
**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

**Asariotis
(Respondent/Applicant)**

v.

**Secretary-General of the United Nations
(Appellant/Respondent)**

JUDGMENT

Before:	Judge Mary Faherty, Presiding Judge Rosalyn Chapman Judge Deborah Thomas-Felix
Case No:	2014-564
Date:	26 February 2015
Registrar:	Weicheng Lin

JUDGE MARY FAHERTY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General against Judgment No. UNDT/2013/144, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 19 November 2013 in the case of *Asariotis v. Secretary-General of the United Nations* (Impugned Judgment). On 20 January 2014, the Secretary-General filed his appeal from the Impugned Judgment and, after this Tribunal granted two extensions of time, on 24 July 2014 Ms. Regina Asariotis filed her answer.¹

Facts and Procedure

2. The following facts are uncontested:²

... The Applicant entered the service of [the United Nations Conference on Trade and Development (UNCTAD)] at the P-4 level on 9 December 2001. On 1 September 2005, she was promoted to the P-5 level and became Chief of the Policy and Legislation Section of the Trade Logistics Branch, Division for Services Infrastructure for Development and Trade Efficiency (renamed the Division on Technology and Logistics (DTL) in early 2008).

... Vacancy announcement 07-ECO-UNCTAD-416118-R-GENEVA (G) for the D-1 post of Head of the Trade Logistics Branch (hereafter “the disputed post”) was published on 26 November 2007. The Applicant applied for the post as a 30-day candidate on 24 December 2007.

... Upon the retirement of the Head of the Trade Logistics Branch on 31 January 2008, the Chief of the Transport Section, Mr. Rubiato, was appointed Officer-in-Charge of the Branch on 1 February 2008, pending the selection of a new Head.

... On 10 March 2008, the Applicant was interviewed for the disputed post. Four other internal 30-day candidates were also interviewed, including Mr. Rubiato.

... On 15 June 2009, a new Director, DTL, was appointed.

... On 15 July 2009, the Director, DTL, advised the Applicant that the disputed post would be re-advertised. However, this decision was subsequently reversed.

... On 28 July 2009, a temporary vacancy announcement for a period of three to six months was issued for the disputed post, and the Applicant applied on 6 August 2009. She was interviewed, but the candidate who had served as

¹ See Order No. 177 (2014) of 31 March 2014, and Order No. 189 (2014) of 24 June 2014.

² Impugned Judgment, paras. 3-23.

Officer-in-Charge of the Branch since 1 February 2008 was selected. The Applicant was notified of this on 19 January 2010.

... From February to April 2010, there was a second round of interviews for the disputed post as advertised in November 2007 [and the Applicant was interviewed again]. On 3 November 2010, the interview panel's recommendations were presented to the Geneva Central Review Board.

... By memorandum dated 7 April 2011, the Geneva Central Review Board informed the Under-Secretary-General for Management that [...] it was not in a position to endorse the recommendations made by UNCTAD, as the selection procedure had been flawed. It recommended that the post be re-advertised.

... By e-mail of 3 May 2011, the Director, DTL, informed the Applicant that [...] vacancy announcement No. 07-ECO-UNCTAD-416118-R-GENEVA (G), issued on 26 November 2007 in Galaxy, would be cancelled and reissued in the new online recruitment platform, Inspira, and she invited the Applicant to apply.^[3]

... On 26 August 2011, the post of Head of the Trade Logistics Branch was readvertised under job opening No. 11-ECO-UNCTAD SIDTED TLB-204438-R-GENEVA. [...] The Applicant applied for the post in October 2011. She was deemed eligible along with 23 other individuals, none of whom was on the roster of candidates preapproved for similar functions. The Applicant was selected for an interview, along with six other candidates.

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interest, contrary to the provisions of Chapter 9.2 of the *Instructional Manual for the Hiring Manager on the Staff Selection System (Inspira)* (Manual), and such irregularity vitiated the entirety of the process.⁶ The Dispute Tribunal rescinded the appointment decision and set the alternative compensation in favour of Ms. Asariotis at USD 8,000 for material damages. It also awarded her USD 6,000 in moral damages.

Submissions

The Secretary-General's Appeal

5. The UNDT erred on a question of law in finding that staff members have fundamental rights relating to the composition of an interview panel. Insofar as the source of such alleged “right” is the Manual, the Manual lacks the legal authority to create any new rights for staff members or impose any obligations on the Organization beyond what is already established in the Staff Regulations and Rules, and administrative issuances. Furthermore, the UNDT erred in concluding that the objective of this statement in the Manual was to allow candidates to raise potential conflicts of interest between panel members and candidates with the Administration prior to interview, and thus allow for the replacement of one or more panel members.

6. The UNDT further erred in finding that had Ms. Asariotis been informed of who comprised the panel, she would have requested a change in the composition of the panel and the Administration would have granted such a request. Such finding was speculative and Ms. Asariotis did not claim before the UNDT that she would have requested a change in the composition of the panel or that she had been deprived of an opportunity to do so. Furthermore, mere participation of an interview panel member in previous selection processes cannot

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attention, prior to the interview, to potential conflicts of interest between panel members and candidates, and thus to allow for the replacement of one or more panel members.

... It is clear that by depriving the Applicant of this information, the Administration prevented her from contesting the choice of panel members. This was therefore an infringement on her rights, notwithstanding the absence of a rule requiring the Administration to comply with such a request for the replacement of panel members.⁷

17. The Secretary-General contends that in so concluding the Dispute Tribunal erred in

19. Ms. Asariotis submits that this provision puts her contention beyond doubt, and she maintains that the final sentence of Section 2.6 implies that manuals shall be considered authoritative unless in any way inconsistent with the administrative instruction on staff selection. She notes that the Manual in issue here refers its readers to ST/AI/2010/3 under the heading “Reference Documents” and she points to Chapter 1.9 where it states: “The following documents provide additional information: ST/AI/2010/3 of 21 April 2010 on the staff selection system”.

20. While we note Ms. Asariotis’ arguments, as set out in her submission, we agree with the Secretary-General that the Dispute Tribunal erred in law in determining that Ms. Asariotis had an entitlement to be apprised of the composition of the interview panel, pursuant to the provisions of Section 9.5 of the Manual.

21. We hold that this particular Manual, being an “*Instruction Manual for the Hiring Manager on the Staff Selection system*” (emphasis added.61e454.8(thclSte legnualthclSt3.5(e)drc(h)-3.4(g

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same post, the names of the panel members were never formally communicated to her, as such depriving her of the possibility to contest the composition of the panel.¹³

29. Thus, in the particular circumstances of this case, we find no error of law or fact on the part of the UNDT in reaching the above conclusion. Nor do we find any legal or factual error on the part of the UNDT when it concluded that had Ms. Asariotis been informed of the composition of the panel in advance of her interview, she would have requested the replacement of the panel members.

30. The UNDT correctly held that the failures of the Administration in this regard vitiated the entirety of the process. Accordingly, for the reasons set out above, the UNDT's determination that the selection decision be rescinded is upheld.

Did the Dispute Tribunal err by awarding material and moral damages?

31. We are not persuaded by the arguments put forward by the Secretary-General on the issue of the material damages awarded to Ms. Asariotis. Had the interview process been properly regulated, the UNDT assessed Ms. Asariotis' chances of being selected for the post as one in seven, as she was one of seven candidates short-listed for interview. In arriving at pecuniary damages of USD 8,000, the UNDT had regard to the difference in salary and the career prospects Ms. Asariotis would have had if selected. In our view, the approach adopted by the UNDT was reasonable and we reject the argument that the UNDT's conclusion was speculative or inconsistent with the facts, as found by the UNDT.

32. Similarly, we are not persuaded by the arguments put forward by way of legal challenge to the award of moral damages. At paragraph 59 of its Judgment, the UNDT noted Ms. Asariotis' description of the "anxiety that the irregular process ha[d] caused her since May 2012" and that "her quality of life ha[d] been severely affected, as her attending physician ha[d] noted." Accordingly, the UNDT was "convinced" on the evidence before it that her distress was real. In all the circumstances, we are satisfied that the UNDT had ample evidence upon which to conclude, in accordance with our jurisprudence in *Asariotis*,¹⁴ that Ms. Asariotis' circumstances warranted an award of moral damages. The award and the quantum thereof were entirely reasonable.

¹³ *Id.*, para. 45.

¹⁴ *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-309.

33. For all of the reasons set out above, the appeal is dismissed.

Judgment

34. The appeal is dismissed and the Judgment

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