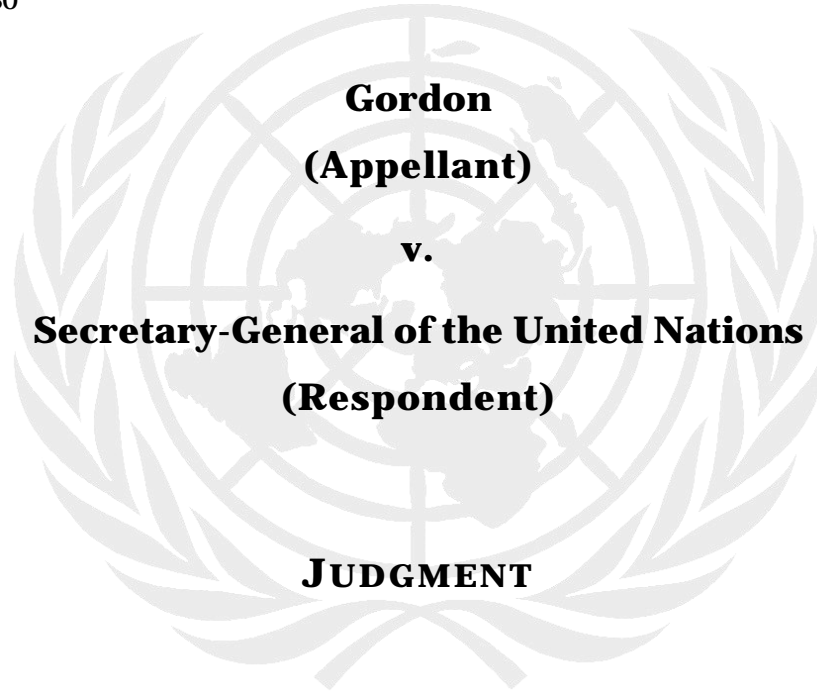




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2011-280



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**Before:** Judge Richard Lussick, Presiding  
Judge Mary Faherty  
Judge Sophia Adinyira

**Judgment No.:** 2012-UNAT-262

**Date:** 1 November 2012

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** Self-represented

**Counsel for Respondent:** Rupa Mitra

**JUDGE RICHARD LUSSICK, Presiding.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Clement Gordon (the Appellant) against Judgment No. UNDT/2011/173, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 6 October 2011 in the case of *Gordon v. Secretary-General of the United Nations*.

### **Synopsis**

2. Mr. Gordon appeals the UNDT Judgment that the lateral moves and work experience of the selected candidate, together with the selection criteria for a position for which he had applied, were all in compliance with administrative instruction ST/AI/2006/3/Rev.1. The Appeals Tribunal dismisses the appeal and confirms the UNDT Judgment.

### **Facts and Procedure**

3. At the material time, Mr. Gordon was Chief of the Printing Section, at the P-4 level, with the Publishing Service of the United Nations Office at Geneva (UNOG).

4. On 25 January 2010, a vacancy announcement for the P-5 level post of Chief of the Publishing Section, with the Meetings and Publishing Division, Department of General Assembly and Conference Management (DGACM), in New York was advertised on Galaxy.

5. Mr. Gordon applied and was invited for a written test and then for an interview in March 2010. He was not selected but was placed on the roster of candidates pre-approved to perform similar functions. The candidate who was selected had been appointed to the post of Deputy Chief of the Publishing Section in February 2008.

6. Mr. Gordon appealed his non-selection. In Judgment No. UNDT/2011/173, the UNDT rejected his application. The UNDT analysed three factual issues against the criteria set forth in administrative instruction ST/AI/2006/3/Rev. 1 (Staff selection system): a) whether evaluation criteria were in place for the selection exercise for the P-5 vacancy; b) whether the selected candidate met the requirement of two lateral moves; and, c) whether the selected candidate had the required years of work experience. The UNDT gave an affirmative answer to all three questions.

7. Mr. Gordon appealed to the Appeals Tribunal on 6 December 2011. The Secretary-General had 45 days within which to file an answer.<sup>1</sup> On 13 January 2012, the Secretary-General filed a request for a two-week extension of the time limit to file an answer, which was granted. The Secretary-General answered on 26 January 2012.

### **Submissions**

#### **Mr. Gordon's Appeal**

8. Mr. Gordon submits that the UNDT erred in fact on the issues of lateral moves, years of relevant work experience and the absence of selection criteria, and that its Judgment should, therefore, be reversed.

9. Mr. Gordon maintains that the UNDT failed to address the evidence in the form of IMIS data that he had provided, which did not indicate any lateral move by the selected candidate.

10. Regarding the number of years of relevant work experience, Mr. Gordon submits that the UNDT erred in not considering the issue of how many years of work experience the selected candidate had accumulated: “[H]ow could the successful candidate obtain the maximum 50 points for experience, when [it] is not clear if [...] he even met the minimum 10 years?”

11. As for the selection criteria, Mr. Gordon reiterates that the Administration failed to put in place any selection criteria. He claims that this was evidenced by the absence of the documented record that should have accompanied the recommendation of the Programme Case Officer (PCO) and by the fact that the selection decision had been taken before the approval of the process by the Central Review Bodies.

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

12. The Secretary-General submits that the UNDT correctly concluded that the selected candidate underwent the requisite number of lateral moves to be considered for promotion to the P-5 level.

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<sup>1</sup> On 5 March 2012, the Appeals Tribunal provisionally amended its Rules of Procedure so that a respondent may file an answer within 60 days of receipt of an appeal.

13. The Secretary-General also submits that, as found by the UNDT, the selected candidate had both the type of experience as well as the number of years required by the vacancy announcement, and that it was only correct that both Mr. Gordon and the selected candidate received the maximum number of points, since they both had more than the required ten years' experience.

14. The Secretary-General maintains that the UNDT correctly concluded that Mr. Gordon had failed to show that the evaluation criteria used in the selection process were not properly determined and applied, or that the selection process was flawed due to bias against him.

### **Considerations**

15. The Appellant claims that the UNDT erred in its findings on three factual issues concerning respectively: (i) lateral moves; (ii) work experience; and (iii) selection criteria.

#### *(i) Lateral Moves*

16. The Appellant alleges that the UNDT erred in finding that the selected candidate had the requisite number of lateral moves entitling him to be considered for promotion to the P-5 level.

17. The UNDT was satisfied from the documents before it that the selected candidate was reassigned from the News and Media Division of the Department of Public Information effective September 2002, with no change in level, to the United Nations Publications Sales and Marketing Section within the Library and Information Resources Division, in the same Department, and that he remained in that Section until he was promoted to the next level in September 2006. The UNDT found that such reassignment constituted a lateral move within the meaning of administrative instruction ST/AI/2006/3/Rev.1.

18. The UNDT further found that the selected candidate's assignment from 2 July 2004 to 31 August 2006 to a vacant post one level higher than his own, which entitled him to a special post allowance, also qualified as a lateral move within the meaning of ST/AI/2006/3/Rev.1. The UNDT accordingly found that the selected candidate did have the requisite number of lateral moves entitling him to be considered for promotion to the P-5 level.

19. The Appellant claims that the UNDT failed to address the evidence in the form of IMIS data that he had provided, which did not indicate any lateral move by the selected candidate. The summary of Mr. Gordon's submissions in the UNDT Judgment shows that the UNDT was aware of the Applicant's claim in relation to the responsibilities of the human resources unit. However, the fact that the selected candidate's lateral moves were not recorded in the IMIS data base is not dispositive of the issue, nor does the definition of "lateral move" in ST/AI/2006/3/Rev.1 include such a requirement. The UNDT's decision on this point was based on evidence that clearly established that the selected candidate's lateral moves satisfied the requirements of ST/AI/2006/3/Rev.1. The Appeals Tribunal finds no error in the UNDT Judgment on this issue.

*(ii) Work Experience*

20. The Appellant also argues that the UNDT erred in not considering the issue of how many years of work experience the selected candidate had accumulated. The Appellant challenges the attribution to the selected candidate of the maximum of 50 points for experience when it is not clear if he even met the minimum of 10 years.

21. The UNDT set out the selected candidate's work experience based on the documents placed on record. The Appeals Tribunal notes that the selected candidate's Personal History Profile shows work experience going back to 1987 (although not specifically mentioned in the UNDT Judgment). The UNDT concluded that the Administration had not erred in evaluating the experience of the selected candidate. Moreover, in considering Mr. Gordon's claim that he had more work experience than the selected candidate, the UNDT observed that, although the vacancy announcement required at least 10 years' experience, the selection did not have to be made solely on the basis of that criterion. The UNDT correctly pointed out that it was not for the UNDT to substitute its own assessment for that of the panel concerning the two pre-selected candidates. In the opinion of the Appeals Tribunal, the evidence before the UNDT supported its finding that the selected candidate had at least 10 years' relevant work experience as required by the vacancy announcement. The selected candidate was therefore correctly awarded the maximum of 50 points for experience. The Appeals Tribunal finds that the Appellant has failed to establish that the UNDT erred on this issue.

*(iii) Selection Criteria*

22. Finally, the Appellant claims that no final selection criteria were given, “meaning that the PCO did not provided [sic] a justification for his selection”. The evidence of this, according to the Appellant, is the absence of any documented record that should have accompanied the PCO’s recommendation. The Appeals Tribunal finds that the Appellant’s claims in this regard are entirely without merit. The UNDT found that the applicable evaluation criteria had already been approved by a central review body in accordance with Section 4.4 of ST/AI/2006/3/Rev.1, and that it was on the basis of those criteria, indicated in the vacancy announcement, that the candidates had been interviewed. Furthermore, the PCO justified his selection by providing a documented record of the scores of each candidate from their Galaxy evaluations, as well as each candidate’s individual evaluation and interview score. The Appeal Tribunal thus finds that the Appellant has failed to demonstrate that the UNDT erred in its findings on this issue.

**Judgment**

23. For the foregoing reasons, the Judgement of the UNDT is affirmed and the appeal is dismissed.

Original and Authoritative Version: English

Dated this 1<sup>st</sup> day of November 2012 in New York, United States.

*(Signed)*

Judge Lussick, Presiding

*(Signed)*

Judge Faherty

*(Signed)*

Judge Adinyira

Entered in the Register on this 18<sup>th</sup> day of January 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar