
UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2022-UNAT-1249

Asr Ahmed Toson

(Appellant)

v.

Secretary -General of the United Nations

(Respondent)

JUDGMENT

Before: Judge Kanwaldeep Sandhu, Presiding
Judge

Counsel for Appellant: Self-represented

Counsel for Respondent: Noam Wiener

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... [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 appealable. ¹³Class (m) 6.8 (e)-

6. The Dispute Tribunal heard the application on the contested decisions in April 2021.

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 theUNDT erred in law when it based its judgment on an incorrect policy for selection processeswhen it stated

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 (d)23.8 (e)-1t (s b)2 TJ 0 Tc Tc 0.022 Tw 0 -1.7121d [(-04

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 ~~in~~ ~~re~~ ~~of~~ ~~the~~ ~~UNDT~~ ~~clearly~~ ~~found~~ ~~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~~ ~~in~~ ~~re~~ ~~of~~ ~~the~~ ~~UNDT~~ ~~clearly~~ ~~found~~ ~~that~~ ~~Mr.~~ ~~Toson~~ ~~had~~ ~~not~~ ~~met~~ ~~the~~ ~~burden~~ ~~of~~ ~~proving~~ ~~that~~ ~~the~~ ~~contested~~ ~~decisions~~ ~~were~~ ~~tainted~~ ~~by~~ ~~bias~~, ~~improper~~ ~~motives~~, ~~or~~ ~~retaliatory~~ ~~conduct~~.

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 nonselection 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 required skills for the positions.

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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*.⁷ 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"⁸ and as such was fatal to the Judgment?

45. The Secretary-General's additional submissions (i)-(j) were not considered in the Judgment. The Dispute Tribunal erred in procedure by not giving the Secretary-General the opportunity to respond to the Dispute Tribunal's findings. The question is whether this error "affected the decision of the case" and as such was fatal to the Judgment.

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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 1st 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 11th day of August 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar