



1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations and a cross-appeal filed by Ms. Regina Asariotis against Judgment No. UNDT/2012/066, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 9 May 2012 in the case of *Asariotis v. Secretary-General of the United Nations*.

Facts and Procedure

2. The facts established by the Dispute Tribunal in this case read as follows:¹

... [Ms. Asariotis] entered the service of [the United Nations Conference on Trade and Development (UNCTAD)] at the P-4 level on 9 December 2001. On 1 September 2005, she was promoted to the P-5 level and became Chief of the Policy and Legislation Section of the Trade Logistics Branch, Division for Services Infrastructure for Development and Trade Efficiency (renamed the Division on Technology and Logistics (“DTL”) in early 2008).

... Vacancy announcement 07-ECO-UNCTAD-416118-R-GENEVA (G) for the D-1 post of Head of the Trade Logistics Branch was published on 26 November 2007. It had an application deadline of 25 January 2008.

... [Ms. Asariotis] applied for the post as a 30-day candidate on 24 December 2007.

... The Trade Logistics Branch consists of three sections, including the Policy and Legislation Section, headed by [Ms. Asariotis], and the Transport Section, headed by another P-5 level staff member.

... Upon the retirement of the Head of the Trade Logistics Branch on 31 January 2008, the Chief of the Transport Section was appointed Officer-in-Charge of the Branch on 15 February 2008,

... By internal memorandum dated 14 May 2008, the Director of DTL recommended to the Secretary-General of UNCTAD that he select for the disputed post the Chief of the Transport Section, who was also serving as the Officer-in-Charge of the Branch. However, no action was taken on this recommendation.

... On 30 June 2008, the Director of DTL, who was the hiring manager, retired. A staff member was appointed to serve as Officer-in-Charge of the Division on 1 July 2008.

... [Ms. Asariotis] received no information on the selection procedure for the disputed post until May 2009, when she was informally advised that the selection procedure had been “put on hold.” According to the Respondent, the budget line item had been required for a priority placement of a staff member holding a permanent appointment until that individual’s retirement in June 2009. During this period, Galaxy, the online recruitment system, continued to indicate that the applications were under consideration.

... On 15 June 2009, a new Director of DTL was appointed.

... On 15 July 2009, the Director of DTL advised [Ms. Asariotis] that the disputed post would be re-advertised. However, as the information below indicates, she subsequently changed her mind with regard to that matter.

... On 28 July 2009, a temporary vacancy announcement for a period of from three to six months was issued for the disputed post, and [Ms. Asariotis] applied on 6 August 2009. She was interviewed, but the candidate who had served as Officer-in-Charge of the B6(t)32(ho[.T t)3c(e)36(h)336(h)u6 -r inario BDi3(o)F1(e)39(3MC /1fBho[.T u)35(r)37(g)

... On 12 October 2010, [Ms. Asariotis], who was still without news, wrote once again to the Officer-in-Charge of the Human Resources Management Section of UNCTAD, who answered the same day that the interview panel's recommendations had "recently" been submitted to the Secretary-General of UNCTAD for transmission to the Central Review Board [(CRB)], and that a decision would be taken by mid-November.

... The interview panel's evaluations indicate that it concluded that [Ms. Asariotis] did not fully meet the requirements for the post and had therefore not been recommended. The panel was of the opinion that only two candidates met the post criteria, the candidate who had been serving as Officer-in-Charge of the Service since February 2008 and one 60-day candidate.

... On 3 November 2010, the panel's recommendations were presented to the Geneva Central Review Board. The Board twice requested additional information with regard to: (i) the performance evaluations of the interviewed candidates, (ii) the reasons why it had taken more than three years to produce the recommendations, (iii) the reasons why one of the candidates had not been recommended despite her experience, (iv) some apparent inconsistencies between the panel's evaluation of the recommended candidate and his experience as described in his personal history profile, and, finally, the reasons why UNCTAD had not taken any measures to avoid having the Officer-in-Charge of the Branch serve as [Ms. Asariotis'] first reporting

7. Notwithstanding the foregoing, the Dispute Tribunal considered that Ms. Asariotis was “entitled to maintain that if the selection procedure had been completed and if it had been free of procedural violations, there was a chance that she would have been selected for the vacant post” and to request compensation for damage suffered. It calculated that, as she had “approximately a 25 per cent chance of being selected, as the [Secretary-General’s] counsel acknowledged during the hearing”, she was entitled to compensation for the material damage incurred in “losing an opportunity for promotion”. The UNDT awarded CHF 10,000 on that basis.

8. The Dispute Tribunal determined that the Administration’s delays in informing Ms. Asariotis of the outcome of her application as well as the irregularities in the selection procedure caused her “great anxiety and resulted in significant moral damage, even though she ha[d] never claimed to have an illness resulting from the Administration’s actions”. As a result, it awarded her compensation in the amount of CHF 15,000.

9. The Secretary-General appealed this Judgment to the Appeals Tribunal on 9 July 2012, and Ms. Asariotis filed a cross-appeal together with her answer on 8 September 2012. The Secretary-General answered the cross-appeal on 9 November 2012.

Submissions

Secretary-General’s Appeal

10. The Secretary-General submits that the UNDT erred on a question of law and exceeded its competence in finding that Ms. Asariotis had lost an opportunity to be considered and in awarding compensation on that basis.

11. The Secretary-General fur

Ms. Asariotis' Answer

13. Ms. Asariotis submits that the UNDT correctly considered her loss of opportunity and awarded compensation on that basis. The Secretary-General admitted before the UNDT that she had a 25 per cent chance of being selected for the post; she thus contends that he should be estopped from now taking a different stance. She lost the opportunity to be considered in a selection exercise in which priority consideration is given to 30-day candidates and in which equally qualified women benefit from affirmative action. She also lost the opportunity to benefit from the advantage associated with inclusion on a roster.

14. Furthermore, the UNDT did not err in fact and law in awarding moral damages on the grounds that the Administration's delays in informing her of the outcome of the application, as well as the irregularities in the selection procedure, caused her great anxiety.

15. Ms. Asariotis requests that the Appeals Tribunal dismiss the Secretary-General's appeal.

Ms. Asariotis' Cross-Appeal

16. Ms. Asariotis contends that the UNDT erred procedurally, by failing to consider several of her legal arguments and in not fully reasoning its Judgment.

17.

Dispute Tribunal's review, was the decision to cancel the selection process, notwithstanding the references at paragraphs 21 to 25 of Ms. Asariotis' application to the irregularities pertaining to the appointment of the Officer-in-Charge. Furthermore, we note that the process whereby the individual was appointed to the Officer-in-Charge position was the subject of two separate decisions by the Administration, on 1 February 2008 and 19 January 2010, respectively. Insofar as Ms. Asariotis takes issue with those decisions, she does so only on 1 July 2011 in her application to the Dispute Tribunal, well past the date by which the decisions should have been subject to management evaluation. Whatever about Ms. Asariotis' state of knowledge as to whether or not the individual who was appointed Officer-in-Charge on 1 February 2008 was a candidate for the vacancy, certainly, by the time the temporary post was filled on 19 January 2010, Ms. Asariotis knew that the person appointed as temporary Officer-in-Charge was, like her, a candidate for the temporary post.

26. While Ms. Asariotis states in her cross-appeal that the UNDT did not address her arguments in relation to the benefits she lost and the priority that would have been afforded to her as a female candidate,³ we do not find that the failure on the part of the UNDT to deal specifically with these issues manifestly affected the outcome of the case, in view of the UNDT's conclusion that the decision to cancel the vacancy announcement was lawful.⁴

and their resulting concerns. The refusal to endorse the recommended candidates effectively rendered the entire selection process a nullity and the Under-Secretary-General had no option but to cancel the vacancy and re-advertise the post.

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