



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

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Judgment No. 2022-UNAT-1249

**Asr Ahmed Toson  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Kanwaldeep Sandhu, Presiding Judge John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2021-1576
Date of Decision:	1 July 2022
Date of Publication:	11 August 2022
Registrar:	Weicheng Lin

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Counsel for Appellant:	Self-represented
Counsel for Respondent:	Noam Wiener

**JUDGE KANWALDEEP SANDHU, PRESIDING.**

1. Mr. Toson (the Appellant), a staff member of the United Nations Population Fund (UNFPA), who served as Representative at the UNFPA Oman Country Office (CO) within the Arab States Regional Office (ASRO) at the P-5 level, contested the following decisions: 1) consideration for reassignment to another duty station in the 2020 rotation cycle, practically, effecting his non-selection for any post in rotation cycle of 2019 and 2) non-selection for nine posts in the rotation in 2019. He argued that his candidacies were not give full and fair consideration in the selection exercises and the selection processes were tainted with bias, discrimination, retaliation, and improper motive.
2. In Judgment No. UNDT/2021/070 (Judgment), the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed his challenge to his non-selection to several positions. Mr. Toson appeals. The central issue in this appeal is whether the Dispute Tribunal erred in finding that Mr. Toson’s candidacies had been given full and fair consideration.
3. For the reasons below, we uphold the Judgment and dismiss the appeal.

**Facts and Procedure**

4. The following factual background is taken from the Judgment (footnotes omitted):

... As an international staff member on a rotational post, [Mr. Toson] is a member of UNFPA’s Leadership Pool and regularly participates in an annual “Rotation exercise” in which both internal and external candidates express their interest in a variety of available posts up to a maximum of five.

... The candidates are interviewed by a Rotation Panel, assessed, and then potentially assigned to key international rotational posts, inclusive of country representatives, deputy country representatives and international operations managers. Such posts range in professional level from the P-3 level to the D-1 level. The Rotation Panel prepares a report of their recommendations for UNFPA’s Executive Director who makes all final decisions on rotation. A candidate is normally only eligible for selection or reassignment to rotational posts within the specific job type(s) for which he has been approved as ready.

... On 18 December 2018, UNFPA’s Division for Human Resources (“DHR”) distributed an email announcing the 2019 Rotation Exercise and invited candidates to submit applications.

... [Mr. Toson] applied for nine posts: seven Representative rotational posts and two posts of Chief. [...]

... He was unsuccessful in all the applications.

... On 26 September 2019, [Mr. Toson] received an email from the Director/DHR informing him as follows regarding the rotation exercise:

... I am writing with regards to the next Rotation process. It has been brought to my attention that you have been exceptionally granted three rotation deferments in your current role as Representative for Oman, a 4-year duty station, which assignment took effect from 1 February, 2013.

Having exceeded your maximum duration in this duty station, I would like to advise that you will be considered for reassignment to another duty station in the 2020 Rotation cycle.

... On 18 October 2019, the Director /DHR circulated to all UNFPA staff members the list of staff movements that had occurred in UNFPA during the third quarter of 2019.

... On 6 November 2019, [Mr. Toson] sought management evaluation of various contested decisions.

### *Relevant UNDT Judgments*

5. On 4 December 2020, the Dispute Tribunal issued Judgment No. UNDT/2020/202 on receivability (Judgment on Receivability). The Judgment on Receivability is not appealed or contested. In this Judgment, the UNDT held that the application insofar as it relates to the 26 September 2019 e-mail is not receivable because that decision was not final and did not produce a direct legal impact on Mr. Toson's legal status or have a legal effect on his terms of appointment or contract of employment. However, the UNDT held that the Circular dated 18 October 2019 confirming to Mr. Toson that he had not been selected for any of the posts he had applied for in 2019 was a reviewable decision. The challenge to the selection decisions on the positions in Yemen and Brazil and the position of Chief, Executive Board Branch in the Office of the Executive Director at UNFPA headquarters were not receivable, as the request for management evaluation had not been submitted in 60 days from the date on which Mr. Toson became aware of the relevant reviewable decision. But the UNDT found that the challenge to the selection decisions for the following positions was receivable and could proceed to hearing: Representative in the CO Uzbekistan, Representative in the CO Ukraine, Representative in the CO Palestine, Representative in the CO Nigeria, Representative in the CO Bolivia, and Chief, Gender and Human Rights Branch at UNFPA's Headquarters (contested decisions).

6. The Dispute Tribunal heard the application on the contested decisions in April 2021. On 10 June 2021, after the receipt of Mr. Toson's closing submissions, the Dispute Tribunal's Registry communicated the Judge's request for the Secretary-General to file a short submission indicating information in relation to each of the six posts in contentions: the date when the interview was conducted, the date of the interview report, the date the interview report was transmitted to the decision maker and the date of the decision maker's selection decision (Judge's Request). On 14 June 2021, the Secretary-General provided the following submissions in response to the Judge's Request (Respondent's additional submissions):

- The rotation exercise does not entail interviews but a desk review by the relevant regional director followed by an assessment by a rotation panel.
- For three posts, the dates of review by regional director, the dates the rotation panel finalized the report, the dates the report was transmitted to the Executive Director and the dates the Executive Director approved the report (all in January and February 2019).
- For the Nigeria position, information that it was an external process and the date Mr. Toson was interviewed and the date the selection decision was made (all in January 2019).
- For the Bolivia and UNFPA's Headquarters positions, information that Mr. Toson was long listed and did not proceed to the next step of the recruitment process.

7. In the impugned Judgment, the Dispute Tribunal found the UNFPA had followed the applicable procedure in the selection exercise as set out in the UNFPA's Policies and Procedure's Manual (PPM) and in a fair and non-discriminatory manner. Therefore, Mr. Toson's application challenging the respective positions was dismissed.

### **Submissions**

#### **Mr. Toson's Appeal**

8. Mr. Toson says that the Dispute Tribunal erred in applying the appropriate legal standard of review of the selection process which he says was "arbitrarily, an abuse of authority, retaliatory, ill-motivated and constituted discrimination and harassment". The case here is about whether "the

impugned administrative decisions were improperly motivated”. Since his complaints were “not considered in any parts of the judgement this constitutes an error of law”.

9. Further, he argues the UNDT erred in law when it based its judgment on an incorrect policy for selection processes when it stated “The applicable policy in *UNHCR* for selection processes ... was the UNFPA’s Policies and Procedures Manual” (emphasis added). In addition, the UNDT wrongly interpreted arts. 17(g), 41, 42, and 44(d) of the UNFPA PPM.

10. He also contends the Dispute Tribunal erred in its assessment of the evidence. For example, he says the Dispute Tribunal wrongfully relied on the testimony of Ms. M, the Director of Department of Human Resources and her deputy, when Mr. Toson is contesting decisions made with direct involvement of these two officials and their testimony should have been closely scrutinized.

11. Regarding the position in Bolivia, Mr. Toson says the Dispute Tribunal erred in noting that he does not dispute the fact that he lacked knowledge of the Spanish language which is an “automatic disqualifying factor” for the representative position in Bolivia because he provided evidence that there were representatives in the Arab region who were selected while they lacked knowledge of the Arabic language. Regarding the position in Nigeria, Mr. Toson says the Dispute Tribunal further erred in stating that the “Panel comprised of the Resident Coordinator Nigeria, the Regional Director for United Nations Oman...” There is no position called the Regional Director for the United Nations Oman as Oman is under the Regional Director of ASRO and there is no Resident Coordinator (RC) for Oman.

12. Further, Mr. Toson argues that the Dispute Tribunal accepted a very brief comment from the selection panel of “does not fit” as an explanation which he says is not sufficient when there is an official determination of retaliation against supervisor with protective measures put in place. The Dispute Tribunal should have assessed “to what extend (sic) protective measures were applied in terms of process integrity”.

13. Mr. Toson also submits that the Dispute Tribunal wrongfully found that “The mere fact that [Mr. Toson]’s Supervisor participated in the selection process did not affect its integrity given that at that time the Ethics Unit had not made any adverse findings against him”. The Dispute Tribunal failed to address any part of the most central claim of bias and retaliation, or that the contested decisions prove bias, arbitrariness, and abuse of authority.

14. He also contends the Dispute Tribunal wrongly assessed Ms. O's evidence "that she hardly sees candidates with good [Performance Appraisal and Development (PAD)] assessments who are not matched is against the weight of evidence to the contrary" because she is a seasoned Human Resources Specialist who has been occupying the position of secretariat of the rotation panel, solely, for at least eight years and is the most knowledgeable official on "probability" of assigning candidates with good PAD assessments, to international post in rotation exercise. Similarly, the Dispute Tribunal wrongfully relied on the testimony of two witnesses, Ms. M and Mr. P, as they were not accurate about the country profiles.

15. Further, Mr. Toson submits that the Dispute Tribunal failed to exercise its vested jurisdiction and committed a procedural error because the UNDT Judge demonstrated bias in the hearing and should have recused herself. Specifically, he argues that the Dispute Tribunal made a finding based on information that it requested from the Secretary-General after closing remarks and without giving him an opportunity to respond.

16. Mr. Toson seeks appointment in one of the subject posts, protection from further retaliation, recusal of his Regional Director, and compensation for harm and lost opportunities.

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

17. The Secretary-General or the Respondent requests the Appeals Tribunal to dismiss the appeal and uphold the Judgment.

18. In support, the Secretary-General argues that the UNDT Judge did not err in not recusing herself from Mr. Toson's case. The UNDT was well within its discretion to require the Secretary-General to produce a summary of the facts by means of communication through the UNDT Registry, rather than in the form of an order from the UNDT itself. Pursuant to the Code of Conduct for the Judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal (Code of Conduct)<sup>1</sup> and the Dispute Tribunal's Rules of Procedure,<sup>2</sup> the

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<sup>1</sup> Paragraph 2(c) of the Code of Conduct provides that "Judges must recuse themselves from a case if: (i) They have a conflict of interest; (ii) It may reasonably appear to a properly informed person that they have a conflict of interest; (iii) They have personal knowledge of disputed evidentiary facts concerning the proceedings".

<sup>2</sup> Rule 27.2 of the UNDT Rules of Procedure provides that "a conflict of interest arises where a case assigned to a Judge involves any of the following: (a) A person with whom the Judge has a personal, familiar or professional relationship; (b) A matter in which the Judge has previously served in another capacity, including as an adviser, counsel, expert or witness; or (c) Any other circumstances that would make it appear to a reasonable and impartial observer that the Judge's participation in the adjudication of the matter would be inappropriate".

determination as to whether a judge is biased and conflicted from hearing a case is not grounded on the result of such a judge's ruling or in how the Judge manages the case. The Judge's request for information from the Secretary-General did not prejudice Mr. Toson. The Judge was within her discretion not to make additional requests from Mr. Toson to provide this information, which he was obligated to provide from the outset.

19. Further, the Secretary-General submits that the UNDT correctly held that Mr. Toson had not met the burden of proving that the contested decisions were tainted by bias, improper motives, or retaliatory conduct. The UNDT held that the witness testimony clearly demonstrated that Mr. Toson's supervisor, the Regional Director of the Arab States Regional Office, was not involved in the selection process for four of the five Country Office Positions and for the position of Chief, Gender and Human Rights Branch in the Technical Division of the UNFPA headquarters. The UNDT additionally found that the mere fact that the Regional Director of the Arab States Regional Office did provide feedback in the selection process for the Palestine Country Office Representative does not automatically mean that this input was retaliatory but suggested otherwise. Mr. Toson's claim that the contested decisions were marred by bias or retaliatory intent is similar to his argument that the UNDT Judge was biased—namely, he argues that intent can be gleaned from the result of the selection exercises. That is, however, not the test for the determination of bias or improper motives.

20. Therefore, Mr. Toson has not shown that the UNDT had misinterpreted the UNFPA rules regarding the potential involvement of Mr. Toson's supervisor in the rotation exercise. Furthermore, on 16 October 2020, the UNFPA Executive Director determined, based on the conclusions of an OAIS investigation, that there was no case of retaliation. According to the findings of the OAIS investigation, the earliest protected activity which had, according to Mr. Toson himself, prompted alleged retaliation by the Regional Director of the Arab States Regional Office, was a request for management evaluation that Mr. Toson submitted in December 2018 but the Regional Director was not aware of this at the time when the selection process was underway. Thus, Mr. Toson's entire argument that the Regional Director of the Arab States Regional Office had retaliated against him was found not to have been supported by the evidence.

21. As for Mr. Toson's argument that the UNDT failed to note that the contested decisions were arbitrary, he implies that the requirement that the Country Office Representative in Latin America speak Spanish was arbitrary, as the Country Office Representatives in Arab speaking countries do not speak Arabic. However, the Secretary-General says the UNDT reviewed the relevant sections

from the Policies and Procedures Manual and found that the selection exercises had been advertised as required. The UNDT found that because of the competitive nature of the selection exercises, the non-selection of Mr. Toson had been justified, insofar as other individuals for objective reasons had ranked higher than him for each of the positions to which he had applied. The UNDT found that Mr. Toson did not have the requisite experience or linguistic skills for some positions and that for other positions he had some of the required skills, but that other candidates had fared better than him in the overall assessment.

### **Considerations**

#### *Preliminary Issue: Request for Oral Hearing*

22. Mr. Toson requests an oral hearing at the Appeals Tribunal. He argues that the “UNDT violated due process and erred in both facts and law; the Judge granted preferred treatment to [the] administration in terms of providing missing information while failed to apply equal treatment to [Mr. Toson]; the Judgement was based on data provided by [the] administration and [he] was not given an opportunity to contest its authenticity”; and the “Judge misinterpreted testimonies of few witnesses which requires verification by UNAT of their testimonies and cross-examination”. We decline Mr. Toson’s request.

23. Under article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules), the Appeals Tribunal may grant an oral hearing if it would “assist in the expeditious and fair disposal of the case”.

24. However, the Appeals Tribunal has consistently held that an appeal before the Appeals Tribunal is not a rehearing of the matter but an opportunity for parties to appeal on narrow bases, such as errors of law, fact, and jurisdiction of the Dispute Tribunal. Given Mr. Toson’s arguments wherein he wishes to contest evidence before the Dispute Tribunal in a manner that would be essentially a rehearing of the evidence, we find that an oral hearing should not be granted and would not assist in expeditiously and fairly resolving the issues in this appeal.

#### *Merits*

- i) *Did the Dispute Tribunal err on the facts and law?*



25. Mr. Toson says the Dispute Tribunal did not apply the appropriate standard of review in his case. This argument is unfounded.

26. The Appeals Tribunal has consistently held that the Secretary-General or the Administration has broad discretion in staff selections.<sup>3</sup>

27. Therefore, in judicially reviewing administrative decisions regarding staff selections, the Tribunal's role is not to substitute its own decision for that of the Administration, but to assess whether the applicable regulations and rules have been applied and whether they were applied in a fair, transparent, and non-discriminatory manner.<sup>4</sup>

28. In so doing, the following factors are considered: (1) whether the procedure as laid down in the Staff Regulations and Rules was followed; (2) whether the staff member was given full and fair consideration, and (3) whether the applicable Regulations and Rules were applied in a fair, transparent and non-discriminatory manner.<sup>5</sup>

29. The Appeals Tribunal jurisprudence provides that there is a "presumption of regularity" that official acts have been regularly performed. This presumption arises if the management can minimally show that staff member's candidature was given a full and fair consideration. Thereafter the burden of proof shifts to the staff member who must show through "clear and convincing evidence" they have been denied a fair chance of promotion or selection.<sup>6</sup>

30. In this case, the Dispute Tribunal applied the appropriate standard of review. It reviewed the applicable policy of the UNFPA for selection processes (the PPM), reviewed the evidence, and determined that the applicable procedures were followed in the selection exercise for all the relevant positions, giving rise to the presumption of regularity.

31. Mr. Toson says that the Dispute Tribunal made an error in paragraph 17 of the Judgment when it referred to the applicable policy of the "UNHCR" (emphasis added). However, the reference to "UNHCR" instead of "UNFPA" in the Judgment was clearly a

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<sup>3</sup> Article 101(1) of the United Nations Charter and Staff Regulations 1.2(c) and 4.1.

<sup>4</sup> *Kinyanjui v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-932, paras. 13-15.

<sup>5</sup> *Savadogo v. Registrar of the International Tribunal for the Law of the Sea*, Judgment No. 2016-UNAT-642, para. 40.

<sup>6</sup> *Verma v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-829, para. 14.

typographical or clerical error as the policy quoted in the paragraph is from the UNFPA's PPM and the Dispute Tribunal relied on this as the applicable policy in its analysis; therefore the clerical error had no impact on the Dispute Tribunal's analysis or Judgment.

32. The Dispute Tribunal then correctly reviewed and assessed the evidence and submissions to determine if Mr. Toson met the burden to show he had been denied a fair chance of selection by "clear and convincing evidence".

33. Mr. Toson submits that the selection exercise was tainted with bias, discrimination, retaliation, and improper motive. These are serious allegations to make against any person and requires "clear and convincing" evidence to corroborate those allegations. Mr. Toson did not meet the evidentiary burden of proof in support.

34. The Dispute Tribunal considered his reliance on the alleged involvement of his immediate supervisor (the ASRO Regional Director) in the assessment of his candidacy for the positions when the Ethics Unit had determined there had been a *prima facie* retaliation against him by that supervisor and had recommended to the Executive Director that any decisions made by that supervisor regarding Mr. Toson's employment be reviewed by the DHR office and the Deputy Executive Director-Programs as a protective measure.

35. Mr. Toson argues that there was no protective measure in place to "scrutinize the authenticity of his supervisor's feedback to the Rotation Panel" on his candidacies. This argument is based on the interpretation of arts. 17(g), 41 and 44(d) of the UNFPA PPM, Annex II, Selection and Reassignment Process for International Rotational Posts which provides that the assessment process and the DHR "may" include and seek the views and comments of directors and supervisors of the candidates.

36. Mr. Toson contends the Dispute Tribunal wrongly emphasized the word "may" in the provisions and wrongly interpreted the language in article 42 which states that the DHR "should submit to the Rotation Panel (**as applicable**): (a) Indicated post preferences, and related comments submitted by staff members and relevant directors....(f) Past conduct" (emphasis added). He says this explicitly and mandatorily requires that a candidate's immediate supervisor provides feedback to the Rotation Panel and proves that his supervisor was improperly involved in the process by providing the required feedback. Further, he says there is no evidence to corroborate that he did **not** provide comments on his performance or candidacy for other posts.

If so, this conduct is retaliatory as it contradicts with proven official records of UNFPA documenting his “dramatic success”.

37. However, the Dispute Tribunal’s interpretation of the discretion outlined in articles 17(g), 41 and 44(d) of the UNFPA PPM is correct. It is a general principle of statutory interpretation that the use of the word “may” confers a discretionary authority and the use of the word “shall” confers a mandatory requirement. Similarly, article 42 uses the phrase “should submit” rather than “shall submit”. The correct interpretation of this is that article 42 outlines the preferred information the DHR should submit to the Rotation Panel; it does not outline the required or mandatory information to be submitted. This again confers a degree of discretion. Further, article 42 provides that the DHR can submit the enumerated information “as applicable”. Therefore, this article cannot be used to support Mr. Toson’s argument that his supervisor must have improperly provided feedback to the panels as retaliation or with improper motive.

38. More importantly, the evidence is that the Rotation Panel did not receive feedback from Mr. Toson’s supervisor for five of the six positions. In the Judgment, the Dispute Tribunal accepted the testimony of material witnesses that Mr. Toson’s supervisor did not participate in the selection process for the positions in Uzbekistan, Ukraine, Bolivia, and Nigeria and for the position of Chief Gender and Human Rights. The Dispute Tribunal accepted that for the Palestine position, Mr. Toson’s supervisor did provide feedback as he was the Regional Director for the region but found that the evidence did not show that Mr. Toson’s supervisor’s participation in the selection process adversely affected the “integrity” of the process. We agree as there is no evidence the feedback was retaliatory, inappropriate, or made with improper motive, particularly, considering the ultimate finding of the OAIS and the Executive Director in the investigation of Mr. Toson’s complaint was that there was no retaliation.

39. The Dispute Tribunal then reviewed Mr. Toson’s candidacy for all the positions and properly accepted the credible testimony of witnesses involved in the selection process, leading to the conclusion that Mr. Toson was nevertheless given full and fair consideration. He was not selected due to various, reasonable reasons including not meeting language requirements, lack of relevant experience, and not meeting required competencies, rather than because of any alleged retaliation or improper motive against him.

40. In conclusion, we find that the Dispute Tribunal did not err in finding that Mr. Toson's candidacies were given full and fair consideration in the selection processes.

ii) *Did the Dispute Tribunal err in procedure such that the Judge was biased and should have recused herself because of the Judge's Request?*

41. Mr. Toson says the Dispute Tribunal 's finding that the "retaliatory conduct which [Mr. Toson] is complaining about and the Ethic Unit's recommendation arose way after the selection process had ended" was based on additional evidence it unfairly requested from the Secretary-General in violation of due process. He says the UNDT ordered the Secretary-General to provide dates related to management evaluation and dates for request for retaliation protection with the Ethics Office, but Mr. Toson had not been given a chance to comment or contest this as they were provided after the closing remarks and the Judgment issued only 4 days later. He argues that the UNDT should have granted him an equal opportunity to respond. The UNDT Judge could have ordered Mr. Toson to provide this information in the same way she ordered the Secretary-General to provide missing information, within the very same identical context. He says this "shows bias" and the Judge should have, therefore, recused herself.

42. The Secretary-General says that this is not evidence of bias by the Judge and the Judge's Request was within the discretion of the Dispute Tribunal. The information requested by the Judge, namely, when the selection interviews took place, when the interview reports were prepared, when these reports were transmitted to the decision maker, and when the decision maker made the selection decisions, was information to which the Secretary-General alone had access.

43. This is not entirely correct. Mr. Toson also had some of this information, namely when his interview took place. Additionally, the Secretary-General's additional submissions contained different information and evidence than what was specifically requested, namely it provided evidence that there were not interviews but "desk reviews by the relevant regional director followed by an assessment by a rotation panel", the dates of the reviews, the dates, transmissions, and approval of the reports, as well as evidence on the Nigeria, Bolivia, and UNFPA's Headquarters' posts.

44. For the Dispute Tribunal to receive evidence from one party on an *ex parte* basis without just reason and without giving the other party the opportunity to respond to evidence against them may be a breach of a fundamental principle in administrative law of natural justice and fairness, namely *audi alteram partem*.<sup>7</sup> Mr. Toson was notified of the Judge’s Request but was not given an opportunity to reply to the Secretary-General’s additional submissions, information, and clarifications. The Dispute Tribunal relied on this *ex parte* evidence in making a finding. As a result, the Dispute Tribunal erred in procedure. The question is whether this error “affected the decision of the case”<sup>8</sup> and as such was fatal to the Judgment?

45. The Secretary-General’s additional submissions was relied on by the Dispute Tribunal to support its dismissal of Mr. Toson’s argument of retaliation from his supervisor due to his request for management evaluation and complaints. The Dispute Tribunal held his complaint document of 7 June 2019 was the only evidence of when he filed the request and that the Ethic’s Unit’s *prima facie* determination and recommendations which he alleges were not implemented was made subsequently on 30 August 2019. More importantly, the Dispute Tribunal found that the fact that the Rotation Exercise and selection decisions for the positions outlined in the Secretary-General’s additional submissions (Uzbekistan, Nigeria, Ukraine, and Palestine) preceded the occurrence of alleged retaliatory conduct renders his application moot. This finding was based on facts of the dates of review, reports, transmissions, approvals, and selections for the positions in question. These facts are not controversial or disputable.

46. Mr. Toson argues he could have presented evidence that he presented his first request for management evaluation on 10 December 2018. However, the Dispute Tribunal application filed by Mr. Toson indicates the date for the request for management evaluation as “November 06, 2019”, a copy of which is attached to the application. That request is dated “Nov 6, 2019”. If there was an earlier request, Mr. Toson should have provided that date and a copy of that request in the application, but he did not do so. It was reasonable for the Dispute Tribunal to rely on the date in the application. Further, according to OAIS’s investigation, the Regional Director of the Arab States Regional Office had learned of the existence of this protected activity in February 2020, i.e., at least three weeks after the Regional Director had provided input to the desk review on 7 January 2020. In other words, the Regional Director of the

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<sup>7</sup> *Elmira Ela Banaj v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1202, para. 61; *Samir Nazih Amineddine v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1125, para. 62.

<sup>8</sup> Article 2(1)(d) of the Statute.

Arab States Regional Office was not even aware that the protected activity (i.e., the request for management evaluation) had taken place at the time when the selection process was underway.

47. More importantly, the dates of the contested decisions and the dates of Mr. Toson's complaints do not of themselves constitute evidence to link his complaints to conduct that could be considered retaliatory or improper as discussed above. Therefore, the Dispute Tribunal's error of procedure was not such as to "affect the decision of the case" as required by Article 2(1)(d) of the Statute and as such, is not a basis for vacating the Judgment.

48. Since there is no illegality, there is no remedy available to Mr. Toson, including compensation.

**Judgment**

49. Mr. Toson's appeal is dismissed, and UNDT Judgment No. UNDT/2021/070 is affirmed.

Original and Authoritative Version: English

Decision dated this 1<sup>st</sup> day of July 2022 in New York, United States.

*(Signed)*

Judge Sandhu Presiding

*(Signed)*

Judge Murphy

*(Signed)*

Judge Raikos

Judgment published and entered into the Registry on this 11<sup>th</sup> day of August 2022 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar