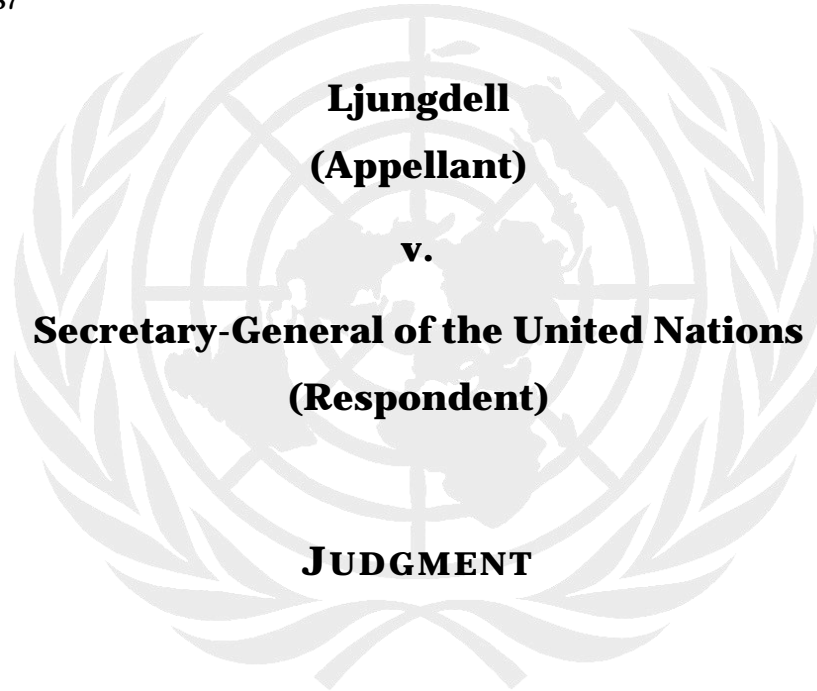




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2012-287



**Ljungdell
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Inés Weinberg de Roca Judge Rosalyn Chapman
Judgment No.:	2012-UNAT-265
Date:	1 November 2012
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Wambui Mwangi/Paul Oertly

JUDGE SOPHIA ADINYIRA, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Stina Elisabeth Ljungdell against Judgment No. UNDT/2011/208, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 8 December 2011. Ms. Ljungdell filed her appeal on 18 January 2012, and the Secretary-General filed his answer on 5 March 2012.

Synopsis

2. Ms. Ljungdell, a staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Geneva, contested before the UNDT the decision not to select her for a Senior Resettlement Coordinator post in Geneva. The reason for her non-selection was that she lacked the requisite managerial skills and resettlement experience.

3. The UNDT, based on the evidence on file and the parties' statements at the hearing, considered as reasonable the Administration's assessment of Ms. Ljungdell's managerial skills and resettlement experience as limited and, therefore, unsuitable for the post.

4. The UNDT considered her allegation that her non-selection was based on discrimination unfounded as it is a fact that the Director of the Division of International Protection (DIP) recommended two female staff members with children for the post and that he rejected a male candidate endorsed by the Appointments, Promotions and Postings Board (APPB) in favour of a female candidate.

5. Ms. Ljungdell was unable to demonstrate that the decision of the UNDT was manifestly wrong.

6. On the issue of compensation, Ms. Ljungdell has not established any errors in law or fact that would warrant an increase in the damages granted by the Administration or to grant her educational expenses.

7. We affirm the decision of the UNDT. The appeal is dismissed.

Facts and Procedure

8. The UNDT's summary of the facts in the present case is not contested. It reads as follows:

2. Having served in the Office of the United Nations High Commissioner for Refugees [...] since December 1991, the Applicant is a staff member at the P-5 level holding an indefinite appointment. Since July 2006, she has been a staff member in between assignments [...] and she undertook several temporary assignments in Geneva.

3. On 29 July 2009, the Applicant was appointed to the post of Deputy Representative in Malaysia. However, before she could take up her functions, she was informed by email dated 9 September 2009 that this post would be discontinued and her appointment to the post would be rescinded.

4. The Applicant submitted five applications for posts advertised in the September 2009 Compendium of vacant posts. Two of these posts were subsequently reclassified at a higher level and the Applicant was thus considered for three P-5 posts, namely Deputy Chief of Mission in India, Deputy Representative in Sri Lanka, and Senior Resettlement Coordinator in the Division of International Protection [...] in Geneva.

5. The summary of decisions of the High Commissioner on Appointments and Postings No. 08/2009 was issued on 23 December 2009. The Applicant was not appointed to the posts of Deputy Chief of Mission in India or Deputy Representative in Sri Lanka. The summary of decisions of the High Commissioner on Appointments and Postings No. 02/2010 was issued on 26 April 2010. The Applicant was not appointed to the post of Senior Resettlement Coordinator in Geneva.

6. By letter dated 21 June 2010, the Applicant requested management evaluation of the decision not to select her for the post of Senior Resettlement Coordinator in Geneva. She also claimed that "the Organization ha[d] acted inappropriately and taken a series of negligent management decisions" during the period between her appointment as Deputy Representative in Malaysia and the decision not to select her for the post of Senior Resettlement Coordinator. In particular, she argued that as a result of the abolition of the post in Malaysia, she had suffered emotional stress and considerable financial losses (e.g., educational expenses of her daughter) for which she requested compensation.

7. On 11 August 2010, the Applicant received a response to her request for management evaluation. She was informed that procedural irregularities were present in the selection process for the post of Senior Resettlement Coordinator and that, as a consequence, she had not received full and fair consideration. The Applicant was also informed that in view of the procedural irregularities and her personal circumstances, she would be paid compensation in the amount of "three months' salary". With regard to her claim for compensation as a result of the abolition of the post of Deputy

Representative in Malaysia, the Applicant was informed that this claim had not been subject to a timely request for management evaluation, which should have been filed within 60 calendar days from the date on which she received notification of that decision.

8. On 13 September 2010, the Applicant wrote to the Deputy High Commissioner requesting to receive the reasons why she was not one of the recommended candidates for the Senior Resettlement Coordinator post despite having an excellent profile for the post. She also requested him to consider the substance of her financial claim contained in her request for management evaluation.

9. On 15 September 2010, the Applicant was informed that the Deputy High Commissioner would review her case and revert to her at a later stage.

10. On 8 October 2010, the Applicant asked the Deputy High Commissioner that the entire selection dossier for the post of Senior Resettlement Coordinator be shared with her.

11. On 15 October 2010, the Applicant made a formal request for mediation.

12. At the Applicant's request, on 21 October 2010, the Dispute Tribunal granted her an extension of time to submit a full application until 10 January 2011.

13. Since the Applicant did not receive a response to her request for mediation, she filed an application with the Tribunal on 20 December 2010. On 24 January 2011, the Respondent submitted his reply. On 7 February 2011, the Applicant submitted observations on the Respondent's reply. On 15 February 2011, a directions hearing took place in which the Applicant and Counsel for the Respondent participated.

14. On 13 October 2011, an oral hearing took place in the presence of the Applicant and Counsel for the Respondent. The Director of DIP testified in person at the hearing.

9. The UNDT rendered Judgment No. UNDT/2011/208 on 8 December 2011, dismissing Ms. Ljungdell's application. At the outset, the UNDT noted that it could only deal with the decision not to select Ms. Ljungdell for the P-5 post of Senior Resettlement Coordinator in Geneva, as she had not requested management evaluation of the decisions to rescind her appointment to the post of Deputy Representative in Malaysia and not to select her for the posts in Sri Lanka and India. With respect to the financial compensation claimed for education expenses, the UNDT considered that this issue was linked to the rescission of Ms. Ljungdell's appointment to the post of Deputy Representative in Malaysia and that, consequently, it could not be reviewed as part of the case.

10. With respect to the Geneva post, the UNDT noted that the Secretary-General had acknowledged that procedural errors had occurred in the selection process and that, as a result, Ms. Ljungdell had not been given full and fair consideration. It found that the three months' compensation that Ms. Ljungdell had already received was adequate. Ms. Ljungdell agreed that there was no basis for her allegation of gender discrimination. The UNDT found that Ms. Ljungdell's allegations that her managerial skills and expertise had been misrepresented were not proven and that it was reasonable for the Administration to have considered her experience insufficient and her skills not appropriate for that specific post. The UNDT found that Ms. Ljungdell had not demonstrated that the Director or Deputy Director of DIP had assured her that she would be the recommended candidate.

11. The UNDT also found that Ms. Ljungdell did not suffer any material damage as a result of the contested decision. She is currently performing at the same level, P-5, as the subject post, and she is a staff member in between assignments holding an indefinite appointment. The UNDT rejected the application.

12. Ms. Ljungdell appeals the UNDT Judgment.

13. At the request of Ms. Ljungdell, the Appeals Tribunal held an oral hearing in her case on 23 October 2012. Ms. Ljungdell attended the hearing via video-conference from Geneva and counsel for the Secretary-General attended the hearing in person. At the beginning of the hearing, Judge Adinyira announced that Judge Faherty, who had been initially assigned as Presiding Judge in this case, had recused herself. The President had, therefore, decided that Judge Adinyira would replace Judge Faherty as Presiding Judge, and that Judge Weinberg de Roca would be assigned to the case to replace Judge Adinyira to sit on the panel. Neither party objected.

Submissions

Ms. Ljungdell's Appeal

14. Ms. Ljungdell submits that the UNDT erred in law and fact when it denied her the opportunity to prove her allegations of discrimination, which started at the outset of the selection process in November 2009 and continued for six months. She further submits that the UNDT failed to exercise its jurisdiction by refusing to rule on her discrimination allegation.

15. Ms. Ljungdell submits that the UNDT erred in fact by accepting the Director of DIP's finding that she did not meet the requirements in respect of managerial skills and settlement experience for the Geneva post of Senior Resettlement Coordinator.

16. Ms. Ljungdell further contends that the UNDT erred in fact by not considering that her claim for compensation for educational expenses resulted from the Administration's failure not to assign her to a post advertised in the September 2009 compendium after the abolition of the post in Malaysia. She therefore asks for compensation in the amount of USD 37,000 for educational expenses.

17. Ms. Ljungdell submits that the UNDT erred in law by denying her the possibility of proving her moral damages. She requests to be awarded USD 30,000 as compensation for moral damages.

18. Ms. Ljungdell requests that the Appeals Tribunal award her USD 100,000 as compensation for the violation of her contractual rights. She requests that the case be referred to the High Commissioner for Refugees for possible action to enforce accountability under Article 9(5) of the Statute of the Appeals Tribunal.

19. In case the Appeals Tribunal does not find her allegations sufficiently proven, she requests a copy of the selection documentation and remand of her case to the UNDT.

Secretary-General's Answer

20. The Secretary-General submits that the UNDT correctly concluded that Ms. Ljungdell's allegations of discrimination were unsubstantiated.

21. The Secretary-General submits that the UNDT correctly concluded that it could not substitute its judgment for that of the Secretary-General in the assessment of a candidate's suitability for a given post.

22. The Secretary-General contends that the UNDT correctly concluded that Ms. Ljungdell's claim for financial compensation for educational expenses was not receivable, *ratione temporis*.

23. The Secretary-General avers that Ms. Ljungdell has not established any errors in law or fact that would warrant an increase in the damages granted by the Administration.

24. The Secretary-General requests that the Appeals Tribunal affirm the UNDT Judgment and dismiss the appeal in its entirety.

Considerations

25. Ms. Ljungdell submits that the UNDT erred in law, fact, and procedure and failed to exercise its jurisdiction in relation to her allegations of discrimination. Ms. Ljungdell contends that, rather than having abandoned her claim of discrimination, she had been denied the opportunity to prove the discriminatory application of the selection criteria. In particular, she contends that the UNDT failed to order that the Secretary-General provide the documentation of the entire selection process for the Geneva post; that it refused to hear seven of the eight witnesses Ms. Ljungdell had proffered; and, that it disallowed Ms. Ljungdell to interview the Director of DIP on the selection process.

26. This Tribunal notes that the UNDT has broad discretion to determine the admissibility of any evidence under Article 18(1) of its Rules of Procedure.¹ The burden was on Ms. Ljungdell to establish that the oral and documentary evidence, if admitted, would have led to different findings of fact and changed the outcome of the outcome of the case.² However, the UNDT established that the Administration had already acknowledged that procedural irregularities had occurred in the selection process for the Geneva post and had accordingly compensated her. As the documentation and witnesses requested by Ms. Ljungdell related specifically to irregularities in the selection process for the Geneva post, the UNDT did not err in denying her request.

27. Ms. Ljungdell next submits that the UNDT awarded compensation only for the breach of her due process rights, and failed to consider and compensate her for the alleged discrimination and abuse of authority. In light of the sequence of events, she suspects that such discrimination and abuse of authority was motivated by her family responsibilities and her expressed desire to work part-time. This ground of appeal is frivolous and is rejected outright. Ms. Ljungdell's allegations are unsubstantiated and speculative. Based on her submissions, no reasonable trier of fact could have found her allegations established. As expected, the UNDT, after examining the full scope of Ms. Ljungdell's allegations of discrimination, concluded:

¹ *Larkin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-134.

² *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110.

[B]ased on the examination of the facts of the case during the oral hearing, the Applicant agreed that there was no basis of her allegation of gender discrimination. It is a fact that the Director of DIP recommended two female staff members with children for the post and that he rejected a male candidate endorsed by the APPB in favour of a female candidate.³

28. In light of the foregoing, the Appeals Tribunal finds no error in the UNDT's rejection of Ms. Ljungdell's allegations that she had been subjected to discrimination on the grounds of gender or on the basis of her family responsibilities and her expressed desire to work part-time.

29. Ms. Ljungdell further claims that the irregularities in the selection process went beyond the breach of her due process rights for which she had already been compensated. Ms. Ljungdell challenges the UNDT's conclusion that she had failed to demonstrate that her managerial skills and experience in resettlement had been misrepresented.

30. Under Article 101(1) of the Charter of the United Nations and Staff Regulations 1.2(c) and 4.1, the Secretary-General has broad discretion in matters of staff selection. The jurisprudence of this Tribunal has clarified that, in reviewing such decisions, it is the role of the UNDT or the Appeals Tribunal to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration.⁴

31. At the time of the contested decision, Article 86 of the APPB Guidelines required that the criteria for suitability determination be done against the requirement set out in the job description. Ms. Ljungdell submits that the job description set out several required and desired competencies, but made no mention of diplomatic, specific managerial or resettlement skills. She concludes that the UNDT erred in law in accepting the Director's assessment that her managerial skills and resettlement experience were insufficient for the post of Senior Resettlement Coordinator.

³ Impugned Judgment, para. 23.

⁴ *Schook v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-216, quoting *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084.

32. The Appeals Tribunal notes that experience in resettlement was a professional requirement in the job description for the post. Although managerial and diplomatic skills were not specifically mentioned, it was reflected in “the engagement and the degree of relationships that the incumbent is expected to have with clients/partners, and the impact of actions” under Section 2.2 of the job description. The same provision required that the incumbent of the post develop and implement strategies and tools to enhance collaboration with key stakeholders, including non-governmental organizations. It was, therefore, reasonable to expect that a suitable candidate would have managerial and diplomatic skills.

33. The UNDT noted that while Ms. Ljungdell may have managerial skills, they were not considered appropriate for this specific post. Based on the evidence on file and the parties’ statements at the hearing, the UNDT found reasonable the Administration’s assessment that Ms. Ljungdell’s managerial skills and resettlement experience were limited and she was, therefore, unsuitable for the post.

34. Ms. Ljungdell submits that before the UNDT she made no claim that her resettlement experience had been misrepresented. Rather she claimed that incorrect information had been inserted to boost another candidate’s profile. She was denied the chance to produce written and witness testimony in proof of this.

35. We are of the view that the UNDT correctly exercised its discretion as the issue was of no direct concern to Ms. Ljungdell’s candidature. The principal reason for the non-selection of Ms. Ljungdell was her lack of sufficient experience in resettlement. Since resettlement experience was a professional requirement for the post of Senior Resettlement Coordinator, we consider the contested decision was reasonable in the circumstances. From the foregoing, we find no merit in this ground of appeal.

36. Ms. Ljungdell further contends that the UNDT erred in fact by not considering that her claim for compensation for educational expenses resulted from the Administration’s failure to assign her to one of the posts advertised in the September 2009 compendium after the abolition of the post in Malaysia. She requests compensation in the amount of the difference between the maximum Education Grant Allowance for Sweden and the actual school fees for her daughter for three academic years - 2009/2010, 2010/2011 and 2011/2012.

37. Ms. Ljungdell contends that the first year of educational expenses could be possibly construed as linked to the cut in the Malaysian post, but it is unreasonable to conclude that the school years 2010/2011 and 2011/2012 were linked to the Malaysia post cut occurring in 2009. Had her contractual rights been upheld in the selection process, she would have been appointed to the Geneva post and she would have recalled her daughter from the school in Sweden for her to continue her studies in her former school in Ferney-Voltaire, free of charge. Ms. Ljungdell concludes that the last two years of educational expenses are the direct result of the flawed process.

38. The Appeals Tribunal finds that Ms. Ljungdell's claim for the first year is not receivable as her request for management evaluation of the decision to cancel the Malaysia post was untimely. As regards the claim for the second and third academic years, the claims are too remote from the contested decision of the Senior Resettlement Coordinator post in Geneva. The claim is unrelated to the contested decision. It was Ms. Ljungdell's decision to continue to keep her child in school in Sweden while competing for other advertised positions for which she was unsuccessful. She did not move her daughter from the school in Sweden after she was informed of her non-selection to the Geneva post on 2 April 2010.

39. This Tribunal has consistently held that a staff member should be compensated for real and incurred expenses and such claims should be directly related to the damages resulting from a breach of his or her contractual rights. This is not the case here. The appeal fails on this ground.

40. Ms. Ljungdell submits that this Tribunal has consistently held that moral damages may not be awarded without specific evidence supporting the award; and that, as such, the UNDT erred in law by denying her the opportunity to fully prove the extent of her damages.

41. The UNDT found that Ms. Ljungdell

has not suffered any material damage as a result of the contested decision. As a matter of fact her personal level is P-5 and the level of the post is also P-5; furthermore, she is a [staff member in between assignments] holding an indefinite appointment. She therefore continues to receive her full salary and is not threatened by the expiration of her appointment.

42. In these circumstances, the UNDT considered the compensation of three months' salary awarded her to be adequate. We do not find this award to be unreasonable.

Judgment

43. The appeal is dismissed and the UNDT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 1st day of November 2012 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Chapman

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

(Signed)

Weicheng Lin, Registrar