



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2016-UNAT-642



Savadogo
(Appellant)

v.

Registrar
of the International Tribunal



Registrar: Weicheng Lin

Counsel for Mr. Savadogo: Neil Macaulay/Alex Haines

Counsel for Registrar: Philippe Gautier

JUDGE SOPHIA ADINYIRA , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Louis Savadogo against the decision taken by the Registrar of the International Tribunal for the Law of the Sea (Registrar and ITLOS, respectively) on 27 May 2015 in light of the recommendation of the Joint Appeals Board of ITLOS (JAB). Mr. Savadogo appealed on 25 August 2015, and the Registrar answered on 2 November 2015.

Facts and Procedure

2. Mr. Savadogo joined ITLOS as a Legal Officer at the P-4 level in April 2001.

3. In October 2012, ITLOS circulated a vacancy announcement for a newly-created post of Senior Legal Officer/Head of Legal Office at the P-5 level. Mr. Savadogo submitted his application for that post in December 2012, along with 33 other applicants.

4.

Submissions

Mr. Savadogo's Motion and Appeal

15. In his motion for leave to submit four additional documents, Mr. Savadogo

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2016-UNAT-642

Mr. Savadogo did not provide any reason as

Considerations

Preliminary matters - request for oral hearing and request for production of documents

(i) Request for oral hearing

27. Mr. Savadogo requests that the Appeals Tribunal hold an oral hearing, at which he can substantiate his claims of the Registrar's bias and discrimination against him. The Appeals Tribunal denies the request pursuant to Article 8(3) of the Statute of the Appeals Tribunal (Statute).

28. We find that Mr. Savadogo's complaint of bias and discrimination is not receivable as it consists of a series of past issues in respect of which he should have sought redress at the appropriate time. Furthermore, these allegations were not the subject of his request for review of 8 August 2013. We also stress that it neither was the task of the JAB nor is that of the Appeals Tribunal to conduct a fresh investigation into Mr. Savadogo's complaint.⁴

(ii) Motion for submission of additional documentation

29. Mr. Savadogo filed a motion for submission of additional documentation in the form of (i) the report of ITLOS' Conciliation Committee; (ii) the reply of the Registrar before that Committee; (iii) a medical report; and (iv) the job description for the P-4 post of Legal Officer.

30. On the submission by a party of additional documentary evidence, including written testimony, Article 10(1) of our Rules provides:

A party may seek to submit to the Appeals Tribunal, with an appeal or an answer, documentary evidence, including written testimony, in addition to that contained in the written record. In exceptional circumstances and where the Appeals Tribunal determines that the facts are likely to be established with such additional documentary evidence, it may receive the additional evidence from a party. On its own volition, the

31. The Appeals Tribunal denies Mr. Savadogo's request, finding no need for further evidence pursuant to Article 10(1) of our Rules. Secondly, the medical report and the job description for the P-4 post of Legal Officer were documents which Mr. Savadogo could have had prepared or were known to him during his appeal before the JAB and which he should have presented to the JAB. Thirdly, both the report of ITLOS' Conciliation Committee and the reply of the Registrar filed during the conciliation proceedings are "privileged and confidential" documents and should therefore be excluded from proceedings before the Appeals Tribunal pursuant to Article 15 of our Rules.

32. Article 15 of the Rules states:

Exclusion of all documents and statements made during mediation

1. Except in cases concerning enforcement of a settlement agrl.7(forctiols (nc)5.3Sbmp5.-1.732243(es e-1.4(a

35. The Appeals Tribunal is competent to hear and pass judgment on an application filed by a staff member of ITLOS pursuant to the 2010 Agreement between the United Nations and ITLOS extending the competence of the Appeals Tribunal to ITLOS.

36. By the structure of the internal justice system under the Staff Regulations of ITLOS, employees go through two internal phases, i.e., the Conciliation Committee and the JAB, before appealing to the Appeals Tribunal⁵

37. Our Statute and Rules are applicable, in the exercise of the Appeals Tribunal's jurisdiction, to appeals from an ITLOS staff member directed against a decision taken by an executive authority of ITLOS.⁶

38. This appeal is directed against a decision of the Registrar dated 27 May 2015, accepting the recommendation of the JAB in its report of 11 May 2015. The JAB report concerned Mr. Savadogo's appeal against the Registrar's decision of 15 July 2013 informing him that he had not been selected for the P-5 post of Senior Legal Officer/ Head of Legal Office.

39. This Tribunal recalls that under the Staff Regulations of ITLOS, the jurisdiction of the JAB can only be invoked if a contested decision has been previously submitted for administrative review followed by proceedings before the ITLOS Conciliation Committee.⁷ An attempt at reconciliation by the ITLOS Conciliation Committee in the present case failed and Mr. Savadogo appealed to the JAB.

40. In reviewing administrative decisions regarding appointments and promotions, the factors to be considered are: (1) whether the procedure as laid down in the Staff Regulations and Rules was followed; (2) whether the staff member was given fair and adequate consideration,⁸ and (3) whether the applicable Regulations and Rules were applied in a fair,

transparent and non-discriminatory manner. The Tribunal's role is not to substitute its decision for that of the Administration.⁹

41. We are satisfied that the JAB was guided by these principles when it reviewed the selection process.

Selection process

42. The selection of candidates for vacant posts at ITLOS is governed by ITLOS' Staff Regulations 4.2, 4.3 and 4.4 and ITLOS/AI/06/11. We note that the JAB was guided by these Regulations and Rules and the Administrative Instruction.

43. The selection process consists of a written test and two interviews as provided for under section V of ITLOS/AI/06/11.

(i) The written test

44. Paragraph 12, Section V, of ITLOS/AI/06/11 provides:

Before the interview, the candidates take written tests which are prepared and evaluated by the supervisor(s), the Registrar and the Deputy Registrar. Where appropriate, the Registrar, in consultation with the President, may request an independent external expert to prepare and/or evaluate the tests. The names of these external experts shall not be communicated to candidates. Nor shall the names of the candidates be communicated to the external experts.

45. The JAB held that the anonymous written tests had been conducted in accordance with the requirement set out in paragraph 12 of the Administrative Instruction. It did not find any fault in the Registrar's and the Deputy Registrar's involvement in the evaluation of the written tests, which had also been submitted for evaluation to two independent external experts.

46. Mr. Savadogo, however, complains that his right to an objective procedure was violated in several respects. He submits that the Registrar should have withdrawn from the selection process as ITLOS/AI/06/11 assigns a number of tasks to the Registrar,

⁹ See *Ljungdell v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-265, para. 30, quoting *Schook v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-216 and cites therein.

THE UNITED NATIONS A

51. We also note that all of these allegations of bias or what Mr. Savadogo termed as “evidence of bias and discrimination” were a series of issues in respect of which administrative review should have been sought by Mr. Savadogo at the appropriate time. They were also not the subject of Mr. Savadogo’s request for review of 8 August 2013. Accordingly, the JAB rightly held they were not receivable.

52. However, it is reasonable to expect the selection process to be a fair one during which there is no room for extraneous considerations such as bias, prejudice and discrimination. Thus, for the purpose of determining if the impugned administrative decisions were improperly motivated, it was within the competence of the JAB to examine allegations of bias and discrimination in so far as they may have relevance to the assessment of the selection process.

53. We find that the JAB did consider these allegations and concluded that it could not find the Registrar had acted with hostility or bias towards Mr. Savadogo. For instance, the JAB reviewed the exchange of notes and memoranda between Mr. Savadogo and the Registrar over several years. The JAB noted that while the correspondence demonstrated numerous differences of opinion between them, it did not show hostility from either side. With regards to the distribution of work, the JAB correctly held the Registrar had discretion as to the organization and distribution among staff members in a non-discriminatory manner. The JAB, moreover, held that, while it appeared that some tasks had been preferably assigned to Mr. Savadogo’s colleague, it also appeared that Mr. Savadogo had been assigned with other tasks particularly relating to legal research.

54. We affirm the JAB finding. The evidence Mr. Savadogo put forward does not support any appearance or inference of bias or discrimination. Consequently, he has failed to discharge the burden of proof in support of his allegation that the Registrar’s decision was influenced by bias or discrimination.

55. In *Rolland*,¹¹ the Appeals Tribunal held that:

The Dispute Tribunal possesses jurisdiction to rescind a selection or promotion process, but may do so only under extremely rare circumstances. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent,

¹¹ *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, paras. 20-21.

proper procedures have been followed, and all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection/promotion.

All candidates before an interview panel have the right to full and fair consideration. A candidate challenging the denial of promotion must prove through clear and convincing evidence that procedure was violated, the members of the panel exhibited bias, irrelevant material was considered or relevant material ignored. There may be other grounds as well. It would depend on the facts of each individual case.

56. It is obvious that Mr. Savadogo was not satisfied with the findings by the JAB, but he merely repeated on appeal his arguments that did not succeed at the JAB. The Appeals Tribunal stressed in *Ilic* that:¹²

When the Appeals Tribunal hears an appeal, it does not simply re-try the case. The function of the Appeals Tribunal is to determine if the Dispute Tribunal has made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Statute. The appellant has the burden of satisfying the Appeals Tribunal that the judgment rendered by the Dispute Tribunal is defective. It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective. It is not sufficient for an appellant to state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the Dispute Tribunal.

In *Al-Moued*, the Appeals Tribunal reiterated further:¹³

It is apparent that [the Appellant] is not aware of his onus as an appellant. He is not correct in thinking that a person bringing an appeal does not have any onus of establishing that the Tribunal below erred in its decision and that an appeal is an opportunity to present the same arguments for decision by a higher Tribunal. That is a totally misconceived notion of the nature of an appeal.

[T]he consistent jurisprudence of the Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and is not an opportunity for a dissatisfied party to reargue his or her case: "A party cannot merely repeat on appeal arguments that did not succeed in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by the Appeals Tribunal.

Accordingly, we reject Mr. Savadogo's complaints.

¹² *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

¹³ *Al-Moued v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-458, paras. 18 and 23, quoting *Dannan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-340, para. 14 (and cites therein).

62. The Registrar responds that the violation noted by the JAB did not lead to any inequality among the candidates as all of them had been treated in the same manner and had only one interview, and that there is no justification for inferring from the limited procedural violation that the selection process as a whole was unfair. In his view, the JAB was justified in recommending the payment of compensation for the procedural violation.

63. We note that, although the JAB considered the breach of the interview procedure to be a violation of a fundamental nature, it held that: ¹⁶

On the other hand, mitigating factors have to be taken into account. First, at least one interview was held giving [Mr. Savadogo] the opportunity to present himself beyond the written test. Second and more important, all candidates participating in the selection procedure were subjected equally to the same flaw in the procedures, i.e. each of them had one interview only, and the composition of the interview panel was the same in all cases. Insofar,18..c3.1913 -0-c -.eparti.19eo

Judgment

67. The appeal is dismissed. The Registrar's decision to adopt the recommendation of the JAB to compensate Mr. Savadogo in the amount of USD 3,000 is affirmed.

Original and Authoritative Version: English

Dated this 24th day of March 2016 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Lussick

Entered in the Register on this 13th day of May 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar