



T H U N A T

the Organization. The UNDT, relying on the jurisprudence of the Appeals Tribunal in *Marsh*,¹ awarded USD 8,000 as compensation for pecuniary damages and USD 2,500 for moral damages.

Submissions

The Secretary-General's Appeal

5. The Secretary-General contends that the UNDT erred in law by applying the Appeals Tribunal's ruling in *Marsh* to the present case. In *Marsh*, the staff member who was one of three candidates interviewed was disadvantaged by the selection of a candidate who had been wrongfully included in the process despite ineligibility. Absent the ineligible candidate, Mr. Marsh would have had a "substantially increased" chance of being placed on the roster, as one of what would have been two candidates at the final interview stage. By contrast, in the present case, Mr. Terragnolo "would have had to overcome far many more hurdles than Mr. Marsh before being placed on a roster and appointed". ST/SGB/2011/10 (Young Professionals Programme) sets out eight sequential steps in the YPP selection and appointment process. Mr. Terragnolo was screened out at the very first step of this lengthy process and accordingly, his chances to be rostered at the time of the irregularity were

suffered. He also notes that Mr. Terragnolo had an even more remote chance of being rostered than Ms. Farr since she had already passed the written examination.

8. The Secretary-General requests that the Appeals Tribunal vacate the UNDT Judgment in its entirety.

Mr. Terragnolo's Answer

9. The remedy suggested by the Secretary-General would not place him in the situation he would have been in, had the irregularity not occurred. Allowing him to take the examination will not remedy the harm suffered.

10. The *Farr* case differs from the present case in that the harm suffered in *Farr* could be remedied by rectification of a procedural error, while in the present case, there was no

13. Mr. Terragnolo contends that the UNDT erred by implicitly rejecting his request for compensation for the payment of his tuition fees for higher education. By failing to recognize the value of his diploma, the Administration violated his right to have all his qualifications taken into account in an equitable manner. Having been denied the effective right to pursue a career within the Organization at a level corresponding to his qualifications, he has lost the investment into his education. He therefore requests that the Organization reimburse the costs for his education.

The Secretary-General's Answer to Cross-Appeal

14. The UNDT correctly concluded that Mr. Terragnolo did not establish that the contested decision was based on improper motives. The UNDT applied the correct standard and burden of proof in accordance with the jurisprudence of the Appeals Tribunal. Mr. Terragnolo has not established that the UNDT erred by finding that he had not established any retaliation on the part of the Administration.

15. Mr. Terragnolo has not established any other error by the UNDT warranting an increase in the amount of compensation. The Secretary-General requests that the Appeals Tribunal reject the cross-appeal in its entirety.

Considerations

Amicus Curiae Brief

16. The former chairperson of the 44th Staff Council of the United Nations Staff Union applied on 28 February 2014 to file a friend-of-the-court brief. On 27 March 2014, the Secretary-General objected on the ground that the applicant has no legal or other expertise that would assist the Appeals Tribunal in its deliberations.

17. Article 17 of the Rules of Procedure of the Appeals Tribunal establishes that “[t]he President or the panel hearing the case may grant the application if it considers that the filing of the brief would assist the Appeals Tribunal in its deliberations. The decision will be communicated to the applicant and the parties by the Registrar.”

18. As stated in *Masri*,³

... the application will only be granted if the proposed brief would assist the Appeals Tribunal in its deliberations.

The purpose of a friend-of-the-court brief will generally be to address matters other than the law. The Appeals Tribunal is composed of experienced, professional Judges who are able to ensure that proper deliberations are held concerning the general principles of law that are applicable in the case with the benefit of the parties' submissions, the UNDT Judgment and the judicial work of the Tribunal itself, without the need for additional contributions from friends-of-the-court.

If the issues in a case raise very specific or particular questions of law which are not generally within the expertise of counsel or the Judges, an application to file a friend-of-the-court brief may be granted. ...

19. In the present case, the applicant, who is a former Chairperson of the Staff Council of the Organization's Staff Union and who, it is noted, has no legal background, offers his assistance with respect to matters involving the facts, evidence and law of the case, mainly in relation to the alleged retaliation said to have tainted the relationship between the Administration and the staff member.

20. With due respect to the view contained in the application, this kind of assistance would be no more than the expression of the opinion of a private person related to a party about how the issues involved in a lawsuit should be decided by the Court. This cannot be considered to be the real meaning and utility of a friend-of-the-court submission.

21. Therefore, the Tribunal considered that the application would not assist it in its task.

Appeal and Cross-Appeal

22. Turning to the merits of the case, it must be pointed out that the UNDT's conclusion that Mr. Terragnolo was unlawfully denied his participation in the examination related to his application under the Young Professionals Programme is uncontested. Only the compensation awarded by the UNDT is before this Court, challenged by both parties.

³ *Masri v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-098, paras. 25 - 27.

T H U N A

28. The Tribunal concurs with the UNDT that the circumstances of the case do not necessarily lead to attribute the unlawful exclusion of the claimant to his activity as a staff representative, where no supporting evidence was provided. Mr. Terragnolo has failed to establish any error in the UNDT's conclusions about this issue, which could warrant a reversal.

29. Mere allegations, speculations, justified or unjustified fears or suspicions of persecution, or the sole circumstance of serving as a Staff Union representative who experiences an administrative illegality do not allow for a conclusion of retaliation.

30. Finally, the Appeals Tribunal finds no merit in Mr. Terragnolo's claim for reimbursement of the cost of his studies. Certainly, he did not suffer the loss of his investment into his own education as a professional, a benefit that he acquired irrespective of any examinations or competing processes that he could have attended or actually attended. The illegality that took place with respect to his application does not deprive him of that benefit. Moreover, the cost of the investment was not determined by the Administration.

31.

Original and Authoritative Version: English

Dated this 27th day of June 2014 in Vienna, Austria.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Faherty

(Signed)

Judge Weinberg de Roca

Entered in the Register on 29th day of August 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar