



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

Judgment No. 2013-UNAT-286

**Charles
(Appellant)**

v.

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

JUDGMENT

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| Before: | Judge Sophia Adinyira, Presiding Judge Mary Faherty Judge Rosalyn Chapman |
| Case No.: | 2012-312 |
| Date: | 28 March 2013 |
| Registrar: | Weicheng Lin |

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| Counsel for Appellant: | Self-represented |
| Counsel for Respondent: | Zarqaa Chohan |

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Lestrade Charles against Judgment No. UNDT/2012/024, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 14 February 2012 in the case of Charles v. Secretary-General of the United Nations.

Facts and Procedure

2. Mr. Charles, a P-3 level staff member in the Procurement Division, Office of Central Support Service, Department of Management, in New York, applied for the generic P-4 level position of Board of Inquiry Officer, Field Personnel Division, Department of Field Support, which was advertised on 21 September 2010.

3. He was one of 65 candidates pre-screened by the Office of Human Resources Management (OHRM) and invited to take a written test. Mr. Charles and 34 other candidates successfully completed the test and were invited for interview by a three-member expert panel in December 2010. The expert panel recommended 23 candidates for placement on the roster, which recommendation was endorsed by the Field Central Review Body on 2 February 2011. Mr. Charles, who was not one of the recommended candidates, was advised that his application had not been successful on 10 February 2011 and, upon request, received feedback that his performance management competency had been rated as “marginal”.

4. On 7 April 2011, Mr. Charles requested management evaluation of the decision not to select him for the post but, on 11 May 2011, was advised that the decision was considered “appropriate in the circumstances”. Again, he received feedback about his performance management competency.

5. Mr. Charles appealed this decision to the UNDT on 5 August 2011, contending, *inter alia*, that as he had applied for a generic job opening, the expert panel was competent only to conduct an assessment of his candidacy on behalf of the Director of the Field Personnel Division, but did not have the authority to make the final recommendation. Furthermore, he contended that, in the absence of mandatory training in competency-based interview techniques, the recommendation of the expert panel was invalid and should be

considered null and void, and, moreover, its members were “unqualified, untrained and incompetent” to assess his competencies.

6. In its Judgment No. UNDT/2012/024, the Dispute Tribunal found that Mr. Charles’ candidature had been given full and fair consideration and dismissed his application, *in toto*.

7. Having reviewed the relevant provisions of ST/AI/2010/3 of 21 April 2010, entitled “Staff selection system”, the UNDT rejected his submission that the expert panel did not have the authority to compile a list of recommended candidates based on its assessment of all the candidates participating in the selection process. It found “no requirement in any of the regulations, rules or policies of the Organization for all expert panel members to undergo training in competency-based interviewing”, and recalled:

ST/AI/2010/3 sets out the procedures applicable to staff selection processes as from 21 April 2010. It is a comprehensive document that is presumed to include all that is necessary for the correct execution of the selection process. It states that all manuals are to be read subject to the administrative instruction, but is silent as to the requirement that all interview panelists are required to complete training.

8. Mr. Charles attempted to rely on A/61/822, the Secretary-General’s Report to the General Assembly on “Human resources management reform: recruitment and staffing” of 27 March 2007, in contending that the expert panel was not properly trained. Whilst noting that it was clear from paragraph 26 of A/61/822 that OHRM had been conducting training on staff selection and all expert panel members are now required to complete competency-based interview training, the Dispute Tribunal held that a lack of such training could not be construed as a procedural error, as the Report had no regulatory effect and, as such, did not create individual rights. In the instant case, two of the three expert panel members had received relevant interview training prior to the interviews.

9. The Dispute Tribunal found no evidence to support Mr. Charles’ other allegations in respect of the expert panel, holding that the selection process had been properly conducted in accordance with ST/AI/2010/3. Finally, the UNDT chided Mr. Charles for wasting “[t]he limited resources of the Tribunal ... in this case to re-state the clear policy of the Organization in respect of staff selection processes”, finding he had “made claims of

irregularity with no evidence at all to support such allegations”, and recalled that “[t]he Tribunal discourages such unnecessary litigation”.

10. Mr. Charles appealed the UNDT Judgment to this Tribunal on 27 March 2012, and the Secretary-General answered on 22 May 2012. On 15 February 2013, Mr. Charles filed a motion for disclosure of a document, which was granted by the Appeals Tribunal on 12 March 2013. The Secretary-General provided the document on 14 March 2013.

Submissions

Mr. Charles’ Appeal

11. Mr. Charles submits that the Dispute Tribunal erred on material questions of fact, which resulted in a manifestly erroneous and unreasonable decision.

12. He further submits that the UNDT erred on several questions of law, significantly undermining the integrity and fairness of the process. He contends that the Organization has flouted its own policy of a mandatory requirement that expert panel members undergo training in competency-based interviewing, resulting in a significantly flawed administrative decision which has deprived him of his chance of career advancement.

13. Mr. Charles asks the Appeals Tribunal to find that his candidature was not given full and fair consideration and that his contractual and due process rights were violated. He seeks “reasonable compensation for the damage caused to his career advancement opportunity and for the moral and emotional harm caused as a consequence of the violation of his rights”.

Secretary-General’s Answer

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

15. On the substance of the case, the Secretary-General submits that the UNDT correctly concluded that Mr. Charles’ candidature was given full and fair consideration and that he has established no errors warranting reversal of the Dispute Tribunal’s conclusion as to the propriety of the interview.

16. 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 any alleged breach.

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

Considerations

18. Mr. Charles, pursuant to Article 2(1) of the Statute of the Appeals Tribunal, appeals on grounds that the UNDT erred on material questions of fact and law.

19. Both grounds of appeal stem out of the finding of the UNDT that there is no requirement in any of the regulations of the Organization for all expert panel members to undergo training in competency-based interviewing.

20. Mr. Charles submits that the requirement for expert panel members to undergo training in competency-based interviewing is a policy of the Organization and is stated in several official documents. He contends that the fact that the panel of experts did not undergo the mandatory training in competency-based interviewing techniques is a violation of the instructions of the Secretary-General and that this establishes his claim that his assessment was improper.

21. The Appeals Tribunal notes that Mr. Charles merely repeats arguments submitted before the Dispute Tribunal. The Appeals Tribunal recalls its repeated decisions:

The appellant has the burden of satisfying the Appeals Tribunal that the judgment rendered by the Dispute Tribunal is defective. It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective. It is not sufficient for an appellant to state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the Dispute Tribunal.¹

22. The Appellant had sought to rely on A/61/822, the Secretary-General's Report to the General Assembly on "Human resources management reform: recruitment and staffing" of 27 March 2007, on an OHRM memorandum of 11 September 2006 and on information

¹ *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29; see also *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110.

set forth on the OHRM website, in alleging that the expert panel was not properly trained. Mr. Charles submits further that whether or not this was expressly provided for, the spirit and intent of the Organization's human resources framework suggests that a panel is expected to have been trained.

23. In the view of the Appeals Tribunal, the Secretary-General's reports and memoranda lack the legal authority vested in properly promulgated administrative issuances. Administrative issuances regulate matters of general application and directly concern the rights and obligations of staff and the Organization. Rules, policies or procedures intended for general application may only be established by duly promulgated Secretary-General's bulletins and administrative issuances.²

24. The Appeals Tribunal notes that the relevant administrative instruction on the staff selection process, ST/AI/2010/3, is silent on the requirement for such training. In any event, there was evidence before the Dispute Tribunal that two of the three expert panel members had received relevant training prior to the interview. Mr. Charles contends that the UNDT erred as the Secretary-General proffered no evidence other than mere statements on this issue. This submission is without merit. The Appeals Tribunal affirms that the UNDT has broad discretion under its Rules of Procedure to determine the admissibility of evidence and the weight to be attached to such evidence.³

25. Mr. Charles submits further that his candidature for the generic post of Board of Inquiry Officer was not given full and fair consideration and that his contractual and due process rights were violated. Here too, Mr. Charles is repeating the same arguments he made before the UNDT, which have been ruled upon.

26. The Appeals Tribunal has held in *Megerditchian*:

It should be emphasized that "priority consideration" cannot be interpreted as a promise or guarantee to be appointed or receive what one is considered in priority for. To hold otherwise would compromise the highest standards of

² See Section 1.2 of ST/SGB/2009/4, "Procedures for the promulgation of administrative issuances", of 18 December 2009.

³ See *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123 and *Larkin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-134.

efficiency, competency, and integrity required in selecting the best candidate for staff positions under Article 101 of the Charter.⁴

Similarly, in a prior case filed by the same Appellant, this Tribunal held:

[I]n reviewing the Secretary-General's exercise of his discretionary authority in matters of staff selection and promotion, the UNDT is to consider, whether the staff member's candidacy was given full and fair consideration and whether the procedure set forth in the Staff Regulations and Rules was followed. Mr. Charles merely repeats arguments he raised before the UNDT and does not show how the UNDT erred.⁵

27. In *Rolland*, the Appeals Tribunal held that a selection should be upheld when candidates have received full and fair consideration, when discrimination and bias are absent, when proper procedures have been followed, and when all relevant material has been taken into consideration.⁶

28. In the case before us, the Dispute Tribunal in considering the selection process, opined:

... [T]he fact that one out of three members of the expert panel who interviewed that Applicant had not received competency-based training in interviewing does not in and of itself result in a breach of the Applicant's rights. ...

... Neither has the Applicant substantiated his contention that the expert panel members were "unqualified, untrained and incompetent to assess [his] competencies" to the extent that this would render the entire selection process void.

... There is no evidence at all before the Tribunal that the expert panel committed any procedural or other errors that had any impact on the selection process. On the contrary, as documented, the selection process in all respects followed the comprehensive system prescribed by ST/A1/2013/3.⁷

⁴ *Megerditchian v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-088, para. 28.

⁵ *Charles v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-242, para. 34 (internal citations omitted).

⁶ *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122.

⁷ UNDT/2012/024, para. 35 *et seq.*

The Dispute Tribunal concluded:

[T]he evidence on the record establishes to a higher degree than that required by the test in *Rolland* that the evaluation of the Applicant's candidacy was done fully and fairly and that the selection process was not vitiated by any irregularity. The Applicant was assessed against objective standards which applied to each candidate who was interviewed. Both his strengths and weaknesses were noted. In the face of such finding the Applicant has not shown through clear and convincing evidence that he was denied a fair chance of promotion.⁸

29. We affirm this decision.

30. Mr. Charles seeks "reasonable compensation for the damage caused to his career advancement opportunity and for the moral and emotional harm caused as a consequence of the violation of his rights". We find this claim unreasonable, as the UNDT has not erred in finding that there is no evidence of procedural irregularities. Even if there was, an individual is not entitled to compensation if he or she did not suffer any harm.⁹

31. From the foregoing, the appeal fails.

Judgment

32. The appeal is without merit and is dismissed. The UNDT Judgment is affirmed.

⁸ UNDT/2012/024, para. 39.

⁹ See *Sina v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-094.

Original and Authoritative Version: English

Dated this 28th day of March 2013 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Faherty

(Signed)

Judge Chapman

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

(Signed)

Weicheng Lin, Registrar