

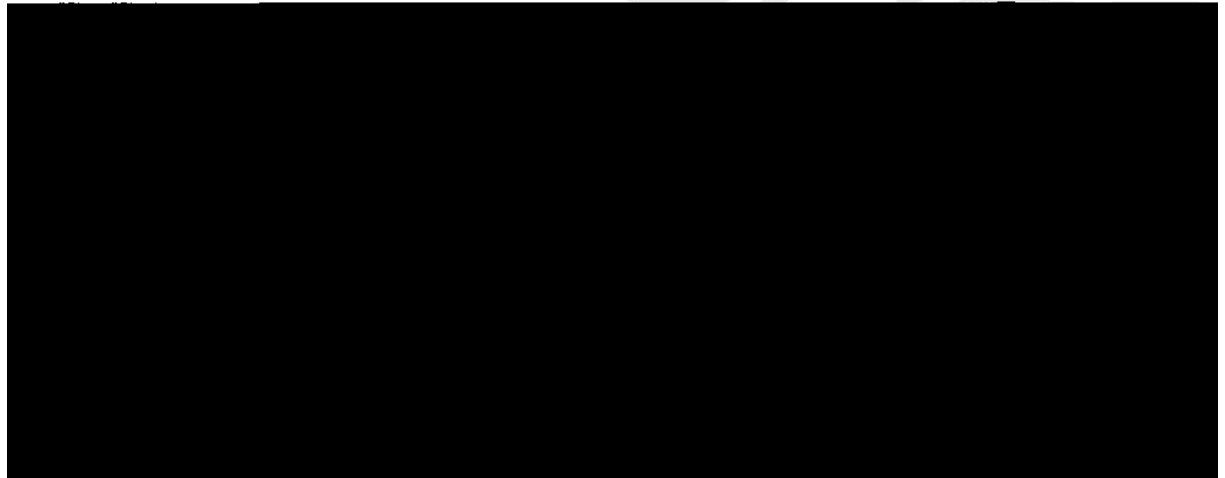


UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D 'APPEL DES NATIONS UNIES

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Judgment No. 2014-UNAT-453

Rahman

A large, faded background image of a tropical beach scene. In the foreground, there are several palm trees. In the middle ground, a boat is visible on the water. The background shows a hazy horizon with a sun or moon setting or rising. The entire image is rendered in a light, monochromatic tone.

Counsel for Mr. Rahman: George Irving

Counsel for Secretary-General: Rupa Mitra/Zarqaa Chohan

JUDGE RICHARD LUSSICK , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it two appeals against Judgment No. UNDT/2013/097/Corr. 1, rendered by the United Nations

... On 26 June 2009, the Applicant filed a request for protection against retaliation with the Ethics Office, to which he felt he had been subjected by the Secretary-General [of UNCTAD] having reported misconduct.

... On 30 June 2009, the Secretary-General of UNCTAD informed all staff that an OIOS investigation had been opened

... On 20 October 2010, the Senior Review Group requested the Secretary-General of UNCTAD to re-advertise the vacancy announcement for the post of Director (D-2), Division on Africa, in order to attract new female candidates. The post was re-advertised from 3 November 2010 to 3 December 2010 in Inspira under vacancy announcement 10-ECO-UN CONF ON TRADE AND DEVELOPMENT-17024-R-GENEVA.

... On 20 November 2010, on the recommendation of the Ethics Office, the Applicant was temporarily assigned to the United Nations Office for Partnerships in New York.

... Following the re-advertisement of the vacancy announcement for the post on 3 November 2010, the Applicant applied for the post of Director (D-2), Division on Africa. During that second round of candidates who had already been interviewed were not reinterviewed, and three male candidates, including the Applicant, were again recommended by the selection panel, since no qualified female candidates had been identified. On 7 February 2011, their names were submitted to the Senior Review Group, which, on 25 February 2011, asked UNCTAD once again to reopen the vacancy for an additional 30 days, on the grounds that no female candidate had been recommended.

... On 8 March 2011, the Director of the Ethics Office wrote to the Applicant to inform him that, further to the OIOS report, the Director considered the Applicant to have been the victim of retaliatory action by two staff members of the Office of the Secretary-General of UNCTAD and that he had recommended to the Under-Secretary-General of the Department of Management that disciplinary actions should be instituted against them. In addition, the Director of the Ethics Office informed the Applicant that he had recommended that the Secretary-General of the United Nations should transfer the Applicant laterally to another United Nations agency with the same grade and level of responsibility.

... After a third round of interviews had been held according to the same procedures as before, the Applicant and four other candidates were again recommended by the selection panel: the Applicant having met four competencies fully and the fifth partially, while the other four had met the five competencies fully.

... On 24 July 2011, the list of five recommended candidates was sent to the Senior Review Group by the Secretary-General of UNCTAD. The Senior Review Group recommended four candidates to the Secretary-General, excluding the Applicant because he did not meet all the requisite competencies. The Chef de Cabinet of the Secretary-General selected one of the candidates recommended by the Senior Review Group and, on 19 September 2011, the Applicant was notified in writing that he had not been selected for the post.

... On 14 November 2011, the Applicant requested a management evaluation of the decision not to select him for the post in question.

... On 12 December 2011, the Secretary-General for Management informed the Applicant that he would be returning to UNCTAD in Geneva as of 1 June 2012 once certain conditions had been met.

... On 23 December 2011, the Counsel for the Applicant wrote to the Director of the Ethics Office to remind her that recommendations had not yet been implemented by the Secretary-General [of the United Nations].

... On 4 January 2012, the Applicant requested a management evaluation of the decision to return him to UNCTAD as of 1 June 2012 and the refusal to implement the recommendations of the Ethics Office.

... On 17 January 2012, the Management Evaluation Unit rejected the Applicant's request with regard to the decision not to select him for the post of Director (D-2), Division on Africa.

... By letter of 24 January 2012, the Director of the Ethics Office replied to the letter from the Counsel for the Applicant of 23 December 2011, informing him that, given the difficulties of effecting the lateral transfer of the Applicant, her Office would comply with the conditions for his return to UNCTAD decided by the Secretary-General [of the United Nations].

... On 25 January 2012, the Counsel for the Applicant wrote to the Director of the Ethics Office in particular to express disposition to the Applicant's return to UNCTAD.

... On 16 April 2012, the Applicant filed an application, which was registered on 20 April 2012 by the Geneva Registry of the [Dispute] Tribunal under number UNDT/GVA/2012/034, in which he contested the decision not to select him for the post of Director (D-2), Division on Africa.

... On 30 April 2012, in response to a request for a management evaluation of the decision given on 12 December 2011, the Applicant was informed that the Secretary-General had decided, inter alia:

- a. To confirm the closure of his complaint of harassment and retaliation;
- b. To appoint him, as of 1 June 2012 and until his retirement date, to a D-1 level post as Principal Officer in United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLS) in New York.

3. In Judgment No. UNDT/2013/097/Corr.th, the Dispute Tribunal consolidated Mr. Rahman's two applications in respect of his non-selection for the D-2 post and his reassignment. The UNDT found no evidence to indicate that the conditions under which the interview with Mr. Rahman took place hampered the interview panel in its evaluation of his competencies, or cast doubt on the integrity of the interview panel members. The



that the UNDT's granting of a remedy beyond which had been sought by Mr. Rahman was at odds with the Appeals Tribunal's emphasis ~~sub~~*sub* ~~at~~*petita* rule.

8.

12. Mr. Rahman further submits that the token fines imposed and the undue delay in doing so do not lend themselves to a notion of ~~finality~~ ~~credibility~~; nor do they provide an effective and proportionate remedy to the problem of retaliation.

13. Mr. Rahman requests that the Appeals ~~Tribunal~~ ~~submit~~ reject the Secretary-General's legal arguments as, in his view, they appear specifically ~~highlight~~ ~~of~~ his real motive ~~to~~ cover up the "gross mishandling" of his case.

*Case No. 2013-540*

Mr. Rahman's Appeal

14. Mr. Rahman submits that the Dispute ~~Tribunal~~ ~~failed~~ to exercise ~~proper~~ appropriate jurisdiction by refusing to review or decide on a number of issues on the grounds of receivability. In addition, it overlooked important elements of evidence ~~and~~ ~~in~~ law in its evaluation of the evidence, leading to a manifestly unreasonable decision. ~~Judgment~~ ~~under~~ appeal failed to respect both the letter and the spirit of ~~the~~ Organization's ethics ~~policy~~ ~~as~~ well as the findings and recommendations of the Ethics ~~Office~~ ~~issued~~ pursuant to that policy.

15. Regarding his non-selection for the ~~Post~~ ~~Post~~, Mr. Rahman submits that the Dispute Tribunal failed to draw ~~appropriate~~ ~~conclusions~~ from the OIOS reports and the circumstances surrounding the selection ~~process~~ ~~in~~ fact in failing to review or account for the numerous procedural irregularities ~~in~~ ~~the~~ selection process (initial exclusion of his candidacy, irregular conduct of the interview ~~in~~ ~~the~~ absence of signatures of the interview panel members on the final version of that ~~panel~~ ~~report~~ and existence of undue influence by Messrs. C. and G.

16. Concerning his reassignment, Mr. Rahman ~~submits~~ ~~that~~ the Dispute Tribunal erred in fact when it referred to a transfer to a post in New York. He had made it clear to the UNDT that there was no actual transfer because there ~~was~~ ~~not~~ a post in New York, an official job description, a place in the office structure, nor a physical office.

17. Mr. Rahman maintains that the Dispute ~~Tribunal~~ ~~mis~~interpreted his request as wishing to be informed of the nature of the ~~disciplinary~~ ~~measures~~ imposed on Messrs. C. and G., when such information was already widely known ~~which~~ ~~did~~ nothing to lead credibility to the policy of accountability.





**THE U**



without giving any reasons, that the UNDT ~~exercised~~ its jurisdiction ~~in~~ requiring these certifications. This argument cannot be sustained, as the Dispute Tribunal may order production of documents or ~~submit~~ evidence as it deems necessary.

29. There is no merit in Mr. Rahman's argument that the UNDT failed to draw appropriate conclusions from the OIOS ~~report~~ and the circumstances surrounding the selection process. T in j 9.48 0 52eiw8

*The legality of the decision to transfer Mr. Rahman back to UNCTAD in Geneva*

33. Mr. Rahman's appeal is grounded on the following arguments:

- (a) The Dispute Tribunal committed a mistake of fact in misreading his original request for management evaluation and severely i s o 4 . 8

35. We find that there was no error in the UNDT conclusion that the dispute was limited to the administrative decisions already referred to and as set forth in the request for management evaluation and repeated inapplicable application to the UNDT and that it was therefore not seized with the issue of compensation for damages resulting from retaliatory acts against him.

36. The UNDT also correctly held that the decision of 12 December 2011 to reassign Mr. Rahman to UNCTAD in Geneva had been abrogated by the decision of 30 April 2012 placing him in New York as of 1 June 2012 his retirement date, rendering his application non-receivable insofar as it concerned the decision of 12 December 2011.

37. The UNDT found that “the Secretary-General carried out the recommendation of the Ethics Office as well as possible and protected Applicant from retaliation on the part of the UNCTAD staff members, which was the objective to be met. While it is unfortunate that as of the date of the present decision, the Applicant will not yet have his job description in hand, that is no basis for contesting the decision of the Secretary-General,

40. We also find that the UNDT correctly applied the law in not granting Mr. Rahman an order for costs against the Secretary-General.

41. In summary, we find that Mr. Rahman has failed to establish that the Dispute Tribunal committed any error of law. The appeal has no merit.

Case No. 2013-524

42. The Dispute Tribunal ordered the Secretary-General to inform Mr. Rahman as soon as possible regarding the nature of the disciplinary measures imposed on the persons responsible for retaliation. In making this order, the UNDT acknowledged that there was no legal provision requiring the Secretary-General to disclose disciplinary measures imposed on staff members. However, the UNDT held that professional conduct involving retaliation against another staff member was an exception whereby justice to the victim entitled the victim to know whether the disciplinary measure was commensurate in gravity with the misconduct. The UNDT found that in the present case, the Secretary-General did not do everything in his power to alleviate the harmful effects that the retaliation may have had on Mr. Rahman, and there was no reason why Mr. Rahman could not be informed.

43. The Secretary-General appeals this decision on the grounds that the subject matter was not included either in the management evaluation decision or in Mr. Rahman's application to the UNDT and there is no legal requirement that a staff member must be informed of disciplinary measures on other staff members.

44. We find that the UNDT's decision was *ultra vires*. We agree that the victim of retaliation is entitled to know whether justice is done to the perpetrators of the retaliation, and that it is fair and reasonable to require the Secretary-General to provide this information, regardless of whether or not there is any legal provision that effect. The UNDT held, it is the Secretary-General's responsibility to dispense justice for the victim.

45. In the present case, Mr. Rahman advises that he already knew what disciplinary proceedings had been taken and that this was general knowledge throughout UNCTAD. Mr. Rahman claims that the UNDT had misunderstood his case, and that what he was actually requesting was accountability and transparency. Nonetheless, the Secretary-General has not shown that the UNDT erred in law or in fact.

Judgment

46. In Case No. 2013-524 (the Secretary-General appeal), the appeal is dismissed and the Judgment of the UNDT is affirmed.

47. In Case No. 2013-540 (Mr. Rahman appeal), the appeal is dismissed and the Judgment of the UNDT is affirmed.



Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of June 2014~~14~~ Vienna, Austria.

*(Signed)*

Judge Lussick, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Adinyira

Entered in the Register on 29<sup>th</sup>~~29~~ day of August 2014 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar