



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2016-UNAT-652



Nikolarakis
(Respondent/Applicant)

v.

Secretary-General of the United Nations

JUDGE SOPHIA ADINYIRA ,

The hiring manager acted on the basis of a flawed understanding of the role of competency-based interviews under ST/AI/20 10/3 when he fettered his discretion by declining to recommend [Mr. Nikolarakis] for promotion based solely on the result of his competency-based interview. Further, the hiring manager ignored relevant material when he did not take into account [Mr. Nikolarakis'] performance assessment reports, which would have provided a fuller picture of his ability to demonstrate the competency of Teamwork in his day-to-day work. [Mr. Nikolarakis] was therefore denied the right to full and fair consideration of his candidacy for promotion.

14. The UNDT awarded Mr. Nikolarakis moral damages in the amount of USD 3,000 with interest, as compensation for the procedural error and unfairness to which he was subjected.

Submissions

The Secretary-General's Appeal

15. First, the UNDT erred on a question of fact in finding that the Administration failed to take into account Mr. Nikolarakis' performance records prior to submitting the list of recommended candidates to the CRC. The evidence showed that the records of all candidates, including their performance reports, were fully reviewed before the list of proposed candidates was sent to the CRC.

16.

18. Lastly, the UNDT erred in awarding Mr. Nikolarakis moral damages. Even if the Appeals Tribunal were to find that he was denied

24. The Secretary-General is essentially arguing that only a candidate's "overall rating" in an e-PAS may be considered within a selection process. This amounts to asking recruiters "willfully to turn a blind eye to important evidence" by ignoring the other parts of the performance reports. This is inconsistent with previous case law of the Appeals Tribunal.

25. The UNDT's findings do not create uncertainty or unfairness in selection processes as they relate only to the case at hand and the Administration's failure to give Mr. Nikolarakis full and fair consideration.

26. The award of moral damages was based on the oral evidence provided by Mr. Nikolarakis and meets the test laid down in *Asariotis*² and the revised Statutes of the UNDT and the Appeals Tribunal. However, Mr. Nikolarakis contests the application of such amendments given that the application was filed before the amendments took effect. He also respectfully invites the Appeals Tribunal to defer to the opinion of the UNDT in exercising the discretion to award damages.

Considerations

Did the UNDT err in substituting its own judgment for that of the Administration regarding how the selection process should have been conducted?

27. The Secretary-General submits that the UNDT erred on a question of law in substituting its own judgment for that of the Administration regarding how the selection process should have been conducted.

28. We find much weight in this submission as our jurisprudence is clear that in matters of staff selection, the Secretary-General has broad discretion³. We have clarified that this discretion is not unfettered and is subject to judicial review.⁴ We have clarified further in *Ljungdell*:⁵

Under Article 101(1) of the Charter of the United Nations and Staff Regulations 1.2(c) and 4.1, the Secretary-General has broad discretion in matters of staff selection. The

² *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-309, para. 36.

³ *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-506, para. 48, citing, *inter alia*, *Simmons v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-425.

⁴ *Ibid.*, para 49.

⁵ *Ljungdell v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-265, para. 30.

jurisprudence of this Tribunal has clarified that, in reviewing such decisions, it is the role of the UNDT or the Appeals Tribunal to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration.

29. In

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Dated this 30th day of June 2016 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Simón

Entered in the Register on this 24th day of August 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar