



Judgment No. 2018-UNAT-886



Counsel for Ms. Rehman: Self-represented

Counsel for Secretary-General: Amy Wood

**JUDGE SABINE KNIERIM, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/038, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 14 March 2018, in the case of Rehman v. Secretary-General of the United Nations. The Secretary-General filed the appeal on 14 May 2018, and Ms. Rafia Rehman filed her answer on 31 May 2018.

**Facts and Procedure**

2. Ms. Rehman is a former employee of the United Nations International Children's Emergency Fund (UNICEF), Pakistan Country office (PCO) in the Education Section, where she worked as a Programme Assistant at the GS-6 level until her contract was not renewed on 31 December 2015 due to an alleged lack of funds.

3. Ms. Rehman applied for the position of Programme Assistant, GS-5 in the Polio Section, UNICEF, PCO, Peshawar, in October 2015. On 23 November 2015, she was notified that she had been shortlisted to undertake a written test, which was to be administered on 25 November 2015. On 5 January 2016, Ms. Rehman was invited to a competency-based interview, which was held on 7 January 2016.

4. After the interview, Ms. Rehman did not receive any further communication from UNICEF, PCO. Consequently, on 22 January 2016, she wrote to the then Chief of Human Resources (CHR) of UNICEF, PCO, inquiring about the status of the recruitment process. The CHR replied to her on the same day that the recruitment process was still underway and that she could not give Ms. Rehman a "specific update" at that moment.

5. On 25 January 2016, Ms. Rehman wrote again to the CHR indicating that she hoped to be notified as soon as the selection process was completed. On 28 January 2016, Ms. Rehman once again wrote to the CHR inquiring about the status

7. During the following days, Ms. Rehman did not receive any communication pertaining to her non-selection to the post of Programme Assistant, GS-5, Polio Section, UNICEF, PCO, Peshawar, from either the CHR or the UNICEF PCO.

8. On 3 February 2016, Ms. Rehman requested management evaluation of the decision not to select her for the position of Programme Assistant, GS-5, Polio Section, UNICEF, PCO. She also sought suspension of the recruitment process pending the consideration of her management evaluation request.

9. On 5 February 2016, Ms. Rehman received a response to her request for suspension of action from UNICEF management rejecting it on the grounds that the selected candidate had accepted the offer and the non-selection decision did not appear *prima facie* to be unlawful.

10. On 29 February 2016, Ms. Rehman received the full outcome of her management evaluation request in writing, upholding the decision not to select her for the post of Programme Assistant, GS-5, Polio Section, UNICEF, PCO, Peshawar.

11. On 27 March 2017, Ms. Rehman filed an application with the UNDT contesting the decision not to select her for the post of Programme Assistant, GS-5, fixed-term, Polio Section, Peshawar, Pakistan, and not to inform her of not being selected.

12. The UNDT rendered its Judgment on 14 March 2018. It rejected the application in so far as it concerned the contested non-selection decision, finding that Ms. Rehman had failed to provide any proof of bias or irregularities in the recruitment process or to substantiate that her candidature had not been given full and fair consideration. The UNDT considered, however, that the Administration had failed to notify Ms. Rehman of her non-selection. While this procedural irregularity did not affect the non-selection decision warranting its rescission, the UNDT found, based on Ms. Rehman's testimony, that she had "suffered stress and anxiety because of that procedural violation, warranting the award of USD 500 as nominal damages".<sup>1</sup>

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<sup>1</sup> Impugned Judgment, para. 42.

## **Submissions**

### **The Secretary-General's Appeal**

13. The Secretary-General submits that the UNDT erred on a question of law and fact by finding that there was undue delay in notifying Ms. Rehman of her non-selection. The then applicable UNICEF Executive Directive CF/EXD/2013-004 (Staff selection) did not establish a specific deadline for notifying unsuccessful candidates of their non-selection. Absent a specific timeframe, the Appeals Tribunal jurisprudence requires that a candidate be notified "within a reasonable amount of time". In the present case, Ms. Rehman was promptly and accurately informed that the selection process was ongoing when she requested updates on the status of the selection process. She was notified of her non-selection on 5 February 2016, merely five days after the selection process was completed on 28 January 2016 when the selected candidate informed UNICEF of his acceptance of the offer of appointment. As Ms. Rehman was therefore duly informed of her non-selection within a reasonable time, her due process rights were fully respected and the UNDT erred in finding that there was a procedural irregularity.

14. The Secretary-General further argues that the UNDT exceeded its competence and erred in law by awarding moral damages to Ms. Rehman as there was no breach of her legal rights. In addition, the UNDT erred by awarding compensation absent evidence of harm, other than Ms. Rehman's testimony, as required by Article 10(5)(b) of the UNDT Statute and the established Appeals Tribunal jurisprudence.

15. In light of the foregoing, the Secretary-General requests that the Appeals Tribunal vacate the UNDT's decision to award nominal damages in the amount of USD 500 to Ms. Rehman. He clarifies, however, that he does not challenge the UNDT's finding that Ms. Rehman's candidature was given full and fair consideration and the rejection of her application in this regard, asking the Appeals Tribunal to leave these aspects of the Judgment undisturbed.

### **Ms. Rehman's Answer**

16. Ms. Rehman submits that the appeal is not receivable *ratione temporis* as it was filed on 14 May 2018 and thus not within the 60 calendar-day time limit prescribed in Article 7(1)(c) of the Appeals Tribunal Statute which started to run upon receipt of the UNDT Judgment on 14 March 2018. Moreover, the Secretary-General has failed to ask for a suspension or waiver of

time limit. In light of the Appeals Tribunal's strict approach to enforcing time limits, the appeal should be rejected as time-barred.

17. Ms. Rehman further asserts that the UNDT did not err in finding that the undue delay constituted a procedural irregularity which caused her mental stress warranting the award of moral damages to "uphold the high standard of justice". In particular, the contested decision was part of a "series of events" of lack of accountability and bias towards her which are the subject matter of parallel proceedings before the UNDT.

18. Consequently, Ms. Rehman requests that the Appeals Tribunal reject the appeal, affirm the UNDT Judgment and direct the Secretary-General to immediately pay the award of USD 500 plus interest as ordered by the Dispute Tribunal.

### **Considerations**

Receivability of the appeal

19. The appeal is receivable. Time limits for filing an appeal are governed by Article 7(1)(c) of the Appeals Tribunal Statute and Articles 7(1)(a) and 29(a) and (b) of the Appeals Tribunal Rules of Procedure which provide:

Article 7 of the Appeals Tribunal Statute

1. An appeal shall be receivable if:

(...)

(c) The appeal is filed within 60 calendar days of the receipt of the judgement of the Dispute Tribunal or, where the Appeals Tribunal has decided to waive or suspend that deadline in accordance with paragraph 3 of the present article, within the period specified by the Appeals Tribunal.

Article 7 of the Appeals Tribunal Rules of Procedure

Time limits for filing appeals

1. Appeals instituting proceedings shall be submitted to the Appeals Tribunal through the Registrar within:

(a) 60 calendar days of the receipt by a party appealing a judgement of the Dispute Tribunal[.]

Article 29 of the Appeals Tribunal Rules of Procedure

Calculation of time limits

The time limits prescribed in the rules of procedure:

- (a) Refer to calendar days, but shall not include the day of the event from which the period runs;
- (b) Shall include the next working day of the Registry when the last day of the period is not a working day[.]

20. The 60-day time limit started to run when the parties received the UNDT Judgment on 14 March 2018. The last day of the 60-day period was 13 May 2018 which was a Sunday and thus not a working day which is why the time limit included the next working day pursuant to Article 29(b) of the Appeals Tribunal Statute. The filing of the appeal on Monday, 14 May 2018, was therefore timely.

Procedural irregularity

21. We find that the UNDT erred in law in finding that the Administration failed to properly notify Ms. Rehman of her non-selection as Programme Assistant and that this resulted in an undue delay constituting a procedural irregularity.

22. Section 8.6 of the then applicable UNICEF Executive Directive CF/EXD/2013-004 (Staff selection) reads as follows:

Communication of selection decision

8.6 All interviewed candidates shall be informed by the [Human Resources] unit of the selection decision and, where applicable, their placement in a talent group.

23. The main purpose of imposing on the Administration the obligation to inform all interviewed candidates of a selection decision is to enable the unsuccessful staff members to pursue their procedural rights, including requesting management evaluation and suspension of the recruitment process. As Ms. Rehman requested both management evaluation and suspension of action on 3 February 2016, only six days after the completion of the selection process on 28 January 2016, it is evident that she knew about her non-selection and was not prevented, by uncertainty, to timely challenge this decision.

24. Given these circumstances, there is no failure on the part of the Administration to officially inform Ms. Rehman of her non-selection. Further, on 5 February 2016, Ms. Rehman received a response to her request for suspension of action from UNICEF management rejecting it on the grounds that the selected candidate had accepted the offer and that the decision not to select her did not appear *prima facie* to be unlawful. This letter informed Ms. Rehman in unequivocal terms that she had not been selected for the position in question.

25. The 5 February 2016 letter was not untimely. Although UNICEF Executive Directive CF/EXD/2013-004 only requires interviewed candidates to be informed of the selection decision and does not prescribe a specific time limit, the Administration has a duty to inform unsuccessful candidates within a reasonable amount of time.<sup>2</sup> As the selected candidate had indicated that he would take on his duties on 15 February 2016, the 5 February 2016 information would have well enabled Ms. Rehman to pursue her procedural rights had she not already done this before.

Moral damages

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**Judgment**

27. The appeal is upheld and Judgment No. UNDT/2018/038 is hereby vacated insofar as it awards to Ms. Rehman “USD 500 for the damage suffered as a result of the failure by UNICEF PCO to officially notify her of