



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

Judgment No. 2013-UNAT-346

**Goodwin
(Appellant/Respondent)**

v.

Secretary-General of the United Nations

THE UNITED

THE U

10. On 27 August 2009, Mr. Goodwin filed an application with the UNDT challenging the Secretary-General's decision to first withdraw and then reinstate the administrative reprimand and the decision to transfer him from

The Secretary-General's Answer to Mr. Goodwin's Appeal

14. The Secretary-General requests the Appeals Tribunal to affirm the UNDT findings that Mr. Goodwin did not suffer any actual economic harm and submits that his appeal be dismissed in its entirety.

The Secretary-General's Appeal

15. The Secretary-General submits that the UNDT erred in law and exceeded its competence in awarding damages for non-pecuniary harm and requests that the Appeals Tribunal vacate the award of compensation.

16. Mr. Goodwin failed to submit any evidence in support of his claim that his reputation or wellbeing was harmed as a result of the breach of his due process rights.

17. Furthermore, the UNDT made no factual findings specifying the actual injury that resulted from the breach. The UNDT awarded Mr. Goodwin compensation on mere general findings, which are legally insufficient to support the award of compensation.

18. Alternatively, the Secretary-General requests the Appeals Tribunal to find that the UNDT erred by ordering an excessive amount of compensation and to reduce the award accordingly.

Mr. Goodwin's Answer to the Secretary-General's Appeal

19. Mr. Goodwin requests the Appeals Tribunal to reject the appeal in its entirety and to award costs to him.

Considerations

Mr. Goodwin's Appeal

20. Mr. Goodwin appeals the UNDT's failure to award him compensation for pecuniary loss. He contends that the Dispute Tribunal, while recognizing the unlawfulness of the treatment afforded to him between 2005 and 2009, nonetheless committed an error of law and fact by failing to observe that the promotion to the P-5 post of Chief Aviation

Officer, for which he was recommended in November 2005, was denied to him as a consequence of the unlawful acts of the Administration.

21. The Secretary-General argues that no error of law or fact was made by the Dispute Tribunal and contends that the UNDT properly considered that Mr. Goodwin “must establish that he suffered actual economic harm” and found that he had not. The Secretary-General contends that the UNDT’s reasoning is fully in line with the jurisprudence of the Appeals Tribunal which has consistently held that there must be a sufficient evidentiary basis of injury for an award of compensation.³ The Secretary-General further submits that no testimony or other specific evidence of actual economic harm was

35. On the issue of quantum of damages, we stated in Solanki that “compensation must be set by the UNDT following a principled approach and on a case by case basis” and “[t]he Dispute Tribunal is in the best position to decide on the level of compensation given its appreciation of the case”.⁷ Having regard to all the matters of which the UNDT was apprised in the present case and noting, in particular, the nature of the administrative actions foundndndn di73 st

Original and Authoritative Version: English

Done in New York, United States.

(Signed)

Judge Faherty, Presiding
28 June 2013

(Signed)

Judge Weinberg de Roca
21 June 2013

(Signed)

Judge Lussick
28 June 2013

Entered in the Register on this 26th day of August 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar

Dissent by Judge Faherty on Mr. Goodwin's Appeal:

1. In his Submission on Compensation, on foot of UNDT Order No. 293 (NY/2011), Mr. Goodwin stated in paragraphs 3 and 4 as follows:

The decision to transfer [Mr. Goodwin] from the P-5 post of Chief of Aviation in UNMIS occurred after he had been competitively selected, assumed the functions as Officer-in-Charge and was proposed for appointment to the post by the mission in the fall of 2005. The [Secretary-General] has not disputed this point, which is [a] matter of record, and the official correspondence from the mission remains in his possession should further verification be required.

[Mr. Goodwin's] arguments that this action was a disguised disciplinary measure rests on the fact that his career and professional reputation were directly affected by denying him the benefits that his return to the post would have entailed. The negative effects of the imposition of a *de facto* "deferment, for a specified period, of eligibility for consideration for promotion" (which is a disciplinary measure enumerated under Staff Rule 10.2) had the effect of an additional, surreptitious penalty. This was found by the Tribunal to entail the liability of the [Secretary-General]. [Mr. Goodwin] would either have been promoted to P-5 or at least received an SPA for performing functions at a higher level. His legitimate career expectations were derailed until

4. It is an undisputed fact, known to the Dispute Tribunal prior to its determination on the issue of compensation that at the time of the initiation of the impugned disciplinary process Mr. Goodwin had been recommended for promotion to the P-5 position of Chief Aviation Officer. Curiously however, at paragraph 15 of its Judgment, the UNDT states that Mr. Goodwin could have established actual economic harm if he had identified “a specific promotion which he missed out on”. Yet that is, I am satisfied, what Mr. Goodwin does at paragraphs 3 and 4 of his Submission on Compensation.

5. It is also apparent from the face of the Judgment on Compensation that the UNDT only considered Mr. Goodwin’s claimed pecuniary loss in terms of abstract promotions, a case he did not make in his submission to the Dispute Tribunal.

6. I am thus satisfied that in assessing the claim for pecuniary loss, the UNDT failed manifestly to attach any or sufficient weight to the fact that Mr. Goodwin had been recommended for promotion to the P-5 level at the time of the impugned administrative actions.

7. By reason of the foregoing, I am satisfied that the Dispute Tribunal erred on a question of fact resulting in a manifestly unreasonable decision in ruling that Mr. Goodwin had not identified a specific promotion which he missed out on. I am satisfied that actual financial loss was incurred as a result of his not having been able to assume the P-5 position for which he was recommended in November 2005.

8. Details of the loss were contained in his Submission on Compensation to the UNDT which is annexed to his appeal. Given that Mr. Goodwin made specific reference to the difference in pay between a P-5, step 1 position and a P-4, step 7 position, I do not agree with the Secretary-General that the claim being made is speculative.

9. Having regard to the calculations furnished and taking into consideration that the UNDT, in awarding USD 30,000 moral damages, took into account the effect on Mr. Goodwin’s “general possibilities for career advancement and promotions”, I would in those circumstances award pecuniary damages

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2013-UNAT-346