



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2021-1540

Edoardo Gianotti

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

ORDER No. 431 (2021)

1. On 26 February 2021, the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva issued Judgment No. UNDT/2021/013 in the case of *Gianotti v. Secretary-General of the United Nations*, whereby the UNDT rejected the application of Mr. Edoardo Gianotti (Mr. Gianotti) as not receivable *ratione materiae*.
2. Mr. Gianotti challenged the recruitment exercise undertaken by the Administration to fill the post of Economic Affairs Officer at the P-4 level (the Post), after the Executive Secretary for the United Nations Economic Commission for Europe (UNECE) had rejected his candidacy for the Post. The Administration, however, had not concluded the recruitment process, and a final selection had not yet been made at the time Mr. Gianotti filed his application to the UNDT. As such, the Dispute Tribunal reasoned in the absence of a final selection decision, Mr. Gianotti had not, at the time, suffered any direct consequences, and therefore his application was not receivable.
3. On 1 April 2021, Mr. Gianotti appealed the UNDT Judgment to the United Nations Appeals Tribunal (Appeals Tribunal or UNAT). The Secretary-General filed his answer on 1 June 2021.

4. On 21 October 2021, the Secretary-General filed a motion to submit additional evidence, requesting that the Appeals Tribunal admit the additional evidence based on a new fact that is highly relevant to the appeal, which was not available at the time of the answer. Specifically, the Secretary-General seeks to submit an Inspira screenshot showing that Mr. Gianotti has been ultimately selected for the Post, and therefore his request for relief now appears to be moot.

5. On 29 October 2021, Mr. Gianotti filed his comments noting that he does not object to the inclusion of information regarding his eventual promotion to the Post. However, he contends that his appeal is not entirely moot, given the time he has expended litigating the instant issue and the loss he has suffered because of the extended time it has taken the Administration to implement the selection decision. He submits that implementation of his promotion/selection with retroactive effect would result in a differential in pay for 17 months, with interest, which would amount to some \$10,000.

6. Pursuant to Article 2(5) of the Appeals Tribunal Statute, this Tribunal may receive additional evidence: “In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence [and if] in the interest of justice and the efficient and expeditious resolution of the proceedings.”¹ However, to allow evidence under this paragraph, such evidence must not have been known to either party at the level of the Dispute Tribunal.

7. In the present case, the Appeals Tribunal finds the additional evidence contains a new fact that is highly relevant to the issues in the appeal that did not exist at the time of the Dispute Tribunal’s Judgment. Also, it is in the interest of justice and the efficient and expeditious resolution of the issues to admit the additional evidence. The additional evidence is likely to establish the outcome of the relevant selection process and whether there is loss suffered by the Appellant, as alleged, and if so, the type and quantum of loss.

¹ See also Article 10(1) of the Appeals Tribunal Rules of Procedure.

IT IS HEREBY ORDERED that the Secretary-General's motion is **GRANTED**.

Original and Authoritative Version: English

Dated this 30th day of November 2021
in Vancouver, Canada.

(Signed)
Judge Kanwaldeep Sandhu,
Presiding

Entered in the Register on this 30th day
of November 2021 in New York, United States.

(Signed)
Weicheng Lin, Registrar