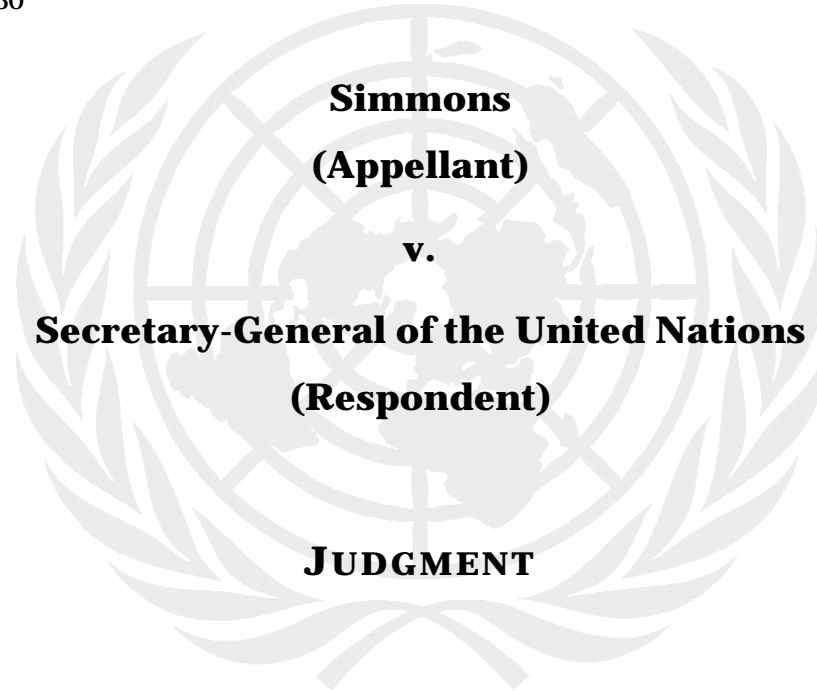




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2011- 230



**Simmons
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Kamaljit Singh Garewal, Presiding Judge Jean Courtial Judge Mary Faherty
Judgment No.:	2012-UNAT-222
Date:	29 June 2012
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Stéphanie Cartier

JUDGE KAMALJIT SINGH GAREWAL, Presiding

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Ms. Sheryl Simmons on 30 June 2011 against Judgment No. UNDT/2011/085 issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 16 May 2011. The Secretary-General filed an answer on 1 September 2011.

2. The Appellant seeks an upward increase of damages for the delay in the completion of her electronic performance appraisal system (e-PAS report) for 2006-2007. In light of the consistent delays in the completion of her earlier e-PAS reports for 2001-2006 and the award of damages to her by the former United Nations Administrative Tribunal (former Administrative Tribunal) for these delays, we increase the quantum of damages from USD 3,000 to compensation equal to three months' net base pay plus interest. Appeal allowed to the extent indicated.

Facts and Procedure

3. Ms. Simmons joined the Organization in 1995 as an Associate Internal Auditor with the Office of Internal Oversight Services (OIOS) in Geneva. She was promoted to the P-3 level as a Programme Budget Officer with the Office of Programme Planning, Budget and Accounts (OPPBA) in New York in 1998.

Delay in completion of 2006-2007 e-PAS report

4. Ms. Simmons' 2006-2007 e-PAS report covered the period from 1 April 2006 to 31 March 2007. On 13 April 2006, Ms. Simmons submitted, and her first reporting officer approved, her individual work plan for 2006-2007. While the e-PAS cycle for 2006-2007 ended on 31 March 2007, the first reporting officer did not sign off the overall evaluation of Ms. Simmons' performance until 5 March 2008.

Non-promotion to the P-4 level

5. The vacancy announcement for an OPPBA post at the P-4 level was circulated on 2 February 2006. 163 candidates, including Ms. Simmons, applied. But for Ms. Simmons, there

were no recent e-PAS reports attached to her application.¹ Nonetheless, she and 22 other candidates were short-listed. 14 candidates including Ms. Simmons were invited to participate in a written test, and 13 of them including Ms. Simmons were called for an interview.

6. On 9 June 2006, Ms. Simmons was informed that she had not been selected for the P-4 post.

Delay during appeal

7. On 9 August 2006, Ms. Simmons filed an appeal with the Joint Appeals Board (JAB) in New York. A JAB panel was not constituted until 23 October 2007. On 13 November 2007, the JAB panel met and resolved to request documents from the Central Review Committee. Due to the retirement of the panel chairperson and the relocation of the panel secretary, a new JAB panel had to be constituted in September 2008. But one of the panel members had to be replaced due to a heavy workload, in December 2008.

8. The new JAB panel met on 15 December 2008 and adopted its report on 28 January 2009. It concluded that the absence of the e-PAS reports had not affected Ms. Simmons' right to full and fair consideration during the selection process, and that the selection process had been conducted regularly. The Secretary-General endorsed the JAB's findings on 13 March 2009.

9. Ms. Simmons appealed. In Judgment No. UNDT/2011/085, the UNDT found, in respect of the selection process for the P-4 post, that Ms. Simmons' candidature was fully and fairly considered and that the unavailability of some of her e-PAS reports had no impact on the decision not to recommend her for the P-4 post. But on the issue of delays in completing Ms. Simmons' e-PAS report for 2006-2007, the UNDT concluded that there was improper delay and that the Administration was responsible for it. Moreover, the UNDT found that the Administration was also responsible for the undue delay in the JAB's constituting a panel to

¹ The delay or incompleteness of Ms. Simmons' five e-PAS reports for the periods 2001-2006 was the subject of two prior cases. On 30 September 2009, the former Administrative Tribunal issued two judgments in favour of Ms. Simmons. In Judgment Nos. 1437 and 1462, the former Administrative Tribunal awarded Ms. Simmons a combined total of 18 months' net base salary: 12 months for violation of her rights relating to the e-PAS reports for 2001-2004 and six months for violation of her rights relating to the incomplete e-PAS report for 2005-2006.

review Ms. Simmons' appeal. The UNDT awarded Ms. Simmons a total sum of USD 3,000 for those procedural violations.

Submissions

Ms. Simmons' Appeal

10. Ms. Simmons submits that the UNDT erred in law in concluding that her candidature for the P-4 post had received full and fair consideration, and that her candidacy was not prejudiced by the delay in the completion of her e-PAS report for 2006-2007. It is her case that her application for the P-4 post was unfairly evaluated, and that the evaluation of her candidacy was prejudiced and the scores were "stage-managed and manipulated".

11. Ms. Simmons also submits that the UNDT erred in awarding her USD 3,000 for violation of her contractual and procedural rights in the completion of her 2006-2007 e-PAS report and in the delay in the constitution of a JAB panel. The compensation is not commensurate with the level of stress and moral suffering to which she had been subjected and inadequate for all the breaches of her rights and moral injury.

12. Ms. Simmons maintains that the UNDT erred in not considering her allegations of retaliation and abuse of authority, and in not ordering the Respondent to pay her damages for introducing new facts and evidence in the closing statement.

Secretary-General's Answer

13. The Secretary-General submits that the UNDT correctly concluded that the missing e-PAS reports did not deprive Ms. Simmons of her right to full and fair consideration for the P-4 post. In the view of the Secretary-General, Ms. Simmons was awarded compensation for the missing e-PAS reports. But the delay in the completion of her 2006-2007 e-PAS report could not have affected the selection process for the P-4 post that was finalized in June 2006, when the said e-PAS cycle was on-going.

14. The Secretary-General also submits that the UNDT correctly concluded that Ms. Simmons did not establish that she had been subject to bias, intimidation or harassment.

15. The Secretary-General further submits that Ms. Simmons has not established any error on the part of the UNDT warranting an increase in the award of compensation. The cases that

she has cited, including her two cases before the former Administrative Tribunal,² in support of her submissions are factually distinguishable from the present case.

Considerations

16. Importance of annual e-PAS reports cannot be under-estimated. These reports are important for the staff member because they inform the staff member of how well or poorly she has performed and how her performance has been judged by her reporting officers. This gives the staff member an opportunity to improve her performance. Needless to say this also helps in the staff member's professional career development. The e-PAS reports also aid interview panels when the staff member is being considered for promotion or selection to a higher post or a fresh post. Moreover, these reports inform the management of the strength and weaknesses of the staff member and help the management to assess the staff member while deploying the staff member or assigning duties to the staff member.

17. In the Appellant's case, her 2006-2007 e-PAS report was not completed within the time required. The reporting period ran from 1 April 2006 to 31 March 2007. The Appellant submitted her work plan on 13 April 2006, and it was approved on the same day by the First Reporting Officer. Her mid-term review was conducted in November 2006 and the reporting cycle ended on 31 March 2007. Thereafter the matter was delayed for nearly a year.

18. The First Reporting Officer signed off the Appellant's 2006-2007 e-PAS report only on 5 March 2008 and the Second Reporting Officer signed it on 8 March 2008. It is obvious that there was considerable delay in completing the Appellant's 2006-2007 e-PAS report.

19. There appears to be a pattern of delays in completing the e-PAS reports as far as it concerns the Appellant. We were surprised to note that on earlier occasions too there had been delays in completing the Appellant's five e-PAS reports for the periods 2001-2006. This breach of her right to a timely completed e-PAS report had been subject to cases filed by her before the former Administrative Tribunal. The Appellant was awarded compensation in the amount of twelve months' net base salary in respect of violation of her rights relating to the e-PAS reports for 2001-2004 and six months' net base salary in respect of the incomplete e-PAS report for 2005-2006.

² Former Administrative Tribunal Judgment Nos. 1437 and 1462 (2009).

20. In the present case the Appellant was awarded USD 3,000 for the delayed 2006-2007 e-PAS report. In the circumstances of the case and particularly in view of the previous violations of her rights, this award was manifestly insufficient. We increase the compensation to three months' net base pay. The compensation shall be computed on the basis of the salary the Appellant was drawing on 31 March 2007, with interest on the award of compensation at the US Prime Rate applicable on 31 March 2007, calculated from 31 March 2007 to the date of payment of the compensation. If payment of the compensation is not made within 60 days, an additional five per cent shall be added to the US Prime Rate in effect on 31 March 2007 from the date of expiry of the 60-day period to the date of payment.

Judgment

21. Appeal is allowed to the extent indicated above.

Original and Authoritative Version: English

Dated this 29th day of June 2012 in Geneva, Switzerland.

(Signed)

Judge Garewal, Presiding

(Signed)

Judge Courtial

(Signed)

Judge Faherty,

Entered in the Register on this 12th day of September 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar