

TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2013-UNAT-345

Neault

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

JUDGMENT

Before:

1. On 10 August 2012, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) issued Judgment No. UNDT/2012/12 3 in Geneva in the case of *Neault v. Secretary-General of the United Nations*. On 8 October 2012, the Secretary-General filed his appeal, and on 14 December 2012, Ms. Emilia Neault filed her answer.

Facts and Procedure

2. Ms. Neault joined the International Criminal Tribunal for the Former Yugoslavia (ICTY) in August 2007 as a G-4 Computer Information Systems Clerk with the Office of the Prosecutor (OTP). On 1 March 2010, the ICTY issued vacancy announcement No. 2010/REG/CHA/012-GS (VA No. 012) for two G-5 posts as Judges' Assistant. Ms. Neault and six other candidates were interviewed.

3. On 8 June 2010, the Chair of the interview panel reported that the interview panel did not find any of the seven candidates suitable for the posts. Specifically, the interview panel found Ms. Neault unsuitable because there was a likelihood of an actual or apparent conflict of interest as she was involved in several cases still before the ICTY.

4. The findings of the interview panel were not endorsed by the Central Review Panel (CRP). On 12 August 2010, the CRP concluded that conflict of interest was not part of the pre-approved evaluation criteria, and that the reasons provided by the interview panel were insufficient to explain the rejection of all seven candidates. In revised reports released on 23 September 2010, the interview panel found five candidates, including Ms. Neault, qualified for the G-5 posts. The CRP endorsed the revised reports.

5. On 7 October 2010, the Acting Head of ICTY Chambers asked the Human Resources Section (HRS) to re-advertise the two G-5 posts because none of the five pre-selected candidates were suitable for the posts of Judges' Assistant.

6. On 11 October 2010, Ms. Neault was informed that she had not been selected, but that she was included on a roster for future job openings with similar functions at the G-5 level.

7. On 13 October 2010, Ms. Neault sought clarification regarding her non-selection for the posts. In response, the Chief of HRS, ICTY, advised her that it had been perceived that she may have had a conflict of interest in relation to the posts, due to her previous role in OTP.

8. On 29 November 2010, Ms. Neault sought management evaluation of the decision not to select her for the posts advertised in VA No. 012.

9.

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2013-UNAT-345

THE UNITED NATIONS APPEALS TRIBUNAL

communication of a response to a management evaluation, namely, 30 calendar days for disputes arising at Headquarters and 45 days for disputes arising at other offices.

27. The facts underlying the pending appeal are simple and straightforward. Ms. Neault

30. The Secretary-General makes several arguments to support his contention that the limitations period for filing the application commenced to run on the date the MEU should have responded to Ms. Neault's request for management evaluation. The main argument relies on Staff Rule 11.4(a), which provides:

A staff member may file an application against a contested administrative decision, whether or not it has been amended by any management evaluation with the United Nations Dispute Tribunal within ninety calendar days from the date on which the staff member received the outcome of the management evaluation, or from the date of expiration of the deadline specified under staff rule 11.245.8(d), JTJ - 0 TwTthe m -wTthe 6 0.

33. Lastly, the Secretary-General argues that, as a matter of policy, to alleviate any uncertainty on the part of staff members about the correct deadline for filing an application with the UNDT, this Tribunal should determine that the filing date should run from the expiration of the period for management evaluation; otherwise, a staff member awaiting a management response might find himself or herself time-barred from an appeal. This argument misunderstands the purpose of management evaluation, which “is to afford the Administration the opportunity to correct any errors in the administrative decision so that judicial review ... is not necessary”⁸

34. With this goal in mind, it is both reasonable and practical for Article 8(1) of the

Original and Authoritative Version: English

Dated this 28th day of June 2013 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Faherty

(Signed)

Judge Lussick

Entered in the Register on this 26th