



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/022/  
UNAT/1641

Judgment No.: UNDT/2013/005

Date: 17 January 2013

Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

ZEID

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

JUDGMENT

---

Counsel for Applicant:  
Duke Danquah, OSLA

Counsel for Respondent:  
Alan Gutman, ALS/OHRM, UN Secretariat



However, the Dispute Tribunal found a fact that the “inordinate delay [in the promotion process] and failure to provide [Ms. Kamal with] a timely response to her enquiries, caused her much anxiety and distress” (see para. 28 of *Kamal* UNDT/2011/034). It upheld Ms. Kamal’s claim that she suffered from stress “caused by the delay and by the effect of the process on her reputation with her colleagues”.

4. In *Kamal* 2012-UNAT-204, the Appeals Tribunal vacated *Kamal* UNDT/2011/034, finding that the case did not concern an appealab

*Pre-hearing proceedings*

7. On 14 September 2011, the Dispute Tribunal issued Order No. 215

## Findings of fact

12. In April and September 2004, respectively, two vacancy announcements were issued for the post of Senior Interpreter (Arabic) at the P-5 level for the Interpretation Section, Department for General Assembly and Conference Management (“DGACM”). The Applicant was not among those recommended. These vacancy announcements were cancelled in April 2005 when it was established, following complaints by two staff members, including the Applicant, that the evaluation criteria were not consistent with ST/AI/2002/4 (Staff selection system).

13. On 14 April 2005, a single vacancy announcement for the two posts was re-issued. As a result of the selection process that followed, the Applicant and Ms. Kamal were recommended for appointment. The recommendations were forwarded to the CRB in October 2005.

14. On 17 October 2005, a group of interpreters presented a written complaint to the President of the Staff Union, expressing their concern about the procedures and recommendations and asking for a suspension of the process and the setting up of a joint staff-management working group.

15. On 20 October 2005, the Staff Council adopted Resolution No. 66, proposing the establishment of a joint staff-management working group to review the matter and determine whether the existing rules had been complied with, and to submit a report with findings and recommendations to the Assistant Secretary-General, Office of Human Resource Management (“OHRM”).

16. On 24 October 2005, the Applicant sent

a person who was recommended to the CRE had a direct and legitimate interest in raising the issue. The Applicant received no reply to these communications.

17.

24. On 25 May 2006, the Applicant submitted a request for administrative review

32. In 27 June 2007, having learned that the Respondent was proceeding with the cancellation of the previous vacancy announcements, the Applicant submitted to the JAB a request for suspension of action and sent a letter to the Administration complaining about the said decision. The Applicant submits that his request for suspension was denied due to the fact that the administrative decision had already been implemented.

33. On 12 July 2007—after a delay of seven months following the communication of the Assistant Secretary-General for DGAM dated 5 December 2006—a third vacancy announcement was advertised. The Applicant applied. As a result of this third selection exercise, he and Ms. Kamal were once more recommended for selection.

34. On 16 November 2007, a new JAB panel was established to consider the merits of the Applicant's appeals of 11 September 2006 and 15 February 2007. The JAB panel began consideration of the appeals in December 2007.

35. On 26 December 2007, the Applicant was informed of his selection. In January 2008, it was decided to promote the Applicant to the P-5 level retroactively, effective 14 April 2005 (the date of the posting of the second vacancy announcement), with all related payments backdated to that date, which was six months earlier than October 2005, when the recommendation for the Applicant's promotion had been set for consideration to the CRB during the second selection exercise.

36. The JAB panel that was established in November 2007 considered the Applicant's two appeals of 11 September 2006 and 15 February 2007 jointly and adopted a single report on 31 January 2008.

37. By letter dated 17 April 2008, received by the Applicant on 28 April 2008, he was informed that his appeals to the JAB were unsuccessful and that the Secretary-General had decided not to take any further action with regard to his claims.



38. On 22 September 2008, the Applicant filed an application with the former Administrative Tribunal complaining about the circumstances surrounding his

42. The Tribunal finds that the cancellation of the second selection exercise and its subsequent recommencement were, in the circumstances, appropriate and lawful. This aspect of the claim is dismissed.

*Excessive delays*

43. The Applicant submits that he should be compensated for the harm done as a result of the inordinate delay in reaching finality with respect to his selection. The Tribunal finds that the Administration's failures or deliberate and repeated omissions to answer the Applicant's queries and to keep him informed of progress are an integral part of the Applicant's case as they are intertwined with the delays in the selection and promotion process.

44. The Appeals Tribunal found in *Kamal* 2012-UNAT-204 that there was no contestable administrative decision. It is not clear from the brief Judgment of the Appeals Tribunal whether the issue of there being an appealable administrative decision was raised by the Respondent or the Appeals Tribunal of its own motion. If it was the former, then it should be noted that this was never a part of the Respondent's case in *Kamal* before the Dispute Tribunal. Moreover, it was only raised in the present case following the Judgment of the Appeals Tribunal in *Kamal*.

45. In any event, the issue of a mutually-agreeable retroactive promotion is quite distinct from the issues of inordinate delay and the resultant harm in the present case. Whilst it is correct, as the Appeals Tribunal stated in *Kamal* 2012-UNAT-204, that there is no deadline for completing a promotion exercise, the Tribunal's examination of the issues does not end there. There is a duty on the Administration to respond to staff member's reasonable requests for information, assistance, and action, and to inform staff members of administrative decisions affecting them in a timely manner (*Sina* 2010-UNAT-094, *Obdeijn* 2012-UNAT-201).

46. With respect to the completion of the selection process, there were several delays that were attributable to the Organization and within its control and power to



his enquiries. The Administration's failure were not in any way even remotely consonant with its duty as an international organization towards a member of its staff. The Applicant's enquiries were neither acknowledged nor addressed. Having heard and seen the Applicant give evidence, the Tribunal finds that the Administration's repeated failure and omission to address his complaints—in other words, its failure to act—was an administrative decision that affected his rights and caused him distress.

49. The Tribunal finds that such failures and omissions to act were deliberate or, if they were not, they amounted to negligence in the performance of the Administration's duty to act within a reasonable timeframe. The Tribunal notes that administrative decisions that are subject to review by the Tribunal are not always presented as affirmative decisions. They are sometimes in the form of a failure to act, which may be characterized as an implied administrative decision (see *Tabari* 2010-UNAT-030, *Nwuke* 2010-UNAT-099, *Rahimi* UNDT/2011/089). The several reasonable and legitimate enquiries by the Applicant fell on stony ground. The Respondent's repeated failures constituted a breach of duty on the part of the Administration and were tantamount to maladministration and abuse of power.

50. The Tribunal finds that among the factors that distinguish the present case from that of *Kamal* is the extent of persistent enquiries and requests for information and action sent by the Applicant, all of which were ignored without any explanation. Specifically, the Applicant's enquiries included communications sent to various senior officials in October 2005, January 2006, February 2006, March 2006, April 2006, May 2006, and December 2006. The extent of the Applicant's persistent requests and enquiries highlights the legitimacy of his frustration with the process and demonstrates the gravity of the Administration's failure to act.

51. The Tribunal finds that the managers concerned failed to give proper weight to the fact that as one of the two candidates recommended for promotion, the Applicant had a legitimate interest and concern for a timely resolution. This was

particularly the case in a department that was the subject of several complaints of irregular promotion practices aside from this promotion exercise. It was common knowledge in DGACM that the Applicant and Ms. Kamal were recommended, thus a cloud hung over them as to whether they were also the beneficiaries of irregular practices.

52. Although the Tribunal takes note of Ms. Bhatia's testimony that this selection process was among the most difficult exercises in DGACM due to the significant number of claims and counter-claims brought forward by various participants and at various stages, the Tribunal finds that the delays in this case were unreasonably excessive and could have been minimised.

53. The Applicant testified at the hearing that, morally and professionally, he was hurt and had an overwhelming feeling of insult and humiliation. The continued uncertainty and delays resulted in an uncomfortable working environment that had so affected him that he even considered leaving the Organization. The Tribunal does not consider fanciful his testimony that he felt damaged emotionally and professionally by what he considered to be unfair treatment. The Applicant acknowledged that

*Compensation for delays and related harm*

55. In a number of cases, the Appeals Tribunal granted or upheld the Dispute Tribunal's awards compensating staff members for the excessive delays that they were subjected to by the Administration.

56. In *Asaad* 2010-UNAT-021, the Appeals Tribunal found that the appellant proved that the decision to terminate his probationary appointment was unlawful. The Appeals Tribunal also found that there was a delay of ~~6~~ years in dealing with the appellant's case, which justified compen







64. The Tribunal notes that the Applicant was promoted with retroactive effect from April 2005. The Respondent submitted the reply that, by this retroactive reinstatement, “not only has the Applicant been made whole, both financially and professionally, but he has been placed in a better financial position than if he had been promoted on the basis of the second selection exercise”, presumably because he would have been appointed in or after October 2005 had the second selection exercise been completed normally (see para 44 of the reply). The Tribunal notes that the retroactive reinstatement of the Applicant was at no point in time suggested by the Respondent to be compensation for harm associated with the delays in concluding the exercise or in addressing his enquiries. The Respondent refused to acknowledge liability and stated in his reply that there were no undue delays in this case and any delays “were unavoidable and necessary”. Therefore, the Tribunal is bound to interpret the retroactive payment as compensation for economic loss suffered, as a gesture of goodwill on the part of the Respondent. It was not intended by the Respondent—or accepted or understood as such by the Applicant—to compensate the Applicant for the harm to his morale, professional reputation, and emotional well-being, as established in the course of the present proceedings. Although the fact of his retroactive promotion may have provided some vindication of the stance he took, it did not extinguish the distress which he had experienced. In giving evidence the Applicant was still distressed by the manner in which he had been treated by a failure to recognize his legitimate expectation of a timely decision.

65. As the fact-finding tribunal, this Tribunal is best placed to arrive at a conclusion as to whether the Applicant suffered emotional harm and, if he did, to quantify its extent (*Abbassi* 2011-UNAT-110, *Messinger* 2011-UNAT-123, *Cieniewicz* 2012-UNAT-232, *Gehr* 2012-UNAT-234, *Muratore* 2012-UNAT-245). The Tribunal finds that, applying the principles enunciated by the Appeals Tribunal, the Applicant in the present case is entitled to compensation. The delays in this case were not inconsequential and the Applicant has testified regarding the emotional



or negligent and, in any event, amounted to administration. The resultant harm to the Applicant shall be compensated.

Order

68. The Respondent shall pay to the Applicant the sum of USD10,000. This sum is to be paid within 60 days from the date the Judgment becomes executable, during which period the US Prime Rate applicable at that date shall apply. If the sums are not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

*(Signed)*

Judge Goolam Meeran

Dated this 17<sup>th</sup> day of January 2013

Entered in the Register on this 17<sup>th</sup> day of January 2013

*(Signed)*

Hafida Lahiouel, Registrar, New York