



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

Judgment No. 2017-UNAT-792

**Chhikara
(Respondent/Appellant)**

v.

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

JUDGMENT

Before: Judge Martha Halfeld, Presiding
Judge Richard Lussick
Judge John Murphy

Case Nos.: 2017-1076 & 2017-1079

Date: 27 October 2017

Registrar: Weicheng Lin

Counsel for Mr. Chhikara: Self-represented

Counsel for Secretary-General: John Stompor

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it two appeals against Judgment No. UNDT/2017/012, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 6 March 2017, in the case of *Chhikara v. Secretary-General of the United Nations*. The Secretary-General filed an appeal on 5 May 2017, which was assigned case number 2017-1076, and Mr. Virendra Singh Chhikara filed his answer on 3 July 2017. Mr. Chhikara filed an appeal against the same Judgment on 4 May 2017, which was perfected on 9 May 2017 and assigned case number 2017-1079. The Secretary-General filed an answer on 7 July 2017.

2. On 21 July 2017, the Appeals Tribunal issued Order No. 290 (2017) consolidating the two cases.

Facts and Procedure

3. The relevant facts on appeal, as established by the Dispute Tribunal, are:¹

... [T]he Applicant, a Chief Aviation Safety Officer with a fixed-term appointment at the P-5 level, step 9, in the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), contest[ed] the decision not to shortlist him for an interview during the selection process of the post of Chief of the Air Transport Section (“ATS”) at the D-1 level in the Department for Field Support (“DFS”) in New York (“the Post”). The Applicant request[ed] the rescission of the selection decision for the Post and that the whole recruitment exercise be conducted anew in line with established procedures.

...

... The Post was advertised as Job Opening 15-LOG-DFS-42096-R-NEW YORK (“JO”) on the United Nations online jobsite, Inspira, from 20 April 2015 to 18 June 2015. A total of 49 candidates applied for the JO. Nine applicants were internal and 40 were external. The Applicant applied on 18 June 2015.

... The following outline of facts regarding [the] selection process [was] presented by the Respondent in his response to Order No. 246 (NY/2016) and its veracity has not been contested by the Applicant:

... [...] [F]ourteen (14) candidates were shortlisted and invited for a written assessment. Seven (7) candidates were internal and seven (7) candidates were external [...]. Two applicants (one internal and one external), that were invited

¹ Impugned Judgment, paras. 1 and 3-18.

for the written assessment, did not participate in the written assessment/test as they did not submit any test results.

... [...] [T]he written assessment was administered through an online testing platform called Verint/Vovici. It consisted of two parts: 1. Situational [J]udgements [STJ], and 2. constructive response, and it was taken for 2 hours and 30 minutes without interruption in one seating, at a time convenient for applicants, in an open online written assessment window of two days. According to the Recruitment Strategy for the JO, it was determined that only the candidates that would pass Part 1, would then be further assessed for Part 2. Part 1: The results of 25 [STJ] Items were assessed against the predefined key responses, provided to the Examination and Testing Section/[Office of Human Resources Management (OHRM)] prior to the administration of the written assessment. [...]

... Part 2: Constructive response and the marking guide were also prepared before the administration of the written assessment. The scores for Part 1 - STJs for each short-listed candidate that took the written assessment/test is attached. Applicant JO42096 017 represents the Test Administrator with the pre-defined key response for each item/question. SJT Items/questions 6, 7, 10, 11 and 20 were eliminated from overall rating for displaying poor reliability and validity of psychometric properties [...].

... This test resulted in a pass mark for the applicants who had scored 60 points (60% over 100%) and above by giving positive responses as per the key response or the next response next to the key. Six candidates (including one candidate that was considered as "not-suitable" for not having a pilot licence, and not moved further in the assessment process) that scored 60% and above passed the Part 1: (5) external candidates and one (1) internal candidate.

... Part 2. The method of granting the grades/marks used by the [members of the] [assessment] [p]anel [Panel Members] for the six candidates was based on the [...] marking guide, which was also prepared before the administration of the written assessment [...].

... Part 2 - constructive responses of the six candidates were graded unanimously by the Panel Members. However, the [assessment] [p]anel [Panel] decided to expand the pool of candidates to be interviewed and invite all applicants that passed Part I - the [STJ] Items to the competency based interview. As such, the results of the grading of the Part 2 of written assessment were not taken into account.

... Part 2 - constructive responses of all short listed applicants that participated in the written assessment are attached [...]. Five (5) candidates were interviewed: Two (2) candidates (external) were concluded to meet the

competencies, including the competency of professionalism, and were recommended for the position. Three (3) candidates (one employee, one candidate from [the United Nations] Common System, and one external) were concluded not to meet the competencies and therefore, they were not recommended for the position.

... [F]ollowing the interviews and the recommendations by the Interview Panel, as per the DFS departmental procedure, on 20 November 2015 Director LSD [unknown abbreviation] submitted a recommendation for the selection for the position of Chief, ATS for the [Under Secretary-General (USG)]/DFS's approval pending the review and endorsement of the Central Review Body (CRB) [...]. USG/DFS granted the conditional approval on 30 November 201[5] [...]. Subsequently, on 1 December 2015 the case was submitted to OHRM for review and transmission to the CRB for review and endorsement [...].

... The USG/DFS pre-approved conditional selection decision was implemented the same day on 27 January 2016. Upon recording the selection decision in [Inspira], the Inspira system then sent automated notifications to all the applicants that the recruitment process for this JO was completed, and the result of their application [...].

... On 26 March 2016, the Applicant filed a request for management evaluation of the contested decision. On 26 April 2016, the Applicant received a response from the Management Evaluation Unit ("MEU") which upheld the decision.

... On 25 July 2016, the Applicant filed the present application before the Dispute Tribunal (...), where it was registered under Case No. UNDT/2016/053.

...

... On 8 September 2016, the Applicant filed a request to order the Respondent to provide certain evidence.

...

... By Order No. 246 (NY/2016) of 20 October 2016, the [Dispute] Tribunal provided the following orders (emphasis omitted):

... The Applicant's request for evidence is granted.

... By 5:00 p.m. on Friday, 4 November 2016, the Respondent is to file:

a. A copy of the comments and accompanying documents submitted to the [MEU] by the Executive Office of the Department of Peacekeeping Operations and [DFS] in relation to the Applicant's management evaluation request;

b. The total number of the applicants (internal and external) for the [JO];

c. The number of all short-listed (internal and external) candidates invited for the written assessment;

d. The answers and the corresponding results/marks of each candidate (internal and external), including: (i) for the 25 [STJ] questions, including a list of all these questions; (ii) the correct answers and the method of evaluation for each question; and (iii) for the essay, including the method of granting the passing grade/mark;

e. The final results of the candidates selected for the interview;

f. A copy of the selection decision and the date of its implementation.

... By 5:00 p.m. on Friday, 4 November 2016, the parties are further instructed to file separate statements informing the [Dispute] Tribunal, if:

a. Any additional evidence is necessary to be produced in the present case and, if so, stating its relevance, or if the case may be decided on the papers;

b. If the parties are amenable for an informal resolution of the case either through the Office of the Ombudsman or through *inter partes* discussions.

... In case the parties agree that no further evidence is requested and the [Dispute] Tribunal can decide the case on the papers before it, the parties are instructed to file their closing submissions by 5:00 p.m. on Friday, 11 November 2016.

... On 4 November 2016, in response to Order No. 246 (NY/2016), the Applicant filed a submission stating that he did not seek any further evidence in the case and that he was amenable to informally resolve the case either through the Office of the Ombudsman or through *inter partes* discussions.

... On 4 November 2016, also responding to Order No. 246 (NY/2016), the Respondent filed the documents requested by the [Dispute] Tribunal and stated that he did not wish to produce any additional evidence in the case and that he would file and serve his closing submission on 11 November 2016.

... On 8 November 2016, the Applicant filed a submission in which he stated, *inter alia*, that, based on the evidence produced by the Respondent on 4 November 2016, many new questions arose about the entire selection process, that he requested additional evidence be considered relevant to the case and that, after the receipt of this evidence, he would request[] an additional two weeks to file his closing submissions.

... On 11 November 2016, the Respondent filed his closing submissions in compliance with Order No. 246 (NY/2016).

... By Order No. 259 (NY/2016) of 14 November 2016, the [Dispute] Tribunal rejected the Applicant's request for additional evidence having found that sufficient evidence had been submitted for the [Dispute] Tribunal to determine the case. The Applicant was instructed to file a closing submission on 21 November 2016.

4. On 6 March 2017, the UNDT issued its Judgment, granting the application in part. The UNDT found a number of procedural irregularities and that Mr. Chhikara's "fundamental right to be fully and fairly considered for the Post [had been] breached, because he was unlawfully filtered out based on unapproved eliminating (pre-screening) questions and he was not directly evaluated by the [Panel] as required by [S]ection 7.5 of [Administrative Instruction] ST/AI/2010/3 [(staff selection system)]".² It concluded, however, "that a rescission of the contested decision would be disproportionate"³ and awarded Mr. Chhikara USD 4,000 as compensation for the procedural violations.

5. On 8 March 2017, Mr. Chhikara filed an application for revision with the UNDT contending that arguments made in his closing submissions had not been considered. On 28 April 2017, the UNDT rejected the application in its Judgment No. UNDT/2017/031 (Judgment on Revision).

6. As noted above, in May 2017 the Secretary-General and Mr. Chhikara both filed individual appeals against the UNDT Judgment,⁴ which the Appeals Tribunal consolidated.

7. On 30 May 2017, Mr. Chhikara filed a motion requesting that the Appeals Tribunal order the production of evidence, including evidence that the Secretary-General had failed to produce before the UNDT in response to its Order No. 256 (NY/2016), and for leave to file additional pleadings thereafter. The Secretary-General filed his response thereto on 12 June 2017.

8. On 13 July 2017, the Appeals Tribunal issued Order No. 286 (2017) partially granting Mr. Chhikara's request. It ordered the Secretary-General to produce, by 21 July 2017, the "list of the 25 [STJ] questions including those that were eliminated from the evaluation as well as the methodology used in selecting the 'correct' answers to these questions".⁵ The Appeals Tribunal found that "exceptional circumstances (...) result[ed] from the fact that the Secretary-General

² *Ibid.*, para. 64.

³ *Ibid.*, para. 73.

⁴ Mr. Chhikara also appeals the Judgment on Revision.

⁵ *Chhikara v. Secretary-General of the United Nations*, Order No. 286 (2017), para. 7.

failed to comply with the UNDT's Order No. 246 (NY/2016) and ha[d] (...) not presented any justification for its lack of compliance".⁶ It rejected Mr. Chhikara's other requests.

9. On 21 July 2017, the Secretary-General filed his response to Order No. 286 (2017), submitting the 25 STJ questions and the response key. The Secretary-General stated that "the methodology used in selecting the key responses (i.e., most correct answers) (...) was based on the Vroom-Yetton decision model" and provided a link where additional information regarding the model could be obtained.⁷

10. On 13 September 2017, Mr. Chhikara filed a second motion, along with his comments regarding the evidence produced in response to Order No. 286 (2017). On 25 September 2017, the Secretary-General filed his response thereto.

Submissions

Case No. 2017-1076

The Secretary-General's Appeal

11. The Secretary-General submits that the UNDT erred in fact and law when it concluded that Mr. Chhikara had not been fully and fairly considered for the Post. Mr. Chhikara was shortlisted and invited to participate in the two-part written test. There was no evidence that his test was incorrectly graded or that he was treated differently than any of the other candidates. The UNDT also erred in law when it found that the staff selection manuals were binding; they do not impose any obligations on the Organization beyond those established in the Staff Regulations and Rules and relevant administrative issuances.

12. Its erroneous holding that the manuals were binding led the UNDT to further err in its findings regarding the 25 STJ questions, the scoring/rating methods and the assessment panel. Contrary to the UNDT's findings, the 25 STJ questions were not pre-screening questions; rather, they comprised part 1 of the written test assessing the shortlisted candidates' relevant competencies to serve in the Post and, as such, were not subject to the requirements set forth in Sections 4.6 and 4.7 of ST/AI/2010/3, which apply only to pre-screening questions forming part of the application itself. Also, there are no applicable legal requirements that (i) the

⁶ *Ibid.*

⁷ The link provided was: https://www.mindtools.com/pages/article/newTED_91.htm.

scoring/rating methods for the written test had to be established before the publication of the Post, (ii) the candidates had to be informed as to how a test would be evaluated and the overall score required to advance to a later stage in the assessment process, and (iii) the Panel had to directly evaluate the written test. The UNDT failed to cite any legal basis for these erroneous findings. In any event, the scoring methodology for part 1 of the written test was fairly established and fully and fairly assessed. The same passing score of 60 per cent was applied to all candidates. Mr. Chhikara achieved a score of 55 per cent and, thus, did not advance in the assessment process.

13. The UNDT erred in law in awarding compensation for “procedural violations”, as there were none. It also erred in law in awarding compensation in the absence of harm and on the basis of unsworn testimony; as such, it breached the terms of the UNDT Statute, its Rules of Procedure and established jurisprudence.

14. The Secretary-General requests the Appeals Tribunal to vacate the Judgment or, alternatively, vacate the award of compensation.

Mr. Chhikara’s Answer

15. Mr. Chhikara submits that the UNDT correctly concluded that he had not been fully and fairly considered for the Post. The Secretary-General’s appeal misrepresents the facts.

16. Although the passing score for part 1 of the written test was set at 60 per cent, none of the candidates reached that threshold. Rather than annulling the test, the Administration changed the scoring matrix in an arbitrary manner that benefited some candidates over others and resulted in objective criteria not being used to evaluate it. The “irrational” scoring used resulted in Mr. Chhikara “being filtered out” while another candidate, with one less correct answer (if only correct answers were considered) than Mr. Chhikara, advanced to the next stage. In addition, the 25 STJ questions did not correspond to the five required competencies for the Post; rather, they were “psychometric testing”, as admitted by the Administration. There is no policy providing for such testing during staff selection; ST/AI/2010/3 only requires evaluation of the competencies announced in the JO.

17. The Administration's decision to disregard part 2 constituted a significant change in its Recruitment Strategy that nullified a merit-based selection process. Mr. Chhikara's response to part 2 would certainly have been ranked highly had part 2 been evaluated. These anomalies beg the question of exactly how, if at all, the candidates' competencies were evaluated.

18. Even without the evidence regarding part 1, there is adequate evidence that the selection process was carried out in "an arbitrary, ad-hoc, illogical manner [that was] extremely unfair" to Mr. Chhikara – "even fixed". The Administration's communications to the Central Review Board omitted key facts, including the adjustments made to the scoring of part 1.

19. Mr. Chhikara suffered irreparable harm to his career and would have had a "good chance [of being] selected" had he not been "unfairly filtered out" of the selection process. He requests rescission of the selection process or, alternatively, in-lieu compensation "as deemed fit by [this] Tribunal" and a referral for accountability.

Case No. 2017-1079

Mr. Chhikara's Appeal

20. Although the UNDT correctly concluded that Mr. Chhikara had not been fully and fairly considered for the Post, it made errors of fact in its Judgment. It also erred by not ordering rescission of the selection decision.

21. Contrary to its statement in the recitation of the facts, Mr. Chhikara did contest the facts as presented by the Secretary-General insofar as he contested the failure to produce the 25 STJ questions, despite being ordered by the UNDT to do so. The UNDT further erred by including in its recitation of the facts a reference to the production of this evidence, which was never produced before the UNDT.

22. The UNDT erred by not including in its summary of Mr. Chhikara's submissions any of the arguments advanced in his closing submissions. It reiterated this error in its Judgment on Revision when it stated that closing submissions are "based solely on the submissions and evidence already presented". As Mr. Chhikara's arguments were based on the evidence produced by the Secretary-General in November 2016, Mr. Chhikara could only advance them during his closing submissions.

23. Mr. Chhikara requests that the Appeals Tribunal order rescission of the selection process and that it be conducted anew.

The Secretary-General's Answer

24. Mr. Chhikara has failed to demonstrate that the UNDT erred on a question of fact resulting in a manifestly unreasonable decision against him. His assertions that the impugned Judgment and the Judgment on Revision contained errors of fact are unsubstantiated and each of the alleged errors is contradicted by a proper reading of both Judgments and the record.

25. Mr. Chhikara has failed to identify, let alone demonstrate, any error by the UNDT in the remedy awarded to him, much less establish that the selection decision should be rescinded and conducted anew. It is established jurisprudence that it is not sufficient for an appellant to simply disagree with the outcome of the case. As advanced in the Secretary-General's appeal, there is no evidence that Mr. Chhikara's test was incorrectly graded or that he was treated differently.

26. Mr. Chhikara's requests for production of evidence and leave to file additional pleadings fail to satisfy the requirements of the Appeals Tribunal Statute (Statute) and its Rules of Procedure (Rules). He has failed to address whether there are any exceptional circumstances or why granting his requests would be in the interests of justice.

27. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Chhikara's appeal.

Considerations

28. As noted previously by this Tribunal in Order No. 286 (2017), issued on 13 July 2017, the UNDT by Order No. 246 (NY/2016) had ordered the Secretary-General to provide evidence on details of the selection process, including:⁸

The answers and the corresponding results/marks of each candidate (internal and external), including: (i) for the 25 situational judgment questions, including a list of all these questions; (ii) the correct answers and the method of evaluation for each question.

⁸ *Chhikara v. Secretary-General of the United Nations*, Order No. 286 (2017), para. 1.

29. In response to the UNDT's Order No. 246 (NY/2016), the Secretary-General filed a document of over one hundred pages on 4 November 2016. This document, *inter alia*, stated that "[a] copy of the 25 [situational judgment questions] and the key response per each is attached". However, neither a copy of these questions nor their method of evaluation was attached to the document.

30. On 8 November 2016, Mr. Chhikara filed a submission before the UNDT, asking for the production of the outstanding evidence as well as some additional evidence arguing that based on the evidence submitted by the Secretary-General on 4 November 2016, new questions arose. By Order No. 259 (NY/2016), the UNDT stated that the Secretary-General had filed the "documents requested" and found that "sufficient evidence ha[d] been submitted for it to determine the case" and thus rejected the request for additional evidence.⁹

31. On 6 March 2017, the UNDT issued the impugned Judgment. In its Judgment, the UNDT noted that "the content of the 25 situational questions/scenarios, the correct answers and/or the score used for each question were not presented by the [Secretary-General] as part of the evidence"¹⁰ and decided the case without this evidence.

32. It concluded that the "required procedures were not respected and [Mr. Chhikara's] fundamental right to be fully and fairly considered for the Post was breached",¹¹ but that a rescission of the non-selection decision would be disproportionate. It awarded Mr. Chhikara compensation in the amount of USD 4,000 for procedural violations.

33. The UNDT considered, *inter alia*, that there were certain irregularities in the selection exercise, including, e.g., all members of the assessment panel did not evaluate part 1 of the written test; the 25 questions of this first part exceeded the maximum of 15 questions indicated in the Recruiter's Manual; there is no evidence that these questions had been approved by OHRM or DFS prior to the posting of the JO, as required by Section 4.6 of ST/AI/2010/3; their content and their correct answers and score were not presented as evidence; there was no indication as to which competencies they were supposed to evaluate

⁹ *Chhikara v. Secretary-General of the United Nations*, Order No. 259 (NY/2016), paras. 11 and 14.

¹⁰ Impugned Judgment, para. 62.

¹¹ *Ibid.*, para. 64.

and whether they were related to the responsibilities of the position advertised, in accordance with Section 4.7 of ST/AI/2010/3.¹²

34. The Dispute Tribunal also found that the candidates should have received information about the eliminatory nature and the passing mark of 60 per cent of part 1 of the written test, in order to better manage their participation in the exercise.

35. As noted above, both parties appealed the impugned Judgment, and Mr. Chhikara filed a motion requesting the production of evidence which this Tribunal partially granted in Order No. 286 (2017), dated 13 July 2017. In that Order, this Tribunal found that the Secretary-General had failed to fully comply with the UNDT's Order No. 246 (NY/2016) and had, as of that date, "not presented any justification for its lack of compliance" and ordered that the Secretary-General file the evidence that it had failed to file before the UNDT, namely, "a list of the 25 [STJ] questions including those that were eliminated from the evaluation as well as the methodology used in selecting the 'correct' answers to these questions".

36. In issuing its Order, the Appeals Tribunal found that "[g]iven that the UNDT explicitly dealt with the question as to whether these questions were related to the responsibilities of and experience required for the position, and Mr. Chhikara's appeal refers to the issue (...) the evidence (...) may be relevant"¹³ to its review and ordered its production. The Secretary-General presented this evidence on 21 July 2017.

37. As also noted above, after receiving from the Registry a copy of the Secretary-General's submission as per standard procedure, Mr. Chhikara filed a second, pending, motion, requesting the Tribunal to "consider (...) when deciding the case" his comments on the "important evidence finally produced" in response to the Appeals Tribunal's Order No. 286 (2017). He asserts, *inter alia*, that the evidence demonstrates that the 25 STJ questions were related to a competency that was not one of the competencies of the JO, that there was no rationale for the elimination of five questions and that the methodology was faulty.

¹² *Ibid.*, paras. 59-63.

¹³ *Chhikara v. Secretary-General of the United Nations*, Order No. 286 (2017), para. 7.

38. As noted above, on 25 September 2017, the Secretary-General filed his comments, requesting the motion be denied on the grounds that Mr. Chhikara has failed to advance any exceptional circumstances justifying supplementary pleadings and merely reiterates arguments previously made. The Secretary-General also requests leave to file a written submission in response to Mr. Chhikara in the event his motion is granted.

39. As found by the UNDT, the written test contained two parts: part 1 consisted of 25 STJ questions and part 2 consisted of an essay. These two parts of the written test were separate and scored individually, and only the candidates passing the first part would be further assessed for part 2; and, only those passing part 2 would be invited for interviews. Mr. Chhikara failed part 1, as he received a score of 55 per cent and, therefore, was not considered further.

40. The assessment panel enlarged the pool of candidates to be interviewed to include all the candidates who had passed part 1, regardless of their mark in part 2. The UNDT found that i) the number of 25 questions exceeded the maximum of 15 questions indicated in the Recruiter's Manual, having considered them to be pre-screening questions; ii) there was no evidence in the record that they were part of the question library;¹⁴ iii) by enlarging the number of candidates to be interviewed, the panel ignored an important part of the written assessment and thereby jeopardized Mr. Chhikara's chances to be fully and fairly considered.¹⁵

41. The new evidence—i.e., the 25 situational questions, including their “key” answers—specifically related to part 1 of the written test, precisely where Mr. Chhikara failed. This evidence was considered relevant by the Dispute Tribunal, such that it compelled its production, and as potentially relevant by the Appeals Tribunal when it also ordered its production. It is relevant evidence and should have been presented to the UNDT, in accordance with the two-tier system of administration of justice. The UNDT erred when it considered that it did not need this missing evidence to decide the case; indeed, the UNDT might have decided the case differently had it had access to this evidence which was at the core of the dispute as it related to the specific part of the test which Mr. Chhikara failed.¹⁶ By

¹⁴ Impugned Judgment, para. 60.

¹⁵ *Ibid.*, para. 63.

¹⁶ See, e.g., paragraph 62 of the impugned Judgment, in which the UNDT found that the questions in part 1 “were used to assess the candidates’ suitability for the JO, but it is unclear which competencies were evaluated in [p]art 1 of the written assessment and if these questions were strictly related to the

rejecting, pursuant to Order No. 259 (NY/2016), Mr. Chhikara's request that this missing evidence be submitted and judging the case without it, the UNDT failed to exercise the jurisdiction vested in it and also committed an error in procedure, such as to affect the decision of the case.¹⁷

42. Now that this evidence has been finally produced, we consider that, in light of the Organization's two-tier system and the fact that both parties make submissions on appeal regarding its relevance and bearing on the outcome of the case, this new evidence should be assessed by the UNDT, before being appealed to the Appeals Tribunal.¹⁸ Since the Appeals Tribunal is a tribunal of final instance, the facts shall normally be established before the UNDT.¹⁹

43. Pursuant to Article 2(4)(b) of the Statute, the case is therefore remanded to the UNDT, for additional findings of fact and to be judged anew by the same Judge, after affording the parties an opportunity to comment on this new evidence.

44. Therefore, there is no need to address Mr. Chhikara's second motion as it is rendered moot by our remand. We do not address the merits of the case nor make any findings with respect to the evidence submitted on appeal other than to say, as noted above, it was relevant to the proceedings below and should have been presented to the UNDT.

45. The Appeals Tribunal notes that interests of justice and judicial economy may be served by the UNDT establishing standard rules of evidence and discovery motion practice; and, further, that when the UNDT compels production, it should require full compliance.

responsibilities of the position and the experience and professionalism required to undertake the functions reflected in the JO, according to the mandatory provisions ("must") included in sec. 4.7 of ST/AI/2010/3".

¹⁷ Article 2(1)(e) of the Statute.

¹⁸ This conclusion is also grounded on Article 2(5), *in fine*, of the Statute, which bars the Appeals Tribunal from assessing "evidence that was known to either party and should have been presented at the level of the Dispute Tribunal".

¹⁹ *He v. Secretary-General of the United Nations*, Judgment No. UNAT-2016-686, para. 47; *Kalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-580, para. 51; *Reid v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-563, paras. 43-44 and 53.

Judgment

46. The appeals are partially granted. The consolidated case is remanded to the UNDT, for additional findings of fact and to be judged anew by the same Judge, after affording the parties an opportunity to comment on the new evidence. Judgment No. UNDT/2017/012 is hereby vacated by operation of remand.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Murphy

Entered in the Register on this 8th day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar