

10. In January 2012, the then-UN. - Associate Administrator and the then-Assistant Administrator and Regional Director of (AS #) visited the UA; Country Office,

her 2012 –A to the UN. ! Ad#sor& ! rou4 through the Un\$ted Nat\$ons 34erats\$ons Coord\$nat\$on
3ff\$e. The re/uttal 4ro%ess 9as \$n\$ted on 21 No#em/er 201< and %om4leted on
1< August 2014. The UN. ! Ad#sor& ! rou4 u4held the rat\$ng of C4F \$nd\$at\$ng C4art\$all&
met e14e%tat\$onsF.

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12. On 11 October 2014, Ms. Sarrouh applied for her positions at the UN. - Countries in (en, Tan>an, Jm/a/9e, ! hana and Saud\$ Ara/\$a.

17. On 22 March 2014, Ms. Sarrouh filed an application with the UN. T. "n res4onse to UN. T 3rder No. 201 5N: 7201B6 dated 28 August 201B, Ms. Sarrouh \$nformed the . \$4ute Tr\$/unal that she had /een se4arated from t

Contested decision unlawful. There could not be a sufficient causal link between the irregularity and the decision since other evidence on the record also established the serious concerns regarding Ms. Sarrouh's performance and the overall unsatisfactory performance rating in her 2012 -A was ultimately maintained.

22. Overall, the Secretary-General submits that the UN. T erred in law when awarding compensation for moral harm. As the contested decision was lawful, it was not illegal

as well as the documentation provided /& /oth parts and the . s4ute Tr\$/unal %lear& sho9ed the e#\$dent\$ar& /ass\$ for \$ts f\$nd\$ngs.

22. Ms. Sarrouh further asserts that the UN. T %orre%tl& \$dent\$ed the s%o4e of \$ts re#se9 /& l\$m\$tn\$g \$t to the \$ssues of fa\$rn\$ss and 4ro%edural regular\$ty and thus d\$ed not %ondu%t a de novo re#se9 of Ms. Sarrouh's 4erforman%. The UN. T's re#se9 9as str%tl& l\$m\$ted to UN. -'s o9n 4ro%edural gu\$del\$nes and \$t, inter alia, e1am\$ned 9hether the UN. - team met the o/\$gat\$on to re#se9 Ms. Sarrouh's three latest -As and \$t e#aluated the\$r status to that effe%t. "t too+ \$nto %ons\$derat\$on the e1am4les of 4ost\$the feed/a%+ from a num/er of 9\$tnesses \$n order to %all \$nto Auest\$on the unsu44orted %on%lusions of the ; ! at the t\$me. The UN. T also %orre%tl& found that the 2012 -A 9as g#en d\$4ro4ort\$onate 9e\$ght and the a44eal has not demonstrated an& m\$sta+e of la9 or fa%t \$n the UN. T's anal&s\$ 9h\$%h %on%luded that Ms. Sarrouh 9as not afforded full and fa\$r %ons\$derat\$on. The 4er%e4t\$on that her 4erforman%e \$n the UA; had /een unsats\$fa%tor& \$s not =ust\$ed /& the e#\$den%e on the re%ord. Ourther, the Se%retar&-! eneral's argument that onl& the /est %and\$dates should /e sele%ted to ser#e as) C7)) \$s not 4ert\$nent to the \$ssue of 9hether a %and\$date 9as fa\$rl& treated.

27. ' \$th res4e%t to the UN. T's f\$nd\$ngs of 4ro%edural \$rregular\$ties, the Se%retar&-! eneral essent\$all& summar\$es the arguments alread& made /efore the UN. T and engages \$n a C4urel& s4e%ulat\$#e anal&s\$ of the e#\$den%e as 4roof of 9hat he \$s assert\$ng. The Se%retar&-! eneralK 9\$thout %\$t\$ng an& author\$ty and %ontra(r) 18. 6953 (\$) 21. 26151-18. 96 T dN[(9) 19(u) 95. 1306(r) 18

28. Ms. Sarrouh requests that the Tribunal be directed to award her three months' pay for a period of three months in the amount of US\$ 10,000 for each of the three months of her self-serving misrepresentation of the official record of the United Nations Tribunal's deliberations along with other deliberative misrepresentations.

40. The Tribunal found that the UN Tribunal committed an error of law in deciding that the Tribunal was not to nominate Ms. Sarrouh for the "AA-3" further consideration for the JC positions for which she applied in August and November 2011. ^B

41. The Appeals Tribunal has consistently stated that in matters of staff selection, the Secretary-General has broad discretion. It has held that this discretion is not unfettered and is subject to judicial review.

42. In *Ljungdell*, it referred to the discretion which rests in the Administration in the following terms ²

H Under Article 101(1) of the Charter of the United Nations and Staff Regulations 1.25 and 4.1, the Secretary-General has broad discretion in matters of staff selection. The jurisdiction of this Tribunal has clarified that, in reviewing such decisions, it is the role of the UN Tribunal or the Appeals Tribunal to assess whether the applicable regulations and rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunal's role is not to substitute their decision for that of the Administration.

43. In *Abbassi*, it emphasized that ⁷

H In reviewing administrative decisions regarding appointments and promotions, the UN Tribunal examines the following: 516 whether the procedure as laid down in the Staff Regulations and Rules was followed; and 526 whether the staff member was given fair and adequate consideration.

^B The UN Tribunal found that Ms. Sarrouh's application was rejected in part, with regard to her claims regarding her non-selection for three months for which she had applied in August 2011 and three months for which she had applied in November 2011. It ruled as not rejected *ratione materiae* that part of her application which concerned other positions for which she did not request management evaluation.

² *Ljungdell v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-22B, 4 para. 40, *Shing School v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-212, 4 para. 4, *Autong San! idi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, 4 para. 40. ⁵ Internal footnotes omitted.

⁷ *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, 4 paras. 2-24.

H The Secretary-General has a broad discretion in making decisions regarding promotions and appointments. In reviewing such decisions, it is not the role of the UN. Tribunal to substitute its own decision for that of the Secretary-General regarding the outcome of the selection process.

4. In Holland, we stated ⁸

H The Security Tribunal possesses a discretion to rescind a selection or promotion process, but may do so only under extremely rare circumstances. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the Security Tribunal shall uphold the selection or promotion.

H All candidates before an Interim Panel have the right to full (s) 22.3609() - 445.258(/) 177

members of the Panel established, or relevant material was considered or relevant material ignored.

2. The UN. T's Judgment indicates that it was aware of the seriousness, and we find that it failed to correct the law when considering Ms. Sarrouh's challenge to the selection process.

7. For the reasons which follow, we agree with the Secretary-General's submission that the UN. T erred in conducting a de novo assessment of Ms. Sarrouh's performance and therefore exceeded its competence and intruded into the Administration's managerial discretion to assess the performance of staff. Our reasons demonstrate that the UN. T erred in law and exceeded its competence in substituting its own decision for that of the Administration regarding the outcome of the selection process. We hold in Ni olara is that the same principles apply insofar as substituting the Tribunal's own

THE UNITED NATIONS APPEALS TRIBUNAL

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the Drel#ant 4os#onsE.

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O\$hall&, &ou are \$nstru%ted to %ease all de%\$s\$ons of 4ersonnel a%t\$on 9\$th\$n the Countr& 3ff\$e unt\$ further not\$e. Should an& 4ersonnel a%t\$ons /e reAu\$red to /e ta+en, &ou must o/ta\$ the a44ro#al of the)eg\$onal (ureau 5H6.

Thus, there 9as a re4ort of #er& ser\$ous 4ro/lems \$n the Countr& 3ff\$e 9h\$h fell 9\$th\$n the res4ons\$/\$t& of Ms. Sarrouh as)C for the UA; . The Se%retar&-! eneral 9as ent\$led to ta+e th\$ \$nto a%%ount 9hen %ons\$der\$ng her a44\$at\$ons for #er& \$m4ortant 4osts \$n other %ountr\$es. The UN. T 9as not %om4etent to hold that the Se%retar&-! eneral should ha#e g\$#en 4re%eden%e to d\$fferent %r\$ter\$.

44. "n the \$ght of Ms. Sarrouh's 4erforman%e \$n the UA

The UN. T \$nter4reted the mean\$ng of th\$ statement as /e\$ng that \$t Ca44ears to re%ogn\$e that
DMs. Sarrouh?SE ent\$re 4erforman%e 9\$th UN. -, \$n%lu

B<. The appeal allowed and Judgment No. UN. T720127218 is affirmed.

Original and Authoritative Version ; English

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

&Signed'

Judge *uss+, -resding

&Signed'

Judge Thomas-Oel

&Signed'

Judge) asos

; entered in the register on this 8th day of November 2017 in New York, United States.

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