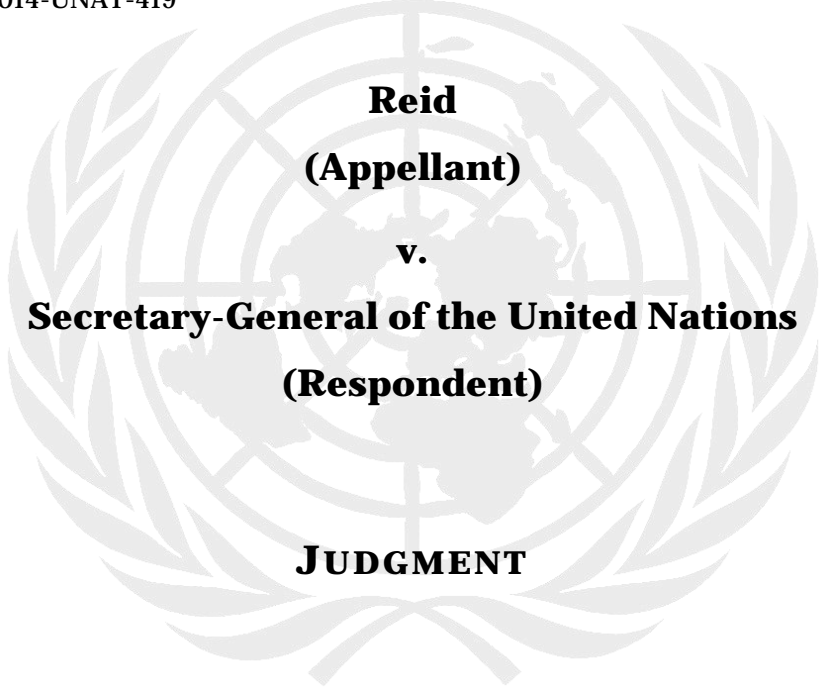




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2014-UNAT-419



**Reid
(Appellant)**
v.
**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before: Judge Inés Weinberg de Roca, Presiding
Judge Richard Lussick
Judge Rosalyn Chapman

Case No.: 2013-471

Date: 2 April 2014

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Simon Thomas

JUDGE INÉS WEINBERG DE ROCA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Timothy Bancroft Reid against Judgment No. UNDT/2013/048 (Judgment on Receivability), rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 13 March 2013 in the case of *Reid v. Secretary-General of the United Nations*. Mr. Reid appealed on 28 May 2013 and the Secretary-General of the United Nations answered on 30 July 2013.

Facts and Procedure

2. On 19 February 2012, Mr. Reid was reappointed to the Organization under a temporary appointment as Chief, Disarmament, Demobilization and Reintegration Officer, D-1, with the United Nations Support Mission in Libya (UNSMIL). Mr. Reid had previously served as a Senior Political Affairs Officer, P-5, with the United Nations Interim Force in Lebanon until November 2009.

3. Mr. Reid alleges that towards the end of 2010, he wrote to the then Under-Secretary-General of the Department of Field Support, complaining that female candidates were being favoured over him for selection to posts, even if they were less qualified and sometimes had no field experience. With the aim of “get[ting] a justification and change in policy”, he requested an explanation of the Organization’s policy, but his queries were allegedly unanswered.

4. On 18 March 2012, Mr. Reid sought management evaluation of the “decision not to give [him] a decision regarding the discrimination against men in the Organization’s hiring process in general and the rostering process in particular”. On 21 April 2012, the Management Evaluation Unit advised that his request was not receivable. On 21 August 2012, Mr. Reid appealed to the UNDT.

5. On 13 March 2013, the UNDT issued a Judgment on Receivability, Judgment No. UNDT/2013/048, by which it dismissed Mr. Reid’s application on the basis that it was not receivable *ratione materiae* due to a “want of subject-matter jurisdiction”. The UNDT held that the contested decision was not an administrative decision over which the UNDT had jurisdiction. Specifically, the UNDT noted that:

A broad brush suggestion that a particular policy is discriminatory is not sufficient for the purposes of litigation. The Tribunal is not in the business of reviewing policies within the Organisation, except where an applicant clearly demonstrates that a specific decision has been made, which is adverse to his or her interests, in furtherance of that policy.¹

6. Mr. Reid appeals the UNDT Judgment.

Submissions

Mr. Reid's Appeal

7. Mr. Reid submits that the UNDT made an error in fact in holding that he was making “broad brush suggestions”; rather, he has made very specific allegations of discrimination and a specific complaint as to why he, as a man, was rostered for only two years when women were rostered for three.

8. Mr. Reid submits that there is no strict definition of “administrative decision” as referred to under Article 2(1)(a) of the UNDT Statute; what amounts to such should be decided on a case by case basis. The UNDT jurisprudence confirms that a challenge to a policy and the “failure of the administration to act” amount to an administrative decision subject to judicial review. It is irrelevant if an administrative decision affects the particular individual or a larger group as long as it affects the person directly.

9. Mr. Reid argues that the UNDT erred in law and failed to exercise its jurisdiction by finding that it had no jurisdiction to review the lawfulness of administrative issuances. In accordance with the jurisprudence of the UNDT and the former Administrative Tribunal, all rules applying to staff members are subject to judicial review.

10. Mr. Reid contends that Article 2(1)(a) of the UNDT Statute gives the Dispute Tribunal competence to hear an appeal regarding an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment, which include all pertinent Regulations, Rules, Bulletins, and Administrative Instructions issued by the Secretary-General. ST/SGB/2008/5 entitled “Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority” which prohibits discrimination based on gender provides that “discrimination” does not have to be an isolated incident but may also apply to a group of similarly situated persons. It also provides the applicant with a remedy, stating that

¹ Impugned Judgment, para. 15.

the UNDT has jurisdiction to examine the administrative activity after a request for investigation, and to decide whether the administrative decision is in compliance with the terms of appointment or the contract of employment. The UNDT therefore failed to exercise its jurisdiction regarding the obligation to take action against prohibited conduct.

11. Mr. Reid requests that the Appeals Tribunal overturn the UNDT Judgment and declare that his appeal is receivable. He requests that the Appeals Tribunal rule on the merits of the case. He reiterates the relief he requested before the UNDT and additionally asks for an award of costs in the amount of USD 5,000 for pursuing his appeal.

12. Mr. Reid requests that the Appeals Tribunal hold an oral hearing in his case.

The Secretary-General's Answer

13. The Secretary-General contends that the UNDT correctly concluded that Mr. Reid did not challenge an "administrative decision" and that it therefore had no jurisdiction to entertain his application. The UNDT's conclusion is consistent with the UNDT Statute and the consistent jurisprudence of the Appeals Tribunal and the former United Nations Administrative Tribunal on the definition of an "administrative decision" subject to judicial review.

14. The UNDT correctly found that Mr. Reid did not identify an administrative decision capable of being reviewed as he failed to identify a specific decision which had a direct and adverse impact on his contractual rights. Mr. Reid's complaints involved female candidates being favoured in general in selection decisions on the basis of the Organization's gender policy. Mr. Reid was therefore not challenging a specific administrative decision which he alleged to be discriminatory, but was asking that the UNDT overturn a policy.

15. Turning to Mr. Reid's contention that the UNDT incorrectly failed to rule in his favour in relation to his complaint under ST/SGB/2008/5, the Secretary-General reiterates that no action could have been taken under that issuance as Mr. Reid never identified a specific incident that could have been challenged. The Secretary-General submits that even if the matter were receivable, Mr. Reid failed to follow the procedures set out in ST/SGB/2008/5 for formally making a report of discrimination.

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

Considerations

17. As a preliminary matter, this Tribunal denies Mr. Reid's request for an oral hearing, finding there is no need for further clarification of the issues arising from his appeal, pursuant to Articles 2(5) and 8(3) of the Statute of the Appeals Tribunal.

18. Article 2 of the UNDT Statute establishes that:

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance[.]

18. The UNDT correctly found that Mr. Reid did not identify an administrative decision capable of being reviewed. He failed to identify a specific decision which had a direct and adverse impact on his contractual rights. Mr. Reid's complaints involved female candidates being favoured in general in selection decisions on the basis of the Organization's gender policy.

19. Mr. Reid is therefore not challenging a specific administrative decision which he alleges to be discriminatory, but is asking that the UNDT overturn a policy.

20. In a similar case, *Planas*, the Appeals Tribunal held:

... In effect, the claim that she was passed over and discriminated against could only be made if the staff member, feeling that she had suffered injury after she had submitted a specific candidacy and after another person had been selected, had contested the results of the selection process, that is, the specific appointment made.

... Therefore, the UNDT was correct in finding that, as Planas did not contest in precise terms her non-selection for any post, she did not identify any administrative decision in her application.

... Advancement of a claim like the one being made requires verification that a particular administrative decision taken with respect to a specific application by Planas to fill one or more specific posts, was taken contrary to law, causing her direct harm. Thus, the violation of the right she invokes would be compared with the

applicable norms and with the rights of the other candidates, in order to determine whether or not the alleged violation took place.²

Judgment

19. In view of the foregoing, the Appeals Tribunal dismisses the appeal and affirms the UNDT Judgment.

² *Planas v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-049, paras. 20-22.

Original and Authoritative Version: English

Dated this 2nd day of April 2014 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Lussick

(Signed)

Judge Chapman

Entered in the Register on this 13th day of May 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar