquiries about the selection process from October 2005 through April 2006, but the Administration did not reply. This was a breach of duty on the part of the Administration since Mr. Zeid was one of the two candidates recommended for promotion in the second selection process and he had a legitimate interest in the timely resolution of the process. The persistent nature of Mr. Zeid's inquiries distinguishes him from Ms. Kamal.

14. The UNDT correctly determined that Mr. Zeid suffered emotional distress from excessive delays and the "conspicuous failure" of the Administration to respond to his inquiries. At the hearing on the merits, Mr. Zeid testified about the emotional distress he suffered as a direct result of his "long ordeal", i.e., that he felt insulted, humiliated, and his reputation was damaged. Thus, Mr. Zeid's case must be distinguished from *Kamal*.

15. The UNDT was justified in awarding monetary compensation to Mr. Zeid. There is ample jurisprudence from the Appeals Tribunal supporting a monetary award when the delay suffered by the staff member was directly caused by the negligence of the Administration or by an act of malfeasance. The retroactive payment to Mr. Zeid was compensation for economic loss and as a gesture of good will; it was not compensation for emotional harm. The Dispute Tribunal is in the best position to decide whether Mr. Zeid suffered emotional harm and to quantify its extent.

16. The Appellee requests that the award of compensation be upheld for the reasons put forth by the UNDT in its Judgment.

Considerations

17. The Secretary General seeks to vacate the award of moral damages to Mr. Zeid in the amount of USD 10,000, based on excessive delays in the promotional selection process and the Administration's "negligence" or "maladministration" in failing to respond to his persistent inquiries about the status of the selection exercise. We hold that it was an error of law for the Dispute Tribunal to award Mr. Zeid USD 10,000 as moral damages.

18. As a "general principle", the Appeals Tribunal has held that "damages for moral injury" may arise "[f]rom a breach of the employee's substantive entitlements arising from his or her contract of employment and/or from a breach of the procedural due process entitlements therein guaranteed ... [or] ...where there is evidence produced ... of harm, stress or anxiety caused to the employee which can be directly linked or reasonably attributed to a breach of his or her substantive or procedural rights".³

19. The facts underlying Mr. Zeid's claims cannot be distinguished from the facts the Appeals Tribunal considered in *Kamal*, in which the exact same selection process was reviewed. In *Kamal*, we held:

[T]he circumstances of the case do not show any negligence or violation of specific rules by the Administration. To the contrary, those circumstances suggest that during a highly contested selection process, with many claims from different staff members and the intervention by the Staff Union, the Administration was cautious to consider all views and respect the rights of all the persons interested in the selection process and its outcome.⁴

Accordingly, the UNDT found in Mr. Zeid's case that "the cancellation of the second selection exercise and its subsequent recommencement were, in the circumstances, appropriate and lawful".⁵

³ *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-309, para. 36.

⁴

Original and Authoritative Version: English

Dated this 2nd day of April 2014 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)