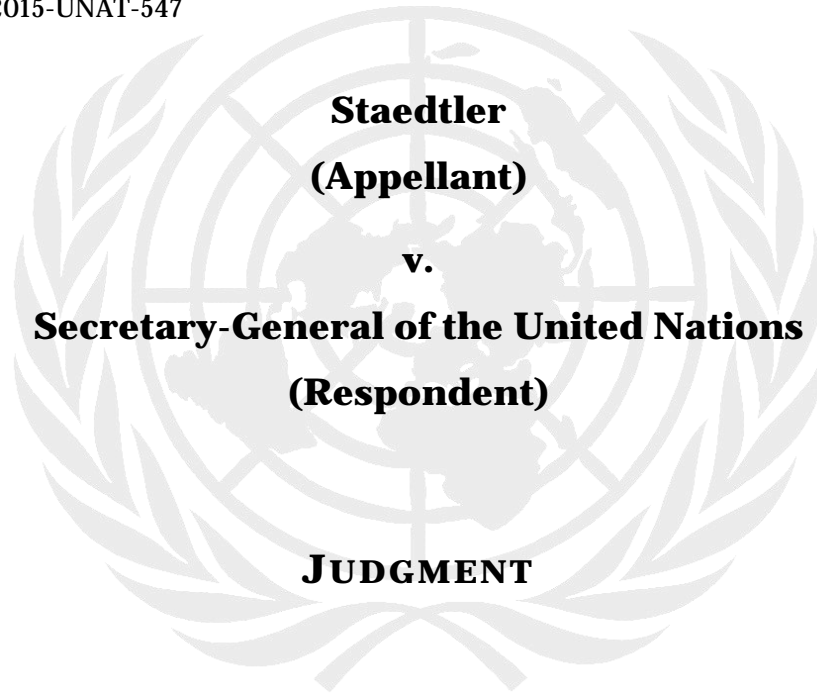




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-547



**Staedtler
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Richard Lussick Judge Luis María Simón
Case No.:	2014-631
Date:	2 July 2015
Registrar:	Weicheng Lin

Counsel for Mr. Staedtler:	Self-represented
Counsel for Secretary-General:	Amy Wood

JUDGE SOPHIA ADINYIRA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2014/058, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 30 May 2014, in the matter of *Staedtler v. Secretary-General of the United Nations*. Mr. Marc Michael Staedtler appealed on 28 July 2014, and the Secretary-General answered on 7 October 2014.

Facts and Procedure

2. The facts as established by the Dispute Tribunal read as follows:¹

... The Applicant has substantial experience as a consultant in architectural and master plan preparation. He joined [the United Nations Human Settlements Programme (UN-Habitat)] on 13 September 2011 on a one year fixed term appointment as a Technical Officer at the P-4 level based in the UN-Habitat Regional and Technical Cooperation Division (RTCD) office, in Tripoli, Libya. He also acted as UN-Habitat's Focal Point for Libya until he was re-assigned to Amman, Jordan.

... The Applicant contends that he was reassigned following his reports of prohibited activities in the Libya programme.

... His fixed term contract expired on 31 December 2012. As it was not renewed he was separated from service on 1 January 2013.

... On 18 October 2012, the Applicant applied for the Fukuoka[, Japan] post of Human Settlements Officer. The competencies of the post were listed as: professionalism; judgment and decision-making; planning and organising; and leadership.

... The Applicant was pre-screened and was found to have met the minimum requirements of the job opening. He was then shortlisted by the hiring man[ager] from a total of 35 applicants as one of four persons to be interviewed for the vacancy. In February 2013, the four shortlisted candidates underwent a competency based assessment by a departmental panel (the Panel).

... In March 2013, the Panel produced a report which recorded the assessments of each candidate against the competencies listed in the vacancy announcement (VA) for the Fukuoka post.

a) Candidate 1 fully met all the requirements of each of the competencies.

¹ Impugned Judgment, paras. 9-24 (internal citation omitted).

b) Candidate 2 (the Applicant) was assessed as having fully met one of the requirements, partially meeting one of the requirements and not meeting the other three requirements. In the overall assessment of the Applicant the Panel noted:

Whilst the interview validated the PHP assessment by the panel, it was clear that he had no experience of working in Asia or the Pacific (indeed the candidate admitted the same), and failed to convince the panel that he had the leadership, judgment and decision making competencies to undertake this position.

c) Candidate 3 partially met two of the requirements and fully met the other three requirements.

d) Candidate 4 fully met the requirements of each of the competencies.

... The Panel recommended candidates 1 and 4 for the post.

... On 22 May 2013, the Central Review Body (CRB) advised the Executive Director that the evaluation criteria had been properly applied and that the applicable procedures were followed. It recommended the two proposed candidates for selection or placement on the roster.

... On 6 June 2013, the Applicant was notified that he had not been selected for the post.

... The Applicant requested the Officer-in-Charge (OIC) of the Recruitment and Planning Section of the Human Resources and Management Section at the United Nations Office in Nairobi (HRMS/UNON) to advise if he had been included on the professional roster following the selection processes for the Cairo and Fukuoka posts; the procedures for inclusion in the roster; and whether this case had been reviewed by the CRB. He also requested the “mandatory documentation of the selection process and roster decision in INSPIRA”.

... The OIC responded on 17 June 2012. She advised that he had not been included in the roster but if any rostering took place the candidate would be advised through INSPIRA. She told him the procedures followed were those in section 9.4 of the Staff Selection System^[2] and that the rostering system is handled automatically by the INSPIRA system. She confirmed that his case had been reviewed by the CRB.

... She declined his request for documentation on grounds that documentation in recruitment cases is treated as confidential and will not be made public adding that even when the UNDT has ordered the disclosure of this type of confidential material, access to it by unsuccessful candidates is very rarely granted.

... The Applicant then sought further information about the composition and membership of the CRB and the criteria for endorsement by the CRB.

² The reference here is to Administrative Instruction ST/AI/2010/3 entitled “Staff selection system”.

... The OIC advised that she could not share the identity of the members of the CRB on posts he was [a] candidate for as the information was kept confidential to maintain their independence.

... On 13 July 2013, the Applicant requested management evaluation of the decision not to provide information of the process leading to and supporting the administrative decision not to include him in the roster; and not to disclose the membership of the CRB.

... Following a review by the Management Evaluation Unit (MEU) the contested decisions were upheld by the Under-Secretary-General for Management.

3. Mr. Staedtler appealed. In Judgment No. UNDT/2014/058, the Dispute Tribunal dismissed Mr. Staedtler's application. It found that the selection process for the Fukuoka post had been properly and lawfully conducted, and that Mr. Staedtler had failed to substantiate his claims of improper motives and procedural errors. The Dispute Tribunal refused to entertain Mr. Staedtler's claims regarding the production of certain documents, as, in its view, such matters were not appealable administrative decisions, but rather ancillary matters, and they were resolved by the Dispute Tribunal during the course of the proceedings.

Submissions

Mr. Staedtler's Appeal

4. The Dispute Tribunal exceeded its competence and committed an error in procedure subjecting the parties to disparate treatment. For instance, it granted five working days to the Respondent to produce certain documents while it gave Mr. Staedtler only two working days to analyse, and respond to, them. It was an error in fact and in law on the part of the Dispute Tribunal when it failed to draw the necessary inference from the Respondent's failure to produce the documents requested by Mr. Staedtler and the Respondent's refusal to disclose the membership of the CRB.

5. The Dispute Tribunal erred in fact and in law when it failed to find that the interview questions "illegitimately deviated from their standard description" and thus unlawfully favoured the two recommended candidates and discriminated against Mr. Staedtler. That panel's ratings in respect of Mr. Staedtler's competencies and interview necessarily require an upgrading to "satisfactory".

6. The Dispute Tribunal erred in fact and in law when it found that the Respondent had satisfied the requirement of making a minimum showing of regularity, and that the selection process had complied with the applicable procedures. He has proved with a preponderance of evidence that the interview and selection procedures were not respected, the members of the Panel were biased, and relevant material was ignored and irrelevant material was considered.

7. Mr. Staedtler requests that the Appeals Tribunal vacate the Impugned Judgment and order the review of his case by a different UNDT judge in case of a remand.

The Secretary-General's Answer

8. The UNDT correctly held that the selection process was lawful in all respects. The Dispute Tribunal found that the Administration had followed the same structured approach in respect of its evaluation of the four shortlisted candidates in full accord with Administrative Instruction ST/AI/2010/3 (Staff selection system).

9. The UNDT also considered Mr. Staedtler's claims of bias and procedural errors against the Panel, but rejected them as unfounded. In this regard, the Secretary-General notes that Mr. Staedtler's claims in respect of the number or description of the competencies listed in the VA or the manner in which the competencies were evaluated by the Panel were not raised in either his request for management evaluation or his UNDT application. Mr. Staedtler should not be permitted to raise these claims at this stage of the proceedings. In any event, not only are these claims not properly before the Appeals Tribunal, but they are without merit.

10. Mr. Staedtler has failed to establish any error, factual, legal or procedural, on the part of the Dispute Tribunal warranting reversal of the Judgment.

11. Mr. Staedtler has failed to establish that the Dispute Tribunal committed any error concerning disclosure of information that he had requested. Pursuant to UNDT's Order No. 65 (NBI/2014), the Respondent provided the UNDT with, inter alia, the comparative report of the interview panel, the VA for the contested post and the questions used by the Panel. The Respondent explained to the Dispute Tribunal that he could not produce the individual notes of the Panel members. The Dispute Tribunal accepted the Respondent's explanation in a reasonable exercise of the Tribunal's discretion in matters of case management.

12. The Secretary-General requests that the Appeals Tribunal dismiss the present appeal and affirm the Impugned Judgment.

Considerations

13. Mr. Staedtler appeals the Dispute Tribunal Judgment on the grounds of errors of procedure, errors of facts and law warranting a reversal of the Judgment.

Errors of Procedure

14. Mr. Staedtler submits that the Judgment is flawed because the Dispute Tribunal exceeded its competence and committed an error in procedure subjecting the parties to disparate treatment. For instance, it granted five working days to the Respondent to produce certain documents while it gave Mr. Staedtler only two working days to analyse, and respond to, them.

15. This submission lacks merit for the following reasons. Article 19 of the UNDT's Rules of Procedure (Rules) gives the Dispute Tribunal broad discretionary powers to issue any orders or directions which appear to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties. This Tribunal has often ruled that it would not interfere lightly with the broad discretion of the Dispute Tribunal in its case management.³ Mr. Staedtler has failed to demonstrate what document or related facts he would have submitted that would have affected the outcome of the case if he had been given more time.

16. Mr. Staedtler submits further that the Dispute Tribunal erred in law and fact when it failed to draw the necessary inference from the Secretary-General's failure to disclose the membership of the CRB and his refusal to produce the documents requested by Mr. Staedtler.

17. We do not find any merit in this submission. The Dispute Tribunal has a broad discretion to determine the admissibility of any evidence under Article 18(1) of its Rules and the weight to be attached to such evidence. This Tribunal is also mindful that the

³ *Leboeuf et al. v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-354, para. 8, citing *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062, para. 23.

Judge hearing the case has an appreciation of all of the issues for determination and the evidence before the UNDT.⁴

18. Regarding the non-disclosure of the membership of the CRB, we find Mr. Staedtler's submission frivolous. We recall our jurisprudence in *Asariotis* that:⁵

[The] interview process was governed by Administrative Instruction ST/AI/2010/3, Section 7.5 of which provides:

... Shortlisted candidates shall be assessed to determine whether they meet the technical requirements and competencies of the job opening. The assessment may include a competency-based interview and/or other appropriate evaluation mechanisms, such as, for example, written tests, work sample tests or assessment centres.

... This instrument does not impose an obligation on the Administration to inform the staff member of the composition of the interview panel prior to the interview.

... In the absence of any such statutory obligation, the UNDT's reliance on the Manual⁶ as conferring "fundamental" rights on staff members constitutes an error of law

19. The same principle can be applied to disclosure of membership of the CRB after the selection process. Accordingly, neither the Secretary-General was under any obligation to disclose, nor would it have been appropriate for the Dispute Tribunal to draw any inference by reason of the non-disclosure.

20. Regarding the Secretary-General's refusal to produce certain documents, the Dispute Tribunal properly found:⁷

... [G]iven the seriousness of [Mr. Staedtler's] allegations and for clarity of record, the [Dispute] Tribunal sought and considered submissions from the [Secretary-General] on the specific allegations made by [Mr. Staedtler] concerning disclosure.

... The [Dispute] Tribunal finds that the only documents the [Secretary-General] did not produce were the original interview notes of the panel members. The [Dispute] Tribunal accepts on the basis of the [Secretary-General's] explanation that these documents are not in [his] possession and he cannot be compelled to produce them.

⁴ *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123, para. 33.

⁵ *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-496, paras. 23-24.

⁶ Manual here stands for the Instructional Manual for the Hiring Manager on the Staff Selection System (Inspira).

⁷ Impugned Judgment, paras. 66-67.

21. From the foregoing, we hold that the Dispute Tribunal did not commit any errors of procedure to warrant a reversal of the Judgment.

Errors of facts and law

22. Mr. Staedtler submits that the Dispute Tribunal committed numerous errors of fact and law relating primarily to the manner in which the required competencies for the post were described and assessed by the Panel and thus favoured the two recommended candidates and discriminated against him. He based his arguments on the Manual.

23. The Secretary-General responds that Mr. Staedtler's claims in respect of the number or description of the competencies listed in the VA or the manner in which the competencies were evaluated by the Panel were not raised in either his request for management evaluation or his UNDT application.

24. The Secretary-General correctly stated: "[Mr. Staedtler] should not be permitted to introduce new arguments at this stage of the proceedings, and furthermore, [...] it is not reasonable for [Mr. Staedtler] to assert that the UNDT erred on questions of fact or law with respect to allegations, which were not raised before the UNDT for its consideration."

25. We find that these issues were not submitted before the court of first instance and therefore cannot be raised for the first time on appeal. Accordingly, we rejected Mr. Staedtler's arguments.

Error in selection process

26. Mr. Staedtler submits the Dispute Tribunal erred in fact and in law when it found that the Respondent had satisfied the requirement of making a minimum showing of regularity, and that the selection process had complied with the applicable procedures.

27. We do not find any merit in these submissions as Mr. Staedtler was unable to demonstrate through clear and convincing evidence that he was not fully and fairly considered for the post. In *Rolland*, the Appeal Tribunal held:⁸

... There is always a presumption that official acts have been regularly performed. This is called a presumption of regularity. But this presumption is a rebuttable one. If the management is able to even minimally show that the Appellant's candidature was given a full

⁸ *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, para. 26.

and fair consideration, then the presumption of law stands satisfied. Thereafter the burden of proof shifts to the Appellant who must show through clear and convincing evidence that she was denied a fair chance of promotion.

In *Fröhler*, the Appeals Tribunal held:⁹

... [I]t is not the function, of the Dispute Tribunal, or indeed of this Tribunal, to take on the substantive role with which the interview panel was charged, even in situations where elements of that procedure have been impugned. The jurisdiction vested in the Dispute Tribunal is to review alleged procedural deficiencies, and if same are established then, by the application of the statutory remedy it deems appropriate in all the circumstances, rectify such irregularity or deficiency as may have been found.

28. The Dispute Tribunal properly applied the foregoing principles in considering Mr. Staedtler's claim. The UNDT stated:¹⁰

The Tribunal [...] has considered the Applicant's extensive submissions (some of which are reproduced in this Judgment) on the Panel's competency based deliberations. It finds that the Panel objectively assessed the Applicant and the other shortlisted candidates on the basis of their submitted documentation and against the required competencies. The Panel did not import different or new competencies from those stipulated. The assessment of each candidate against each of the competencies was documented in the report of the Panel. The Applicant did not meet three of these competencies. The reference to his work experience was an additional relevant factor outside the competencies which was considered by the Panel for each of the candidates. The CRB also took into account geographical representation.

Consequently, the Dispute Tribunal did not make any errors of law or fact in denying Mr. Staedtler's application and concluding that:¹¹

[T]he selection exercise for the Fukuoka post was properly conducted in accordance with the requirements and provisions of ST/AI/2010/3 and that the Applicant was given full and fair consideration by the Panel.

29. Mr. Staedtler further submits that the Dispute Tribunal erred on a question of fact and law in not finding that the CRB had failed in its obligation to place his candidacy on the roster. There is no merit in this submission as Mr. Staedtler was not endorsed as a candidate

⁹ *Fröhler v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-141, para. 32.

¹⁰ Impugned Judgment, para. 60.

by the CRB and thus he was not eligible to be placed on the roster pursuant to Section 9.4 of ST/AI/2010/3/Amend.1 in effect from 29 June 2012 applicable to Mr. Staedtler's situation. Section 9.4 states:

... Candidates for position-specific job openings up to and including at the D-1 level included in a list endorsed by a central review body other than the candidate selected for the specific position shall be placed on a roster of candidates pre-approved for similar functions at the level of the job opening, which shall be drawn from all duty stations for job openings in the Professional and above categories and the Field Service category.

30. It is obvious that Mr. Staedtler was not satisfied with the Dispute Tribunal's decision but he merely repeated on appeal his arguments that did not succeed at the Dispute Tribunal.¹² The Appeals Tribunal stressed in *Ilic* that:¹³

... When the Appeals Tribunal hears an appeal, it does not simply re-try the case. The function of the Appeals Tribunal is to determine if the Dispute Tribunal has made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Statute. 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.

In *Al-Moued*, the Appeals Tribunal reiterated further:¹⁴

... It is apparent that [Appellant] is not aware of his onus as an appellant. He is not correct in thinking that a person bringing an appeal does not have any onus of establishing that the Tribunal below erred in its decision and that an appeal is an opportunity to present the same arguments for decision by a higher Tribunal. That is a totally misconceived notion of the nature of an appeal.

... [T]he consistent jurisprudence of the Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and is not an opportunity for a dissatisfied party to reargue his or her case: "A party cannot merely repeat on appeal arguments that did

¹² *Azzouz v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-432.

¹³ *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

¹⁴ *Al-Moued v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-458, paras. 18 and 23 (internal citation omitted). See also *Dumornay v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-097 and *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-096.

not succeed in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by the Appeals Tribunal.

31. Accordingly, Mr. Staedtler's complaints are rejected.

Allegation of Bias

32. Mr. Staedtler further submits that the non-disclosure of the members of the CRB was evidence of bias and discrimination against him and was interlinked with other cases pending before the Dispute Tribunal in respect of his claim of institutional retaliation campaign against him following his reports of prohibited activities at UN-Habitat.

33. Allegations of bias and discrimination are very serious charges which should not be lightly made. They have to be established on the balance of probability by the person alleging same.¹⁵

34. We note that the Dispute Tribunal properly considered all aspects of Mr. Staedtler's claim of bias but did not find it substantiated. The Dispute Tribunal found that:¹⁶

... The Applicant's repeated allegations of bias are unfounded. The so-called evidence of bias is no more than the Applicant's disagreement with the assessments of his competencies by the Panel. His further assertion that the findings of the Panel "amounts to criminal acting" is unfounded. In the absence of any evidence to support such serious allegations they are irresponsible and reprehensible.

...

... The Tribunal finds no evidence to support the Applicant's contention that his past experience while working in Libya gave rise to a presumption of irregularity. While the Applicant has expressed strong views about the justness of his treatment while in Libya there is no evidence of a factual nexus between the events he describes in 2011 and the selection processes in 2012 and 2013.

We find no errors of fact and law by the Dispute Tribunal in reaching these conclusions.

35. From the foregoing, we hold that Mr. Staedtler has failed to establish that the Dispute Tribunal committed errors in procedures or on questions of facts and law such as to warrant a reversal of the Judgment.

¹⁵ *Macharia v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-128.

¹⁶ Impugned Judgment, paras. 61 and 63.

36. Accordingly, the appeal fails.

Judgment

37. The appeal is dismissed and Judgment No. UNDT/2014/058 is affirmed.

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Simón

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar