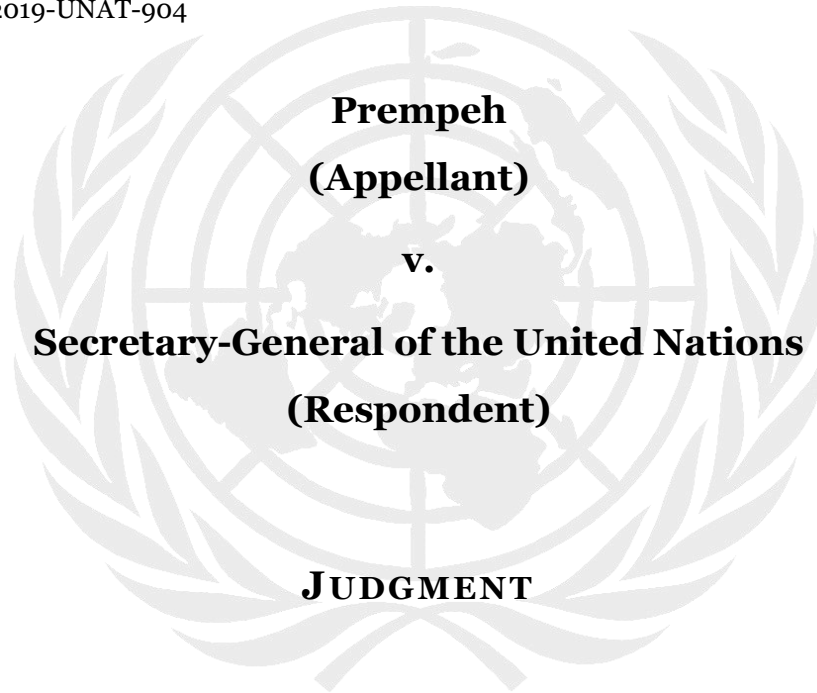




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

---

Judgment No. 2019-UNAT-904



**Prempeh  
(Appellant)**

**v.**

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

**JUDGMENT**

---

|            |   |
|------------|---|
| Before:    | Judge Martha Halfeld, Presiding<br>Judge Richard Lussick<br>Judge John Raymond Murphy |
| Case No.:  | 2018-1196   |
| Date:      | 29 March 2019   |
| Registrar: | Weicheng Lin  |

---

|                         |                  |
|-------------------------|------------------|
| Counsel for Appellant:  | Self-represented |
| Counsel for Respondent: | Jiyoung Kwon     |

**JUDGE MARTHA HALFELD, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Summary Judgment No. UNDT/2018/080, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 14 August 2018, in the case of *Prempeh v. Secretary-General of the United Nations*. Ms. Brenda Prempeh filed the appeal on 3 September 2018, and the Secretary-General filed his answer on 1 November 2018.

**Facts and Procedure**

2. From 1 January to 30 June 2016, Ms. Prempeh worked as a Field Officer for the United Nations High Commissioner for Refugees (UNHCR) in Slovenia under an Individual Contractor Agreement issued by the United Nations Office for Project Services (UNOPS).

3. On 28 July 2017, Ms. Prempeh applied to UNHCR's Entry-Level Humanitarian Programme (EHP)<sup>1</sup> for Protection Officers.

4. By e-mail of 9 May 2018, Ms. Prempeh was advised that her application had been unsuccessful. The e-mail states, in relevant part, as follows:

The Protection Officer Talent Pool has over 4800 applications to date and this is growing. This is a very competitive pool and unfortunately, your application did not come strong in comparison to the other applications which had more related working experience in Protection – in diverse humanitarian contexts and with diverse expertise.

I still encourage you to apply to the related Job Openings (JO) which are advertised regularly [on] our website. Sometimes for a particular JO, we do not have so many applicants and in this case you may stand a good chance.

5. On 6 August 2018, Ms. Prempeh filed an application with the UNDT contesting the decision not to include her in the UNHCR's "Profile Protection Officer (P[-]2, P[-]3 and P-4) Talent Group list". She alleged that "the decision was made on a discriminatory basis and due to victimisation for having reported a lengthy campaign of harassment against [her]", and that "[t]here [had] been several irregularities with [her] applications for work with UNHCR, which indicate that [her] applications [had] not been fairly considered".

---

<sup>1</sup> The EHP is a competitive point of entry into UNHCR's Professional category. Selected candidates join the EHP at the P-2 level for a two-year cohort programme.

6. In the impugned Summary Judgment, the Dispute Tribunal dismissed Ms. Prempeh's application as not receivable. The UNDT noted that, pursuant to Article 3(1) of the UNDT Statute, its jurisdiction was limited to hearing applications filed by a) a staff member, b) a former staff member or c) a person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes. The UNDT found that Ms. Prempeh was not a staff member, but an individual contractor, and did not fall under any of the above categories of potential applicants. Consequently, she had no legal standing before the UNDT. Accordingly, the UNDT summarily rejected Ms. Prempeh's application on the grounds that it lacked jurisdiction *ratione personae* to adjudicate her claim.

### **Submissions**

#### **Ms. Prempeh's Appeal**

7. Ms. Prempeh submits that the UNDT failed to exercise its jurisdiction in not considering her application as a request for suspension of action pending management evaluation under Article 2(2) of its Statute.<sup>2</sup> The Talent Group List method of recruitment is an ongoing process and she is at liberty to reapply. Accordingly, it follows that management evaluation of the decision not to include her in the Talent Group List is also an ongoing process. The decision not to include Ms. Prempeh implies that she is not competent or suitable to work as a Protection Officer, despite having been considered eligible for such work on previous occasions and having proved her competence to work in the area of protection during her placement with UNHCR in Slovenia. The UNDT could have considered her case under Article 2(2) and provided her with redress in this matter.

8. Ms. Prempeh asserts that there are omissions of facts in the impugned Judgment. Specifically, the facts as presented do not refer to the various anomalies which occurred with the job applications she had submitted before 9 May 2018. There had been various instances where her applications were withdrawn in the e-recruitment system, though she did not withdraw them,

---

<sup>2</sup> Article 2(2) of the UNDT Statute provides: "The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal."

and the application status field on the system was obscured for approximately three years. Without knowing the status of her applications, she could not make the necessary enquiries.

9. From 2013 onwards, Ms. Prempeh was subjected to a campaign of harassment. Although she is not certain whether the decision not to include her on the Talent Group list was based on misinformation, the facts of her case might establish that the recruitment criteria were not followed in making the decision not to include her.

10. Ms. Prempeh requests that the Appeals Tribunal “give constructive effect” to her employment status so that she can be fairly considered for placement as a Profile Protection Officer with UNHCR. She further requests that the Appeals Tribunal award her unspecified moral damages for the unfair treatment and unspecified damages for loss of income.

#### **The Secretary-General’s Answer**

11. The Secretary-General submits that the UNDT correctly concluded that it did not have jurisdiction *ratione personae* over Ms. Prempeh’s application because she was neither a staff member nor a former staff member of the United Nations, as required under Article 3(1) of the UNDT Statute. The Appeals Tribunal has consistently held that individual contractors are not staff members and do not have standing before the Dispute Tribunal under Article 3(1) of the UNDT Statute. In the present case, the Agreement signed by Ms. Prempeh identifies her as an “Individual Contractor”, and there is nothing in the Agreement that could lead Ms. Prempeh to believe that she had the status of a staff member. Consequently, Ms. Prempeh did not have standing to file an application before the UNDT.

12. The Secretary-General avers that Ms. Prempeh has failed to identify any errors in law or fact by the UNDT warranting a reversal of the impugned Judgment and that her appeal only repeats the same arguments she had submitted to the UNDT. The Appeals Tribunal has held that when it hears an appeal it does not simply retry the case, and that the appellant has the burden of satisfying the Appeals Tribunal that the judgment rendered by the UNDT is defective. Ms. Prempeh claims in her appeal that her application should have been received under Article 2(2) of the UNDT Statute since the Talent Group List method of recruitment was an ongoing process that was the subject of an ongoing management evaluation. However, the

UNDT's authority under Article 2(2) to suspend contested decisions relates to administrative decisions for which a management evaluation is pending. A management evaluation refers to the process according to which a staff member formally contests an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, and as a first step, submits a written request to the Secretary-General. Therefore, the fact that the recruitment process is ongoing does not mean that there is an ongoing management evaluation. Ms. Prempeh indicated in her UNDT application that she had not requested a management evaluation of the contested decision.

13. Finally, the Secretary-General submits that Ms. Prempeh has not justified her claims for compensation or other relief. As Ms. Prempeh does not have standing before the UNDT, the Appeals Tribunal is precluded from considering the substance of her claims.

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

### Considerations

15. The *punctum saliens* in the appeal is to determine whether the UNDT erred in law in finding Ms. Prempeh's application non-receivable *ratione personae* on the basis that she was an Individual Contractor (not a staff member/former staff member of the United Nations) and, therefore had no legal standing before the UNDT.

16. In light of its Statute, the UNDT's jurisdiction is limited to cases brought by a) staff members, b) former staff members, and c) any person making claims in the name of an incapacitated or deceased staff member of the United Nations. Individual contractors are not staff members and do not have standing before the UNDT, in accordance with Articles 2(1) and 3(1) of the UNDT Statute.<sup>3</sup>

17. Ms. Prempeh worked for UNHCR under an Individual Contractor Agreement issued by UNOPS. Therefore, we find that she did not fall under any of the categories of potential applicants and had no legal standing before the UNDT.

---

<sup>3</sup> *Reda v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-871, paras. 14-15; *Di Giacomo v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-249, paras. 18-20.

18. Ms. Prempeh contends that her application should have been received under Article 2(2) of the UNDT Statute since the Talent Group List method of recruitment was an ongoing process that was the subject of an ongoing management evaluation. However, as a non-staff member, Ms. Prempeh could not have availed herself of the mechanism of a management evaluation, as prescribed by Staff Rule 11.2, which refers explicitly to the possibility for a staff member to challenge an administrative decision through management evaluation. As the Secretary-General correctly pointed out, the fact that the recruitment process is ongoing does not mean that there is an ongoing management evaluation.

19. Moreover, Article 2(2) of the UNDT Statute relates to an application to suspend a decision that is being challenged for the purpose of preserving the status quo and preventing irreparable damage, during the pendency of the management evaluation. However, in the present case, as discussed, since there was no management evaluation, there was no basis to invoke Article 2(2) of the UNDT Statute.

20. Based on the foregoing, this Tribunal finds that the UNDT did not fail to exercise its jurisdiction in not considering Ms. Prempeh's application under Article 2(2) of its Statute. Ms. Prempeh has not identified any errors of law or fact committed by the UNDT warranting a reversal of its Judgment.

21. Lastly, Ms. Prempeh requests the Appeals Tribunal to exercise its discretion to fully consider her application before the UNDT based on the evidence provided in support of the alleged discriminatory treatment. She further requests that the Appeals Tribunal take into consideration the evidence of her competencies. However, since the application was not receivable, Ms. Prempeh had no standing before the UNDT and likewise does not have standing before the Appeals Tribunal. Accordingly, the Appeals Tribunal has no competence to address the merits of her claims.<sup>4</sup>

---

<sup>4</sup> *Hunt-Matthes v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-444/Corr.2, para. 29; *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349, para. 23.

**Judgment**

22. The appeal is dismissed and Judgment UNDT/2018/080 is hereby affirmed.

Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of March 2019 in New York, United States.

*(Signed)*

Judge Halfeld, Presiding

*(Signed)*

Judge Lussick

*(Signed)*

Judge Murphy

Entered in the Register on this 29<sup>th</sup> day of May 2019 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar