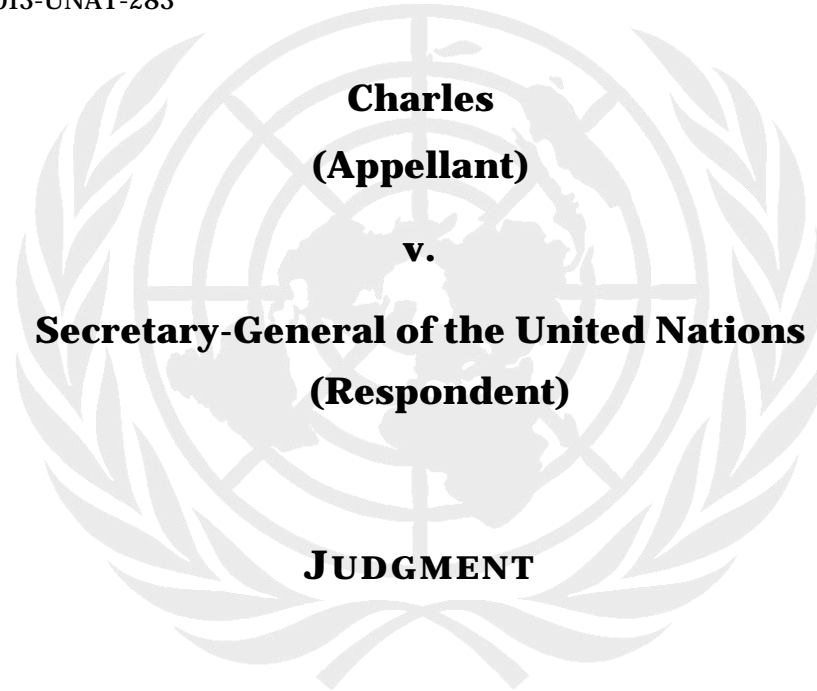




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2013-UNAT-283



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**Before:** Judge Luis María Simón, Presiding  
Judge Inés Weinberg de Roca  
Judge Richard Lussick

**Case No.:** 2012-309

**Date:** 28 March 2013

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** Self-represented

**Counsel for Respondent:** Stéphanie Cartier

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Lestrade Charles against Judgment No. UNDT/2012/020, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 10 February 2012 in the case of *Charles v. Secretary-General of the United Nations*. Mr. Charles appealed on 26 March 2012, and the Secretary-General answered on 1 June 2012.

### **Facts and Procedure**

2. On 14 January 2009, a temporary vacancy announcement for two P-4 level positions as “Procurement Officers, Team Leaders”, located in Mr. Charles’ work unit, the Procurement Division (PD), Office of Central Support Service, Department of Management, was circulated. Both positions required “[a] minimum of seven years of progressively responsible experience in high volume procurement operations, contract administration or related field”. Mr. Charles, who was then at the P-3 level, did not apply for either position, advising his supervisor that he might not be qualified for them.

3. Shortly thereafter, on 17 February 2009, two P-4 level positions for “Procurement Officers” were advertised. The vacancy announcements, which were virtually identical to the above-referenced temporary vacancy announcement, indicated that “[a] minimum of seven years of progressively responsible experience in high volume procurement operations, of which at least three years at the international level”, was required. Mr. Charles applied for the positions on 24 February 2009.

4. According to the Dispute Tribunal, which relied upon a joint statement of facts produced by the parties, no 15-day candidates were identified for either vacancy. As almost all candidates had applied for both positions, the selection processes were combined. Mr. Charles was invited to take a written test for the posts and scored 30 points out of a possible 40. He was one of seven candidates to achieve 30 points; nine candidates obtained a higher score.

5. On 5 November 2009, Mr. Charles was interviewed by telephone for the positions. The interview panel rated his interview as 11.7 out of 20 and deemed him unsuitable for either position. It observed that he did not meet the requirement of seven years’ work experience in high volume procurement.

6. On 23 February 2010, the Director, PD, sent an e-mail to announce that a decision had been made and indicated the successful candidates. On 20 April 2010, Mr. Charles requested management evaluation of the decision not to select him. In the course of the management evaluation process, the PD advised the Management Evaluation Unit (MEU) that Mr. Charles was not recommended for selection as other candidates had obtained better scores on the written test and at interview. In addition, although he was interviewed and rated, the PD noted that he did not meet the work experience requirements. On 21 May 2010, Mr. Charles was notified that the selection decision was maintained, the MEU having determined that it was properly taken.

7. Mr. Charles appealed this decision to the UNDT, contending, *inter alia*, that the candidates for the posts should not have been evaluated together; as an internal candidate at the 30-day mark, he should have received priority consideration; the vacancy announcements were misleading; the interview was procedurally flawed; the interview panel acted *ultra vires*; and, the Respondent erred in failing to specifically advise him of the outcome of the selection process and final decision and in not publishing the results of the selection process.

8. On 21 July 2010, Mr. Charles filed, *inter alia*, a motion for disclosure of documents pertaining to the written test and interviews in the impugned selection process. The Secretary-General subsequently objected to such disclosure. The UNDT did not address the motion at that time but, in its Judgment on the merits of the case, indicated that it did not consider the requested documents relevant to the issue before the Dispute Tribunal, namely whether Mr. Charles' candidacy was properly evaluated, not whether the assessments of other candidates were improper.<sup>1</sup>

9. In its Judgment No. UNDT/2012/020, the Dispute Tribunal recalled that the contested selection exercise was governed by administrative instruction ST/AI/2006/3, entitled "Staff selection system", which provided that candidates should be reviewed by priority status at the 15-, 30- and 60-day marks. The Secretary-General conceded that there was an error in the order in which Mr. Charles was considered; as a 30-day candidate, he should have been considered before the 60-day mark, and the UNDT found that this constituted a procedural breach. However, the UNDT held that he had not suffered harm as a result of this breach, as he

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<sup>1</sup> Judgment No. UNDT/2012/020, para. 17 *et seq.*

did not have the required seven years' "progressively responsible experience in high volume procurement", something he had himself indicated in his communications with his supervisor and the PD Director. As such, he had no prospect of selection and the breach did not result in "denial of a loss of chance of promotion". The UNDT did not award him compensation and rejected his remaining claims.

### **Submissions**

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

10. Mr. Charles submits that the Dispute Tribunal made several errors of fact and of law, including misunderstanding his application and ignoring his motion for disclosure of documents pertaining to the evaluation process.

11. Mr. Charles claims the UNDT erred in finding that his case "was against 'the decision not to select'" him, noting "[t]he focus of my appeal was at all times and remains on the unfairness and unlawful nature of the selection process".

12. Insofar as the substance of the case is concerned, he contends that the errors committed by the Respondent significantly deprived him of a real opportunity to be, at the least, rostered, if not selected and promoted. He asserts that he has adequately discharged the burden of proving that there were procedural flaws and bias in the selection process which prevented him from receiving full and fair consideration, and refers to the issuance of misleading vacancy announcements; the decision to review 30- and 60-day candidates together; the decision to combine the exercises; and, the evaluation process. Furthermore, he disputes the finding of the UNDT that he was adequately notified of the selection decision.

13. Mr. Charles submits that he has "suffered significant material damage, as well as a high degree of moral damage as a consequence of the flaws in the selection process".

14. He requests the Appeals Tribunal to find that his candidature was not given full and fair consideration and that his contractual rights were violated. He seeks "monetary compensation, as the Tribunal deems reasonable and appropriate under the circumstances".

15. Finally, Mr. Charles contends that his case was unreasonably delayed at the UNDT, resulting in "tremendous uncertainty and anxiety".

**Secretary-General's Answer**

16. The Secretary-General considers that Mr. Charles has established no factual, legal or procedural errors on the part of the Dispute Tribunal that would warrant reversal of its Judgment.

17. On the substance of the case, the Secretary-General submits that the UNDT correctly concluded that Mr. Charles did not have the professional experience required, and that the interview panel conducted the interview in a fair and reasonable manner, without bias or prejudice, and did not act *ultra vires* in finding that he lacked the required experience.

18. The Secretary-General further submits that the UNDT was correct in not awarding compensation to Mr. Charles, who suffered no harm as a result of the procedural irregularity in his case.

19. The Secretary-General requests the Appeals Tribunal to affirm the Judgment of the UNDT, and to dismiss the appeal in its entirety.

**Considerations**

20. The first issue to be addressed is the Dispute Tribunal's decision not to take up the Appellant's motion for disclosure of documents pertaining to the evaluation process prior to the final judgment. Whilst an advance express decision on that motion would have been preferable, the Appellant fails to demonstrate how the implicit denial affected his rights or how the disclosure would have had a relevant impact on the evidence already collected in this case, the basic facts of which were not contested. Therefore, there are no procedural grounds to vacate the Judgment under appeal.

21. With respect to the merits of the case, the Tribunal holds that the Appellant has not established any error of fact or law that would warrant reversal of the first instance Judgment. This Court held in *Isarabhakdi* that "[i]t is not enough to demonstrate an illegality to obtain compensation: the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting from the illegality on a cause-effect lien. If these other two elements of the notion of responsibility are not justified, only the illegality can

be declared but compensation cannot be awarded.”<sup>2</sup> As stated by this Tribunal in *Wu*, “not every violation of due process rights will necessarily lead to an award of compensation”.<sup>3</sup>

22. We agree with the UNDT’s determination that the Appellant had no chance of being promoted, since he did not have the years of experience required for the P-4 positions in which he was interested. Hence, the errors committed by the Respondent (*i.e.*, about the 30-day candidates’ right to priority consideration; notification of his non-selection) did not deprive him of a real opportunity to be promoted or even included in the roster. He cannot be considered simply as a candidate qualified for the post but not selected after the competitive process, thereby suitable to have his name put on the roster, because his lack of experience, albeit noticed late, made him unsuitable for the positions. Despite any procedural flaws in the impugned process, he had no foreseeable chance of being promoted or included in the roster; the irregularities did not, thus, affect his status as a staff member.

23. This reasoning leads us to affirm the correct decision not to award compensation to the Appellant, as adopted by the Dispute Tribunal.

### **Judgment**

24. The UNDT Judgment is affirmed and the appeal is dismissed in its entirety.

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<sup>2</sup> *Isarabhakdi v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-277, para. 24.

<sup>3</sup> *Wu v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-042, at para. 33.

Original and Authoritative Version: English

Dated this 28<sup>th</sup> day of March 2013 in New York, United States.

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Lussick

Entered in the Register on this 24<sup>th</sup> day of May 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar