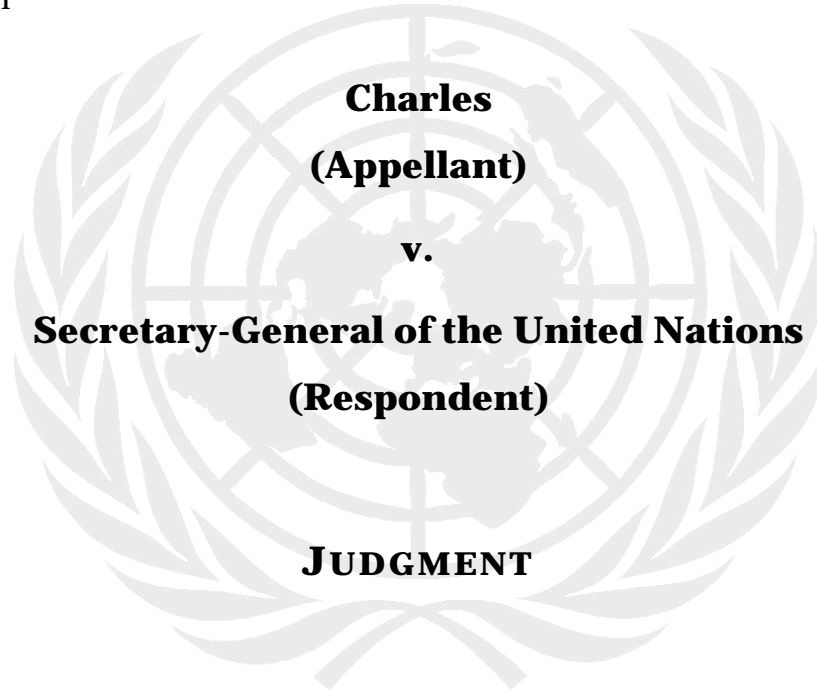




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2011-251



**Charles  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Mary Faherty, Presiding Judge Sophia Adinyira Judge Kamaljit Singh Garewal
Judgment No.:	2012-UNAT-233
Date:	29 June 2012
Registrar:	Weicheng Lin

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Counsel for Appellant: Self-Represented

Counsel for Respondent: Rupa Mitra

**JUDGE MARY FAHERTY**, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Mr. Lestrade Charles on 9 September 2011 against Judgment No. UNDT/2011/139 rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 4 August 2011. The Secretary-General filed his answer on 31 October 2011.

### **Synopsis**

2. Mr. Charles appeals the UNDT Judgment which rejected his request for compensation, while finding that his terms of appointment had been violated by the refusal of the Programme Officer-in-Charge, Sabbatical Leave Programme, Office of Human Resources Management (Programme OiC) to forward his application to the Sabbatical Leave Selection Committee (Committee). The Appeals Tribunal awards Mr. Charles compensation in the amount of one month's net base salary, computed on the basis of his salary on 31 January 2010 with interest at the US Prime rate applicable from 31 January 2010.

### **Facts and Procedure**

3. Mr. Charles is a staff member at the P-3 level in the Procurement Division of the Department of Management of the United Nations. On 15 November 2009, Mr. Charles submitted an application for sabbatical leave for a five-month period.

4. By e-mail dated 16 November 2009, the Assistant of the Programme OiC acknowledged receipt of the application and requested that the Appellant provide the formal endorsement of his application from the Director of the Procurement Division (Director), by 17 November 2009, the deadline for the submission of applications for the 2010 cycle of the Sabbatical Leave Programme.

5. On the same day, the Appellant's immediate supervisor, the Chief, Logistics and Transportation, Procurement Division (Supervisor), sent an email to the Director, advising that pursuant to Section 3 of ST/AI/2000/4 (Sabbatical Leave Programme) in force at the time, sabbatical leave may be approved for a period normally not exceeding four months, subject to the release of the staff member. He stated that since the Appellant's application covered a five-month period, he could not support the application unless funding for immediate recruitment of a replacement could be made available by the Administration.

6. On the same day, the Director forwarded the Supervisor's advice to the Appellant, noting that due to staffing and resource requirements in the Procurement Division, his request for sabbatical leave could not be supported. The Appellant emailed the Supervisor that same day, with a copy to the Director, stating that he understood the position and he requested instead support for one month sabbatical leave up to the end of January 2010.

7. On 17 November 2009, the original deadline, the Supervisor agreed to release Mr. Charles for one month, up to 31 January 2010, a decision which was also approved by the Director. The Supervisor asked the Appellant to contact the Committee to determine whether his original request needed to be amended. The Programme OiC granted the Appellant an extension of time until 22 November 2009 to submit an amended proposal together with the Director's letter of endorsement.

8. On 20 November 2009, the Programme OiC reminded the Appellant to send his application, including the amended work schedule, by 22 November 2009. The Appellant sent his application by this date, but without an amended work schedule.

9. On 17 December 2009, the Appellant requested an update of the status of his application. That same day, the Programme OiC informed the Appellant that his application had not been submitted to the Committee because it was incomplete, since the amended proposal was missing.

10. On 15 January 2010, the Appellant requested management evaluation of the decision by the Programme OiC not to forward his application for sabbatical leave to the Committee. On 16 February 2010, he received the Secretary-General's decision upholding the contested action. On 11 May 2010, the Appellant filed an application with the UNDT in New York. The UNDT granted the Secretary-General an extension of time to submit his reply.

11. On 4 August 2011, the UNDT issued Judgment No. UNDT/2011/139. It found that the Programme OiC reasonably concluded that the leave application was incomplete, but that she did not have the authority to take that decision herself. It therefore found that the Appellant's right to have his leave application submitted to the Committee was breached. The UNDT however found that in any event, without a relevant work schedule included in the application, the Committee could not have considered it, and consequently the Appellant suffered no loss. The UNDT therefore concluded that there was no basis to award damages and dismissed the application.

### **Submissions**

#### **Mr. Charles' Appeal**

12. Mr. Charles submits that the UNDT exceeded its competence and erred in law and fact, inter alia, in finding that his application for sabbatical leave was not complete; in concluding that no informed evaluation would have been possible if the application for leave had been forwarded to the Committee; in assessing the Appellant's chances of being awarded the sabbatical leave if his application had been forwarded; in failing to award compensation to the Appellant; and in granting a 30-day extension to the Secretary-General to submit his reply without notifying the Appellant.

13. Mr. Charles seeks the reversal of the UNDT Judgment; compensation for the violation of [his] "employment and due process rights"; and compensation for moral injury.

#### **Secretary-General's Answer**

14. The Secretary-General submits that the UNDT correctly found that in light of ST/AI/2000/4 and ST/IC/2009/33 (United Nations sabbatical leave programme for 2010), the Appellant's leave application lacked a compatible schedule of work relating to his proposed one-month leave which was required as one of the six criteria under Section 4 of ST/AI/2000/4 for a proper assessment of his application. His application was therefore "manifestly incomplete".

15. The Secretary-General submits that, contrary to the Appellant's submission, the UNDT did not err in stating that his application was incomplete since it did not contain sufficient information to allow the Committee to make a reasoned decision. The proposal is part of the application and in the present case it failed to include a work schedule.

16. The Secretary-General submits that the UNDT correctly concluded that there was no basis for an award of damages. The UNDT properly assessed and concluded that, in light of the totality of the circumstances, the Appellant suffered no harm from the breach that it found. He further submits that the UNDT did not exceed its competence by assuming the role of the Committee.

17. In response to the Appellant's assertion that the UNDT erred in allowing the Secretary-General additional time to submit a reply to the Appellant's application, the Secretary-General submits that the Appellant in fact himself admitted that he did not object to the Secretary-General's motion for leave to file a late reply.

### **Considerations**

18. The UNDT correctly determined that, as a matter of logic, the provisions of Section 1.2 and Sections 4.1 and 4.2 of ST/AI/2000/4 when read together with paragraph 6 of ST/IC/2009/33 (the relevant circular at the time in question) stipulate that the Appellant's application for sabbatical leave (and the study proposal contained therein) fell to be evaluated by the Committee. The UNDT also correctly found that the determination made by the Programme OiC, namely that the application for sabbatical leave should not be forwarded to the Committee, was not within the Programme OiC's power.

19. The Dispute Tribunal thus concluded, again correctly, that the decision made by the Programme OiC was in breach of the Appellant's terms of employment "specifically, his right to have his application forwarded to the Committee and the [Assistant Secretary-General], OHRM".

20. The issue for this Tribunal is whether the Dispute Tribunal Judge erred (i) in his finding that the Programme OiC reasonably concluded that the application for sabbatical leave was "incomplete" and (ii) in his conclusion that notwithstanding that the Appellant's employment rights were breached, he suffered no loss because, in the view of the UNDT, no "reasonable decision maker" (the Committee in question) could have approved a one or two months' period of sabbatical leave, as sought by the Appellant, as this timeframe did not accord with the five-month work schedule contained in the proposal which formed part of Mr. Charles' application. In the present appeal, the Respondent submits that there was no error of law or fact on the part of the UNDT Judge.

21. With regard to (i) above, the Dispute Tribunal Judge properly observed that an "incomplete application may therefore be one which is missing one of the documents specified in [paragraphs 4 and 5 of ST/IC/2009/33]". The Appellant does not take issue with this view and the Appeals Tribunal upholds the finding, inherent in the UNDT Judgment, that the Programme OiC would be entitled not to forward an application to the Committee if there was an objective

failure on the part of an applicant to fulfill the documentary and procedural requirements set out in ST/IC/2009/33.

22. In the course of its Judgment, the UNDT went on to observe as follows:

An application may also be considered incomplete if it is missing key information as described in para 5, such as the outline, activities, or methodology of the proposed research on study project. However, the fact that an application contains minimal information in response to the requirements of paras. 4 and 5 does not necessarily mean that it shall be considered complete. There may be cases where an application, while formally containing the documents and information described above, is substantively incomplete, that is, where it does not contain information of a sufficient or reasonable quality for a decision to be made on the basis of what is submitted.

23. Against the backdrop of this observation, the Dispute Tribunal Judge stated:

The schedule of work that was submitted with the final application related to a five-month sabbatical leave, but the Applicant was, by that stage, applying for leave of one or two months' duration. The proposal, and therefore the application, did not merely lack a correct schedule or work; it contained a schedule of work that was inconsistent with what he was asking for.

24. The UNDT went on to state that

[a]t the date of the extended deadline, the Applicant had submitted an application for sabbatical leave which included an application form together with other documents, including a materially deficient proposal. However, as the proposal did not contain sufficient information to allow the Committee to make a reasoned decision on it, the application was therefore incomplete.

25. We note that the Dispute Tribunal Judge's view on this effectively endorsed what he found was the "reasonable" decision of the Programme OiC that the schedule of work in the proposal could not have assisted the Committee to undertake the evaluation required by paragraph 6 of ST/IC/2009/33.

26. Based on its view that it was unlikely therefore that the Appellant's application would have found favour with the Committee, the UNDT found that "the Applicant cannot be said to have suffered loss from the decision of the Programme Officer-in-Charge not to forward his application to the Committee" and thus found no basis for an award of compensation.

27. Was the UNDT correct in its determination on the issues set out in (i) and (ii) above? We do not believe that it was. In the first instance, we uphold the Appellant's contention that his application was not incomplete. His proposal did not lack a schedule of work; rather it contained a schedule with a timeframe which was at variance with the period of leave being applied for. We do not find that the facts in this case therefore allowed for a finding that the application was "manifestly incomplete".

28. It is the considered opinion of this Tribunal that the impact of the conflict between the five-month work schedule and the one/two-month leave being applied for was something that fell to be adjudicated on by the Committee. It is our view, on a matter of law, that the evaluation in this context was the sole preserve of the Committee in question, as provided for by a logical reading of Section 4.2 (b) of ST/AI/2000/4 in conjunction with paragraph 6 of ST/IC/2009/33.

29. By effectively placing itself in the shoes of the Committee and determining the outcome of the Appellant's application on the merits (a role only the Committee should have performed), the UNDT misdirected itself in law and thus failed to give reasonable consideration to the effect on the Appellant of the breach of his employment rights which the UNDT quite properly found had occurred.

30. What was lost to the Appellant, by the actions/omissions of the Programme OiC was the opportunity to have his application for sabbatical leave duly considered by those technically qualified to do so and whose duty it was pursuant to ST/IC/2009/33 to grant the leave or otherwise. Given the circumstances of this case, the failure to transmit the Appellant's application to the relevant Committee was not a mere procedural breach, in respect of which the UNDT might duly be entitled to arrive at a conclusion that the breach did not merit a compensatory award on the basis that no damage had occurred. The Appeals Tribunal has in a number of cases e.g. *Antaki*,<sup>1</sup> *Sina*<sup>2</sup> pronounced that not every violation of a staff member's rights will necessarily lead to an award of compensation. But, as stated, the circumstances of the present appeal are not such as to classify the matter as being a mere procedural breach, without consequences for the Appellant. The damage done to the Appellant was the lost opportunity to have his application given due consideration by those technically capable of making a decision on the merits. Thus, we set aside the finding of the UNDT that the Appellant suffered no damages.

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<sup>1</sup> *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-095.

<sup>2</sup> *Sina v. Secretary-General of the United Nations*, Judgment 2010-UNAT-094.

31. In like manner as the Programme OiC, and indeed the UNDT, were not entitled to take on the role of the Committee, so too is this Tribunal precluded, in assessing the level of the compensatory award, from making a determination that the Appellant either might or might not have been approved for the leave. The best this Tribunal can do (and what the UNDT should have done), given that the assessment of monetary compensation in a case such as the present can never be an exact science, is to make a fair judgment in all the circumstances. The particular circumstances of this case indicate that, at best, had his application received favourable review, the Appellant would have been given either one or two months' sabbatical leave. Thus, in assessing compensation for the opportunity lost to the Appellant to make his case for leave, and noting the uncertainty as to the exact period of leave being sought, the Tribunal determines, as equitable compensation, payment to him of one month's net base salary, computed on the basis of his salary on 31 January 2010.

### **Judgment**

32. The Appeals Tribunal grants the appeal in part and awards Mr. Charles compensation in the amount of one month's net base salary, computed on the basis of his salary on 31 January 2010, with interest at the US Prime rate applicable from 31 January 2010. The Appeals Tribunal further holds that this Judgment shall be executed within 60 days from the date of its issuance to the parties. If this Judgment is not executed within 60 days, five per cent shall be added to the US Prime Rate from the date of expiry of the 60-day period to the date of payment. The remainder of the appeal is dismissed.



Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of June 2012 in Geneva, Switzerland.

*(Signed)*

Judge Faherty, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Garewal

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

*(Signed)*

Weicheng Lin, Registrar