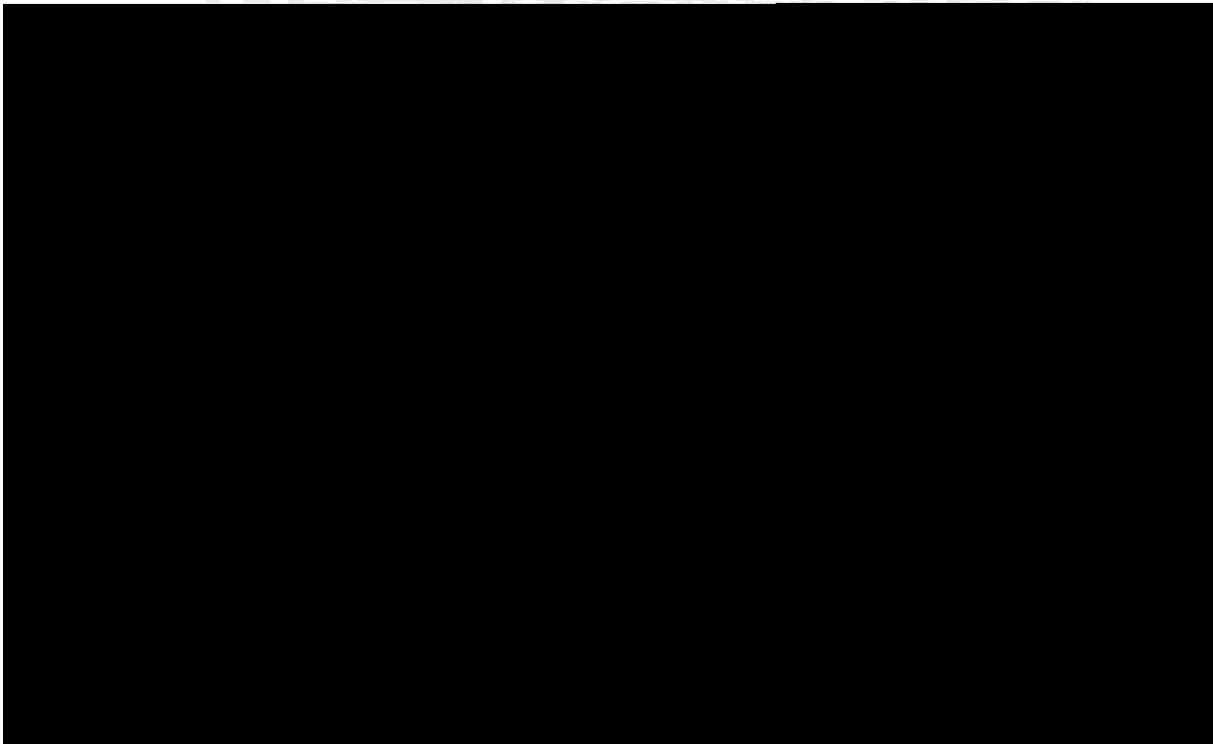


Judgment No. 2017-UNAT-714



JUDGE DEBORAH THOMAS -FELIX , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2016/067, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 2 June 2016, in the case of *Tsoneva v. Secretary-General of the United Nations*. The Secretary-General filed his appeal on

Senior Contracts Officer to the Regional Bureau for Asia and the Pacific and, in March 2014, she was temporarily assigned as Senior Legal Officer to the Staff Council.

... Consequently, DHRM did not recommend the Applicant for Position 2 and recommended another internal candidate.

... DHRM's recomm-1.4c.257(anao)62.9(od)]Tncom57.waspp ...

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no exceptional circumstances within the meaning of Article 2(5) of the Appeals Tribunal Statute existed warranting the introduction of new evidence and thus denied her motion while ordering the redaction of references to the documents in her answer form and their removal from her answer.

Submissions

The Secretary-General's Appeal

5. The Secretary-General submits that the UNDT erred on a question of law and exceeded its competence by finding that the amended version of Article 10(5)(b) of the UNDT Statute, requiring harm to be supported by evidence for an award of damages, was not applicable to the present case because Ms. Tsoneva had filed her application with the UNDT before the amendment entered into force. The UNDT's holding contradicts the Appeals Tribunal's jurisprudence, especially in *Jaber et al.*² and *Maiga*.³ In these cases, the Appeals Tribunal vacated or refused awards of compensation based on the amended versions of the UNDT and Appeals Tribunal Statutes even though the applications had been filed before the amendment entered into effect. This case law is also fully consistent with the General Assembly's position vis-à-vis the Tribunals' authority, which is clearly restricted to the power vested in them by their respective Statutes.

6. He further argues that the UNDT erred in law by awarding compensation for moral damages without the required evidence of harm. Such an award contravenes the requirements set forth in Article 10(5)(b) of the UNDT Statute as well as the established jurisprudence.

7. The Secretary-General therefore respectfully requests that the Appeals Tribunal vacate the award of damages for moral harm ordered by the UNDT.

Ms. Tsoneva's Answer

8. Ms. Tsoneva submits that the UNDT did not err in law when it declined to apply the amended version of the UNDT Statute since its application would have violated the principle of non-retroactivity. The jurisprudence cited by the Secretary-General does not apply to the case at

² *Jaber et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-634, paras. 13 and 29-31.

³

hand. Instead, there is “solid jurisprudence confirming the UNDT[’s] power to determine [on] a case by case basis the appropriate remedy [including for neglect and emotional stress] after [an] assessment of the nature of the evidence

Judgment

13. The appeal is granted and the award of damages for moral harm ordered by Judgment No. UNDT/2016/067 is vacated.

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