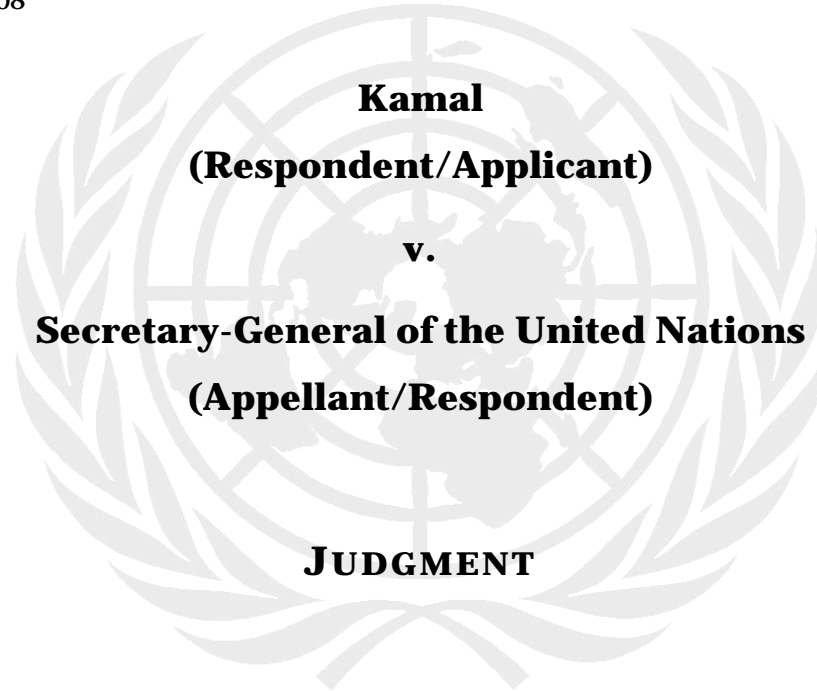




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2011-208



**Kamal
(Respondent/Applicant)**

v.

**Secretary-General of the United Nations
(Appellant/Respondent)**

JUDGMENT

Before:	Judge Luis María Simón, Presiding Judge Jean Courtial Judge Mary Faherty
Judgment No.:	2012-UNAT-204
Date:	16 March 2012
Registrar:	Weicheng Lin

Counsel for Respondent/Applicant: Duke Danquah

Counsel for Appellant/Respondent: Wambui Mwangi

JUDGE LUIS MARÍA SIMÓN, Presiding.

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by the Secretary-General of the United Nations on 4 April 2011 against Judgment No. UNDT/2011/034 issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 18 February 2011. Ms. Kamal filed her answer on 20 May 2011.
2. There is no administrative decision contested in this case. Both parties have accepted the decision to promote Ms. Kamal. Ms. Kamal has not identified any illegality that could lead to an award of compensation, as ordered by the UNDT.
3. The delay in completing the selection process cannot be considered a valid ground for compensation, since the circumstances of the case do not show any negligence or violation of specific rules by the Administration.
4. The moral satisfaction arising from the outcome of the proceeding and the retroactive payment of salary prevented the staff member from suffering special damage from the opportunity of the appointment, which was not supported by evidence.
5. Hence, the Appeals Tribunal allows the Secretary-General's appeal and vacates the UNDT Judgment.

Facts and Procedure

6. Ms. Kamal joined the Organization on 14 February 1988 as an Interpreter Trainee (P-1 level) with the Arabic Section of the Interpretation Service, Department of Conference Services, which subsequently became the Department for General Assembly and Conference Management (DGACM). After several promotions, she was appointed to the P-4 level in 1995.
7. 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, DGACM. These vacancy announcements were cancelled in April 2005 when it was established, following complaints by two staff members, that the evaluation criteria were not consistent with ST/AI/2002/4 (Staff selection system).

8. On 14 April 2005, a single vacancy announcement for the two posts was re-issued. Ms. Kamal and another candidate were recommended for appointment and the recommendations were forwarded to the Central Review Body (CRB) in October 2005.

9. On 17 October 2005, a group of interpreters sent 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 task force. On 20 October 2005, the Staff Council adopted a resolution proposing the establishment of a joint staff-management task force to review the matter and determine whether the existing rules had been complied with in respect of this case, and to submit a report with findings and recommendations to the Assistant Secretary-General, Office of Human Resources Management (OHRM). On 3 November 2005, DGACM adopted new promotion criteria for all P-5 interpreters in DGACM.

10. On 6 December 2005, OHRM decided to establish a working group to review the selection process and to interview interested staff members, including Ms. Kamal.

11. On 21 April 2006, Ms. Kamal wrote to the Under-Secretary-General (USG) for Management and the USG for DGACM requesting information on the results of the working group and any action that was to be taken regarding the selection process.

12. The working group submitted its report in May 2006. It made several recommendations including the dissemination of evaluation criteria prior to any interview process and the maintenance of these criteria throughout the entire process.

13. On 2 June 2006, three staff members submitted a complaint regarding the composition of the working group and requested that a newly constituted panel look at the selection process anew. OHRM rejected this request.

14. On 6 July 2006, Ms. Kamal wrote to the USG for DGACM expressing her concern about the continuing delay in processing her promotion.

15. In November 2006, a joint decision was taken by OHRM and DGACM to cancel the two vacancy announcement of 2005 and to issue a new vacancy announcement making it clear that all candidates would be assessed on the basis of the final version of the selection criteria established by DGACM.

16. On 12 July 2007, a third vacancy announcement was advertised. As result of the third selection exercise, Ms. Kamal was recommended for selection. On 26 December 2007, it was decided to promote Ms. Kamal to the P-5 level retroactive to the date of the posting of the vacancy on 14 April 2005.

17. On 14 November 2008, Ms. Kamal filed an application with the former Administrative Tribunal complaining about the circumstances surrounding her promotion to the P-5 level. The case was subsequently transferred to the UNDT following the abolition of the former Administrative Tribunal on 31 December 2009.

18. The UNDT issued Judgment No. UNDT/2011/034 on 18 February 2011. It dismissed Ms. Kamal's claim that the Administration's decision to suspend the selection process and to withdraw the recommendation to the CRB to promote Ms. Kamal was illegal. It also dismissed Ms. Kamal's claim that the decision to cancel the vacancy announcement for a second time was unjustified and harmed her. The UNDT however found 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". It further 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". The UNDT awarded USD 10,000 to compensate Ms. Kamal for the emotional distress and anxiety suffered.

Submissions

Secretary-General's Appeal

19. The Secretary-General submits that the UNDT erred in fact in concluding that the Administration failed to provide Ms. Kamal with a timely response to the inquiries she made on 21 April 2006 and 6 July 2006 regarding the report of the working group and the delay in the selection process. The Secretary-General emphasizes that Ms. Kamal was not the only staff member in the Arabic Interpretation Section to complain about the selection process for the P-5 Senior Interpreter position. In order to treat all candidates fairly, the Administration found it important to ensure that all candidates were apprised of the same information at the same time. It therefore responded to the candidates collectively, including Ms. Kamal, as opposed to individually.

20. The Secretary-General submits that the UNDT erred in fact by concluding that the delay in the promotion process was inordinate, unreasonable and unconscionable. Recounting the facts, the Secretary-General submits that any delays resulted from “extraneous factors over which the Administration had no control”; and that “the Administration acted in a manner that was both responsible and responsive to the legitimate concerns of the staff members”.

21. The Secretary-General submits that the UNDT erred in fact and law and exceeded its competence in awarding compensation for moral damages under the circumstances of the case and requests that the Appeals Tribunal reverse the award of compensation.

Ms. Kamal's Answer

22. Ms. Kamal responds that the UNDT Judgment was sound and fair in all respects. She requests that the Appeals Tribunal uphold the UNDT Judgment.

Considerations

23. Basically, the compensation awarded is due to what the UNDT considered to be an inordinate, unreasonable and unconscionable delay in the promotion process which resulted in Ms. Kamal's ultimate appointment to a P-5 Senior Interpreter position.

24. The Appeals Tribunal agrees with the Secretary-General that there are no grounds in the present case to award compensation and vacates the UNDT Judgment for the following reasons.

25. There is no administrative decision contested in this case. Both parties have accepted the decision to promote Ms. Kamal. Ms. Kamal has not identified any illegality that could lead to an award of compensation.

26. The delay in completing the selection process cannot be considered a valid ground for compensation, since the circumstances of the case do not show any negligence or violation of specific rules by the Administration. To the contrary, those circumstances suggest that during a highly contested selection process, with many claims from different staff members and the intervention by the Staff Union, the Administration was cautious to consider all views and respect the rights of all the persons interested in the selection process and its

outcome. It is true that the proceedings took more time than usual, but it is also true that there was no deadline to be respected and that Ms. Kamal cannot identify a right to have been selected earlier. And despite this, when appointed in December 2007, she received retroactive payment of salaries, beyond the moment when she was entitled to, as her promotion was deemed effective 14 April 2005.

27. The fact of Ms. Kamal's appointment was an acknowledgement of Ms. Kamal's ability to fill the position after a fair and competitive process, leaving no doubts of the way she obtained it. In light of the moral satisfaction arising from the outcome of the selection exercise, Ms. Kamal could not have suffered special damage from the opportunity of the appointment, which was not supported by evidence.

Judgment

28. The appeal is allowed and the UNDT Judgment vacated.

Original and Authoritative Version: English

Dated this 16th day of March 2012 in New York, United States.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Courtial

(Signed)

Judge Faherty

Entered in the Register on this 7th day of May 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar