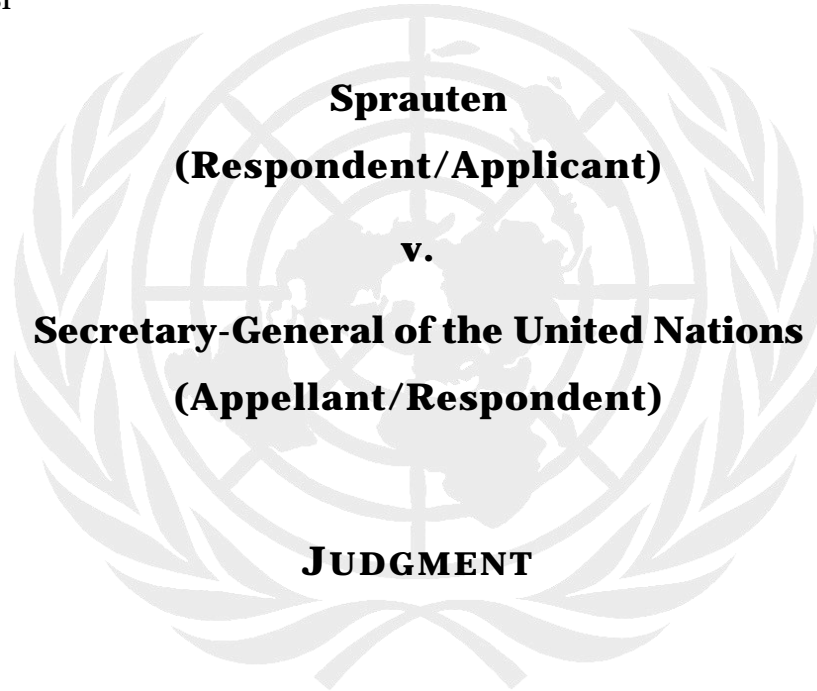




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2011-231



**Sprauten  
(Respondent/Applicant)**

**v.**

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

**JUDGMENT**

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**Before:** Judge Sophia Adinyira, Presiding  
Judge Kamaljit Singh Garewal  
Judge Mary Faherty

**Judgment No.:** 2012-UNAT-219

**Date:** 16 March 2012

**Registrar:** Weicheng Lin

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**Counsel for Respondent/Applicant:** George G. Irving

**Counsel for Appellant/Respondent:** Amy Wood

**JUDGE SOPHIA ADINYIRA**, 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 18 July 2011 against Judgment No. UNDT/2011/094 issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) on 1 June 2011 in the case of *Sprauten v. Secretary-General of the United Nations*. Mr. Rolf Sprauten filed his answer on 21 September 2011.

2. The Appeals Tribunal affirmed in *Lutta* that there is no set way for a trial court to determine damages for loss of chance of promotion and that each case must turn on its facts.<sup>1</sup>

3. The Secretary-General's main contentions are that the award of compensation in the amount of six months' net base salary for the irregularities in the selection process is inconsistent with the Appeals Tribunal's judgment in *Kasyanov*<sup>2</sup>; and that the UNDT erred in law and exceeded its competence by failing to sufficiently state the reasons underlying this award.

4. On the facts, there are substantial differences between the present case and *Kasyanov*. Unlike Mr. Kasyanov, Mr. Sprauten's selection would not have been a mere lateral move but a move from a temporary to a fixed-term appointment. His situation was aggravated by the fact that the post he was occupying was abolished. Mr. Sprauten's loss of opportunity was more severe as it resulted in the loss of job security and therefore warrants a different quantum of compensation.

5. The Appeals Tribunal also rejects the Secretary-General's contention that the UNDT erred in law and exceeded its competence by failing to sufficiently state the reasons underlying its award of six months' net base salary. The UNDT thoroughly examined the governing principles in awarding damages and followed the jurisprudence of the Appeals Tribunal in *Lutta*. The Appeals Tribunal gives deference to the UNDT in the exercise of its discretion and will not disturb the quantum of damages.

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<sup>1</sup> *Lutta v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-117.

<sup>2</sup> *Kasyanov v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-076.

6. The appeal is dismissed.

### Facts and Procedure

7. Mr. Sprauten served with the United Nations Office for Project Services (UNOPS) in 1988 at the L-4 level until his separation in 2009. In January 2006, it was announced that as a result of the decision to relocate the UNOPS headquarters from New York to Copenhagen, Mr. Sprauten's post at the L-4 level as a Portfolio Manager in the Mine Action Unit, North American Office, was to be abolished by 31 March 2007. In December 2006, Mr. Sprauten received a notice of the abolition of his post and, shortly thereafter, a new post of Portfolio Manager (Mine Action) at the P-4 level was advertised at the new UNOPS headquarters in Copenhagen.

8. On 17 January 2007, Mr. Sprauten applied for the P-4 post of Portfolio Manager, which would have been a lateral move and resulted in his conversion to a 100-series contract. Four candidates were initially shortlisted; three were interviewed, including Mr. Sprauten.

9. On 31 May 2007, Mr. Sprauten was informed that he had not been selected for the post. Mr. Sprauten appealed his non-selection on the grounds that the selection process had been tainted with irregularities.

10. On 6 May 2010, the Dispute Tribunal issued Judgment No. UNDT/2010/087 (Judgment on merits).<sup>3</sup> The UNDT found that the selection process for the post of Portfolio Manager had been flawed resulting in a breach of Mr. Sprauten's right to have his candidacy adequately and properly considered. It made no findings on the question of compensation with respect to the case of Mr. Sprauten's non-selection.

11. In Judgment No. UNDT/2011/094 dated 1 June 2011 (Judgment on compensation), the UNDT awarded Mr. Sprauten compensation in the amount of nine months' net base salary: six months' net base salary in effect in May 2007 as non-pecuniary compensation for the substantial and unwarranted irregularities in the selection process for the P-4 post of

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<sup>3</sup> Judgment No. UNDT/2010/087 disposed of two cases, the first regarding Mr. Sprauten's non-selection for the P-4 position of Portfolio Manager; and the second concerning the UNOPS' withdrawal of an offer of a position in UNOPS/Johannesburg to Mr. Sprauten. The Secretary-General appealed the UNDT Judgment in respect of the latter. In Judgment No. 2011-UNAT-111, the Appeals Tribunal overturned and annulled the UNDT Judgment in respect of the second case.

Portfolio Manager; and three months' net base salary as compensation for the stress that Mr. Sprauten had experienced related to his loss of chance/opportunity.

### Submissions

#### Secretary-General's Appeal

12. The Secretary-General only appeals the Judgment on compensation, not the Judgment on merits. In particular, the Secretary-General appeals the award of six months' net base salary for the irregularities in the selection process. The Secretary-General does not challenge the UNDT's award of three months' net base salary for stress experienced by Mr. Sprauten.

13. The Secretary-General recalls that not every violation of due process rights will necessarily lead to an award of compensation. Rather, any compensation for loss of chance must be warranted and proportionate to the harm suffered as the purpose of compensation is to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations.

14. The Secretary-General submits that when a staff member has lost a chance of being appointed, rather than promoted, to a post at the same level, the anticipated loss is more difficult to assess. The Secretary-General recalls that in *Kasyanov*, the Appeals Tribunal held that Mr. Kasyanov could not be awarded compensation for financial losses that he did not actually incur. The Appeals Tribunal, however, confirmed that a staff member who has not been properly considered for a lateral move has suffered damage for which he was entitled to be compensated and ruled that the award of two months' net base salary was appropriate in his case.

15. The Secretary-General submits that the UNDT erred in law and exceeded its competence by failing to sufficiently set out the reasons underlying its award of six months' net base salary to Mr. Sprauten. The Secretary-General submits that there was no basis for the UNDT to depart from the Appeals Tribunal's jurisprudence in *Kasyanov*, which bears substantially similar facts to the present case. The Secretary-General requests that the Appeals Tribunal, in accordance with its jurisprudence in *Kasyanov*, reduce the UNDT's award of six months' net base salary to two months' net base salary in favour of Mr. Sprauten.

**Mr. Sprauten's Answer**

16. Mr. Sprauten submits that the Secretary-General has failed to articulate valid grounds for reducing the UNDT's monetary award. Mr. Sprauten claims that the Secretary-General's appeal is frivolous and delays the full implementation of the UNDT Judgment.

17. The reliance by the Secretary-General on the reasoning in *Kasyanov* is misplaced since *Kasyanov* dealt with a mere procedural irregularity in a promotion exercise, which did not affect the outcome.

18. Mr. Sprauten requests that, as a result of the Secretary-General's abuse of process, this Tribunal award him interest from 6 May 2010, when the UNDT issued the Judgment on merits, and USD 20,000 in costs.

**Considerations**

19. The Secretary-General only appeals the Judgment on compensation, in particular the award of six months' net base salary for the irregularities in the selection process. The Secretary-General's main contentions are that the amount of compensation awarded by the UNDT is inconsistent with the Appeals Tribunal's judgment in *Kasyanov*; and that the UNDT erred in law and exceeded its competence by failing to sufficiently state the reasons underlying this award.

20. Mr. Sprauten submits that the reliance by the Secretary-General on the reasoning in *Kasyanov* is misplaced since *Kasyanov* dealt with a mere irregularity in a promotion exercise, which did not affect the outcome. Mr. Sprauten seeks damages for the loss of opportunity as the subject P-4 post was fixed-term and continuing in nature and, as from July 2004 until his separation in February 2009, he served on a series of short-term and temporary appointments.

21. The Appeals Tribunal recalls that Mr. Kasyanov, a Russian interpreter at the P-4 level, was wrongly denied a lateral transfer as a 15-day candidate because preference had been given to a 30-day candidate. While the Appeals Tribunal confirmed the Dispute Tribunal's award of compensation for non-pecuniary damages arising from the violation of his rights during the selection process, it reduced the compensation to the amount of two

months' net base salary. The Judgment in *Kasyanov* followed the Appeals Tribunal's holding in *Wu*,<sup>4</sup> which was decided on similar facts.

22. The Appeals Tribunal affirmed in *Lutta* that there is no set way for a trial court to set damages for loss of chance of promotion and that each case must turn on its facts. Having regard to the facts, we find substantial differences between the present case and *Kasyanov*. Had Mr. Kasyanov been selected, it would have been a mere lateral move for him without any change in salary and status. On the other hand, Mr. Sprauten's selection would have been a move from a temporary appointment to a fixed-term appointment. His situation was more aggravated as the post he was occupying was abolished. Accordingly, Mr. Sprauten's loss of opportunity was more severe as it resulted in a loss of job security.

23. Finally, the Appeals Tribunal rejects the Secretary-General's contention that the UNDT erred in law and exceeded its competence by failing to sufficiently state the reasons underlying its award of six months' net base salary. The UNDT thoroughly examined the governing principles in awarding damages and followed the jurisprudence of the Appeals Tribunal in *Lutta*. The Appeals Tribunal gives deference to the UNDT in the exercise of its discretion and will not disturb the quantum of damages.

#### Judgment

24. The appeal is dismissed. The UNDT Judgment is affirmed.

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<sup>4</sup> *Wu v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-042.

Original and Authoritative Version: English

Dated this 16<sup>th</sup> day of March 2012 in New York, United States.

*(Signed)*

Judge Adinyira, Presiding

*(Signed)*

Judge Garewal

*(Signed)*

Judge Faherty

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

*(Signed)*

Weicheng Lin, Registrar