



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

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Case No. 2011-257



**Massabni  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Luis María Simón, Presiding Judge Sophia Adinyira Judge Jean Courtial
Judgment No.:	2012-UNAT-238
Date:	29 June 2012
Registrar:	Weicheng Lin

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Counsel for Appellant:	Jay Wormus
Counsel for Respondent:	Wambui Mwangi

**JUDGE LUIS MARÍA SIMÓN**, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Ms. Micheline Massabni on 28 September 2011 against Judgment No. UNDT/2011/127 issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) on 13 July 2011 in Geneva. The Secretary-General filed an answer on 14 November 2011.

### **Synopsis**

2. The duties of a Judge prior to taking a decision include the adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content they assign to them, as the judgment must necessarily refer to the scope of the parties' contentions. Otherwise, the decision-maker would not be able to follow the correct process to accomplish his or her task, making up his or her mind and elaborating on a judgment motivated in reasons of fact and law related to the parties' submissions.

3. Thus, the authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and so, subject to judicial review which could lead to grant or not to grant the requested judgment.

4. Correctly, the UNDT Judge concluded that the staff member was unlawfully deprived of the possibility to have her appeal considered by the Classification Appeals Committee but that it was very unlikely that the post would have been classified to the P-4 level or that there was in fact a relevant chance of access to a special P-4 level allowance.

5. Consistent with the jurisprudence of this Tribunal in *Wu*<sup>1</sup> and other cases, not every administrative wrongdoing will necessarily lead to an award of compensation. The claimant carries the burden of proof about the existence of factors causing moral damage to the victim's psychological, emotional and spiritual wellbeing. When the circumstances of a certain case do not allow the Judge to presume that kind of damage just as a normal consequence to an average person placed in the same situation of the claimant, evidence must be produced and the lack of it will lead to the denial of compensation.

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<sup>1</sup> *Wu v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-042.

6. This Tribunal affirmed the first instance Judgment and dismissed the appeal.

### **Facts and Procedure**

7. Ms. Massabni joined the United Nations Conference on Trade and Development (UNCTAD) in Geneva in 1980. In May 2005, she was laterally assigned to the P-3 position of Chief of Central Support and Reference Unit (Chief of Unit), within the restructured Central Statistics and Information Retrieval Branch.

8. In July 2006, Ms. Massabni wrote to the Deputy Secretary-General of UNCTAD requesting reclassification of her post to the P-4 level and, if possible, to the P-5 level, on the ground that the duties and responsibilities of the post of Chief of Unit had changed substantially as a result of the restructuring within her office.

9. In February 2009, Ms. Massabni submitted to the Director, Division on Globalization and Development Strategies, her second-level supervisor, a request for reclassification form that she had signed and completed in her own name and that of her direct supervisor, the Chief of the Central Statistics and Information Retrieval Branch.

10. But on 15 June 2009, Ms. Massabni's direct supervisor recommended against reclassifying Ms. Massabni's post to the P-4 level. On the same day, Ms. Massabni's second-level supervisor informed Ms. Massabni that he was not in a position to endorse her request for reclassification of her post.

11. On 26 June 2009, Ms. Massabni wrote to the Chief of the Human Resources Management Service (HRMS) of the United Nations Office at Geneva (UNOG), pursuant to Sections 1.1(b) and 1.3 of administrative instruction ST/AI/1998/9 (System for the classification of posts), to request review of her case for appropriate action.

12. On 29 July 2009, HRMS/UNOG informed Ms. Massabni that, on the basis of Section 1.3 of ST/AI/1998/9, her reclassification request of 26 June 2009 had been deemed receivable, but that the current level of her post at the P-3 level had been maintained, "[b]ased on the careful analysis of the functions described in the job description [she had] submitted and the application of the Job Classification Standards for Professional posts".

13. On 23 September 2009, invoking Sections 5 and 6 of ST/AI/1998/9, Ms. Massabni appealed to the Assistant Secretary-General for Human Resources Management in New York against the decision to maintain her post at the P-3 level.

14. In a letter dated 19 April 2010, the Office of Human Resources Management (OHRM) in New York advised Ms. Massabni that the reclassification request form that she had submitted to HRMS/UNOG failed to comply with Section 2.2 of ST/AI/1998/9, in that it was not signed by her direct or second-level supervisor, and, moreover, it did not include a post number or an organizational chart. Consequently, her post could not be reclassified and an appealable classification decision did not exist. OHRM further advised Ms. Massabni that HRMS/UNOG had erred in considering her reclassification request as receivable. In the view of OHRM, HRMS' memorandum of 29 July 2009 did not constitute a classification decision, but was rather "advice".

15. Ms. Massabni requested management evaluation, but her request was rejected.

16. Ms. Massabni filed an application with the UNDT on 19 November 2010. In Judgment No. UNDT/2011/127, the UNDT found that OHRM was in error in rejecting Ms. Massabni's appeal on the ground that there had been no classification decision that could be appealed, and in not referring her case to the Classification Appeals Committee. The UNDT considered that Ms. Massabni "must be regarded as challenging the decision refusing to reclassify at the P-4 grade the post which she occupied at the P-3 grade". The UNDT found the response from HRMS/UNOG of 29 July 2009 to constitute a substantive decision subject to appeal, contrary to the assertion made by the Secretary-General. However, the UNDT was of the view that the unlawful action on the part of the Administration did not cause clear material damage to Ms. Massabni, as the UNDT speculated that it was unlikely that the Classification Appeals Committee would have recommended the reclassification of her post to the P-4 level, or that the Office of Programme Planning, Budget and Accounts and the General Assembly would have confirmed the reclassification. But the UNDT decided to award Ms. Massabni a sum of USD 1,500 for moral damage caused by OHRM's decision not to refer her case to the Classification Appeals Committee, which deprived Ms. Massabni of an opportunity to present her case and to gain recognition of her responsibilities.

**Submissions****Ms. Massabni's Appeal**

17. Ms. Massabni submits that the UNDT erred in law in redefining the administrative decision that she was contesting. She was appealing the refusal by the Assistant Secretary-General for Human Resources Management to submit her classification appeal to the Classification Appeals Committee, and not the decision not to reclassify her post to the P-4 level, as redefined by the UNDT. Ms. Massabni maintains that the two decisions are not equivalent. Ms. Massabni is entitled to a properly classified job description under Staff Rule 2.1(a) as part of her conditions of service, but she does not have a right to reclassification of her post. The UNDT redefined the decision under appeal without legal basis.

18. Ms. Massabni also submits that the UNDT erred in fact and law in reaching its conclusions about the likely outcome of a classification appeal.

19. Ms. Massabni maintains, contrary to the UNDT's erroneous finding, that the implementation of a reclassification decision would not have been required for her to be eligible for a Special Post Allowance (SPA). Had she been successful in her classification appeal, a temporarily vacant post or a post borrowed from another organizational unit could have been used for implementation of the SPA. Ms. Massabni insists that such temporary use of posts is a common practice in the Organization.

20. Ms. Massabni avers that the UNDT erred in law in limiting compensation for moral damage to the period after 26 June 2009, when she wrote to HRMS/UNOG. She did not receive a classified job description at the time of her reassignment to the post of Chief of the Unit in May 2005. Less than one year in her new job, Ms. Massabni began to develop doubts and concerns about the level of her post and the adequacy of her salary. Those doubts and concerns persisted for four and half years with negative impact on her morale. Ms. Massabni submits that the UNDT also failed to take into account the moral damage in the form of frustration, stress and demoralization caused by the bad faith of her supervisors who had encouraged Ms. Massabni to prepare a job description but had had no intention of proceeding with the steps necessary for the reclassification of her post, the negligence and incompetence on the part of HRMS/UNOG resulting in her receiving incorrect or incomplete information about the reclassification procedure, and the undue delays in the handling of her case. In her view, the compensation in

the amount of USD 1,500 was not commensurate with the material and moral damage that she suffered, and a commensurate compensation should not be less than six months' net base salary.

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

21. The Secretary-General submits that the UNDT correctly declined to award Ms. Massabni compensation for material damage as there was no evidence that her post would have been reclassified to the P-4 level had her case been submitted to the Classification Appeals Committee. The UNDT's decision on this issue was fully consistent with the jurisprudence of the Appeals Tribunal such as *Solanki*, *Bofill*, etc. Ms. Massabni had failed to demonstrate that there existed vacant P-4 posts in other parts of the Organization that were available for the Central Statistics and Information Retrieval Branch for the purpose of granting her an SPA, in the event that her request for reclassification was approved.

22. The Secretary-General also submits that the UNDT correctly limited its scope to the contested decision properly before it and limited its consideration of moral damages to 26 June 2009, when Ms. Massabni triggered the procedure under ST/AI/1998/9. In the opinion of the Secretary-General, Ms. Massabni has made the allegations of bad faith, but has submitted no evidence in support of those allegations.

23. The Secretary-General further submits that Ms. Massabni's arguments about equal pay for equal work did not form part of her request for management evaluation and are therefore not receivable.

24. Finally, the Secretary-General considers that the determination of compensation was within the discretionary authority of the UNDT, and that Ms. Massabni has failed to demonstrate the loss or harm suffered that would warrant an increase in the compensation awarded.

### **Considerations**

25. The duties of a Judge prior to taking a decision include adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content, as the judgment must necessarily refer to the scope of the parties' contentions. Otherwise, the decision-maker would not be able to follow the correct process to accomplish his or her task, making up his or her mind and elaborating on a judgment motivated in reasons of fact and law related to the parties' submissions.

26. Thus, the authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and subject to judicial review, which could lead to grant, or not to grant, the requested judgment.

27. It follows from the above that the UNDT did have a legal basis to define the administrative procedure and decisions subject to review. And it was also right for the UNDT to consider that Ms. Massabni was contesting not only the decision not to submit her classification appeal to the Classification Appeals Committee but also the final non-classification of Ms. Massabni's post to the P-4 level as requested by her. All the motivation of the application and the reasons for the petition of compensation rely, in the end, in the Administration's consideration of the post as P-3.

28. At issue is not the interpretation given by the first instance Judge to Ms. Massabni's appeal or the scope of his judgment in respect of the real grounds of appeal, but the underlying reasons of the judgment concerning the likely outcome of a classification appeal, the existence or not of material damage and the evaluation of the moral damage.

29. Addressing these matters, this Tribunal holds that the UNDT did not err in assessing the chances of the post being classified at the P-4 level or higher as requested by the Appellant.

30. Correctly, the UNDT Judge concluded that the staff member was unlawfully deprived of the possibility to have her appeal considered by the Classification Appeals Committee, but that it was very unlikely that the post would have been classified to the P- 4 level. That conclusion was based on the evidence proffered in the form of notes and documents related to the Appellant's direct supervisor's opinion, job description, post needs in the office, Senior Human Resources Officer's determination and other elements of the case file thoroughly examined by the UNDT, whose analysis this Court completely shares. Ms. Massabni has failed to demonstrate that the UNDT's assessment of this issue was erroneous, or that there was in fact a reasonable chance for her to obtain a special post allowance at the P-4 level.

31. Neither was the UNDT erroneous to consider that no clear evidence of material damage arose from the case. Compensation of that kind of damage could not be awarded as it was not demonstrated that the procedural irregularities or breach of the Appellant's rights had affected

the level of her post or deprived her of an actual reasonable chance of receiving the SPA that she refers to in her appeal.

32. Consistent with the jurisprudence of this Tribunal in *Wu*<sup>2</sup> and other cases, not every administrative wrongdoing will necessarily lead to an award of compensation under Article 10(5)(b) of the UNDT Statute. The claimant carries the burden of proof about the existence of factors causing damage to the victim's psychological, emotional and spiritual wellbeing. When the circumstances of a certain case do not allow the Judge to presume that kind of damage as a normal consequence to an average person placed in the same situation of the claimant, evidence must be produced and the lack of it will lead to the denial of compensation. This Tribunal will affirm the first instance Judgment as there are no grounds to increase the amount of compensation that has been granted, despite the request submitted by the Appellant.

### **Judgment**

33. The appeal is dismissed and the UNDT's Judgment affirmed.

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<sup>2</sup> *Wu v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-042.



Original and Authoritative Version: English

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

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Courtial

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

*(Signed)*

Weicheng Lin, Registrar