UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2013-UNAT-378

Ivanov

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Luis María Simón, Presiding Judge Mary Faherty Judge Sophia Adinyira
Case No.:	2013-430
Date:	17 October 2013
Registrar:	Weicheng Lin

Counsel for Appellant:	Joseph Grinblat
Counsel for Respondent:	Amy Wood

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Serguey Ivanov against Judgment No. UNDT/2012/176, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in New York on 13 November 2012 in the case of *Ivanov v. Secretary-General of the United Nations*. Mr. Ivanov appealed this Judgment on 7 January 2013 and the Secretary-General answered on 1 March 2013.

2. On 4 March 2013 Mr. Ivanov filed a motion for leave to present comments on the Secretary-General's answer. The Appeals Tribunal rejected this motion on 25 March 2013 by Order No. 130 (2013).

Facts and Procedure

3. The facts established by the Dispute Tribunal in this case, which are not disputed, read as follows:[1]

> ... On 6 June 2009, [vacancy announcement 09-POP-DESA-419116-R-New York for the P-5 level post of Chief, Population Policy Section ("PPS"), Population Division ("PD"), Department of Economic and Social Affairs ("DESA") (Post)] was listed on the United Nations job vacancy website. Seven candidates, including [Mr. Ivanov], were interviewed for it between 27 May 2009 and 6 June 2009, with an additional candidate being interviewed on 17 July 2009. Upon the completion of the selection process, candidates AB and VM were recommended for the Post by the Central Review Board ("CRB").
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> ... On 15 September 2009, AB was selected by the Under-Secretary-General for Economic and Social Affairs ("USG/DESA") for the Post and VM was added to the roster of candidates pre-approved for similar functions.
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> ... On 7 December 2009, AB entered into service as Chief, PPS/PD, but was soon thereafter, on 18 December 2009, laterally reassigned to the post of Chief, Fertility and Family Planning Section, due to critical operational needs arising from the dismissal of the former Chief of that Section.
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> ... On 22 December 2009, VM, who had been rostered, was selected to replace the now departed Chief, PPS/PD. VM was offered the appointment on 15 January 2010, which he accepted on 22 January 2010.

[1] The facts here are taken from Judgment No. UNDT/2012/176, paragraphs 2-10.

> ... On 1 March 2010, VM entered into service as Chief, PPS/PD, and, on 4 March 2010, [Mr. Ivanov] became aware that VM had been selected as the new Chief, PPS/PD in place of AB.
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> ... On 11 March 2010, [Mr. Ivanov] submitted a request for management evaluation of the decision to select VM on the grounds that he had "the required experience and applied for the [P]ost, but was not selected, and therefore [his] rights for due process were violated because the selected person did not have the minimum required experience for the post".
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> ... On 18 March 2010, [Mr. Ivanov] responded to an email from the Management Evaluation Unit ("MEU") acknowledging receipt of his management evaluation request by stating that he sought to clarify that the purpose of his request for management evaluation was not to contest the decision not to select him but rather that of the breach of his due process rights that resulted from the selection of an unqualified candidate.
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> ... On 22 April 2010, [Mr. Ivanov] received a 19 April 2010 letter informing him that "the Secretary-General has decided to endorse the findings and recommendations of the MEU and uphold the decision taken by the Administration to select another candidate for the post of Chief, PPS".
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> ... On 27 June 2010, [Mr. Ivanov] filed the present application with the [Dispute] Tribunal and, on 28 July 2010, the [Secretary-General] filed and served his reply in which he submits, as a preliminary matter, that [Mr. Ivanov's] application is not receivable *ratione materiae* as "[Mr. Ivanov] has clarified that he is not challenging the decision not to select him".

4. The Dispute Tribunal concluded that Mr. Ivanov's application was not receivable. It identified several administrative decisions: the 15 December 2009 decision not to select Mr. Ivanov for the Post; the decision of the same day to select AB; and, the 15 January 2010 decision to appoint VM. To the extent that Mr. Ivanov could be construed as protesting either of the 15 December 2009 decisions, the Dispute Tribunal found that his request for management evaluation was late, being filed more than a month after his statutory deadline expired.

5. With respect to the 15 January 2010 decision, the Dispute Tribunal held that Mr. Ivanov's request for management evaluation was made within the 60-day time limit and was not, therefore, time-barred, but that he lacked standing to contest the decision: as "there was no actual direct link between VM's selection and [Mr. Ivanov's] candidacy for the Post, it [could not] be said that any of his rights were breached by the new administrative decision".

Submissions

Mr. Ivanov's Appeal

6. Mr. Ivanov submits that the Dispute Tribunal erred on a question of fact and law in rendering its Judgment, as it incorrectly concluded that no link existed between him and the selection of the rostered candidate. He contends, in contrast, that such a link does exist because if the rostered candidate had not been selected, the Post would have been re-advertised and he could have applied.

7. He submits that he is not contesting his non-selection but, rather, the fact that the ultimately successful candidate did not meet the minimum requirements for the Post.

8. Mr. Ivanov avers that the decisive date is the date on which he was informed of the appointment of the rostered candidate.

9. Mr. Ivanov thus requests the Appeals Tribunal to find that his application to the Dispute Tribunal was receivable and to consider the merits of his case.

The Secretary-General's Answer

10. The Secretary-General submits that the Dispute Tribunal correctly concluded that Mr. Ivanov's claim was not receivable. His request for management evaluation was too late to protest the decision not to select him for the Post and he lacked standing to appeal the selection of the rostered candidate.

11. The Secretary-General further submits that Mr. Ivanov has established no reversible error on the part of the Dispute Tribunal.

12. The Secretary-General requests the Appeals Tribunal to dismiss the appeal in its entirety.

Considerations

13. The Appeals Tribunal will not grant Mr. Ivanov's request to find that his application to the Dispute Tribunal was receivable and that the UNDT ought to have considered the merits of his case. This Court is of the view that the Appellant has not established any error in fact or law emerging from the impugned Judgment.

14. After a competitive selection procedure for a P-5 post for which Mr. Ivanov had applied, the competent body recommended two candidates, one of whom was selected by the respective authority. The other person's name was put on the roster. That administrative decision had a direct impact on Mr. Ivanov's interest and standing and could have been impugned by him if he had considered it in breach of his rights as a competitor staff member.

15. However, he did not challenge the competitive procedure's final administrative act: he only began to contest the Administration's actions when the selected candidate was laterally moved, after a short period, to fill in a vacancy and the rostered candidate was appointed as a replacement.

16. The Appellant submits that as this candidate did not have the qualifications for the job, he should not have been selected and the Post should have been re-advertised, allowing Mr. Ivanov to apply for it a second time. He considers that the loss of this opportunity provides the standing for his request for management evaluation, which was submitted only after the appointment of the rostered candidate.

17. Although Mr. Ivanov states that he is not contesting the administrative decision not to appoint him but the decision to appoint another candidate, we note that the latter is the consequence of the former.

18. The Appeals Tribunal holds that Mr. Ivanov's rights as a staff member were linked to the administrative decision that completed the selection procedure. As such, any breach of his rights could only be caused by that decision and not the later one which simply executed the previous selection (in which the decision was made to roster VM).

19. Mr. Ivanov's candidacy for the Post was already unsuccessful by the time VM was selected.

20. Hence, his standing to challenge the qualifications of the recommended candidates, in support of his own interest in the position, came into effect when both the recommended candidate (AB) was selected for the Post and VM was selected for inclusion on the roster.

21. Mr. Ivanov was perfectly aware that he had not been selected and could, therefore, have requested management evaluation of that decision. But he failed to do so. Hence, he cannot create a new opportunity for himself by trying to challenge the subsequent appointment of one of the recommended candidates.[2]

22. Not challenging that decision precluded the staff members, including Mr. Ivanov, who were not recommended for selection from subsequently impugning the designation of the rostered candidate, which arose simply as a consequence of the non-impugned outcome of the selection procedure and the incidental lateral movement of the first appointed person.

23. Therefore, the UNDT Judgment under appeal correctly determined that the claim was time-barred and that the staff member lacked standing, and that, as such, it was not receivable.

Judgment

24. The appeal is dismissed in its entirety and the Dispute Tribunal's Judgment is affirmed.

[2] See, generally, *Roig v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-368, also issued at the 2013 Fall session.

Original and Authoritative Version: English

Dated this 17th day of October 2013 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Simón, Presiding	Judge Faherty	Judge Adinyira

Entered in the Register on this 19th day of December 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar