



Case No.: UNDT/NY/2010/024/
UNAT/1648
Judgment No.: UNDT/2011/026
Date: 1 February 2011

both found evidence of unfair treatment of the Applicant by Mr. Al-Jijakli (see at para. 12 below). However, this was not th

8. The Applicant complained to the Ombudsman about what he perceived as favouritism towards Mr. El-Shaer aimed at grooming him to be Mr. Al-Jijakli's

The report of the rebuttal panel

11. From April to July 2005, the Applicant, Mr. Al-Jijakli and Ms. Xian Zhang (the Applicant's Second Reporting Officer) worked on and signed off on the Applicant's e-PAS for the period 2004-2005. Mr. Al-Jijakli rated the Applicant's performance as "fully successful" while noting concerns and marking a number of core and managerial competencies as "developing". Ms. Zhang stated her concern for the record that the Applicant, whom she had evaluated as Second Reporting Officer since 2002 and whom she had rated as "consistently exceeds expectations", was now receiving "a considerable lowering" in his overall rating "for which no explanation has been forthcoming". The Applicant rebutted this e-PAS.

12. On 6 November 2006, the rebuttal panel submitted its report on the Applicant's 2004-2005 e-PAS. The rebuttal panel found the e-PAS to be "so tainted by improper motives as to merit being set aside". The rebuttal panel recommended that the Applicant's performance rating be upgraded to "frequently exceeds performance expectations".

The selection process

13. The Tribunal's findings, based on the documents and Mr. Sekel's evidence, are as set out below.

14. On 16 November 2005, a vacancy announcement was issued for Mr. Al-Jijakli's post in anticipation of his retirement from service on 1 April 2006. Five candidates in total were short-listed, including the Applicant and Mr. El-Shaer.

15. On 31 March 2006, Mr. Al-Jijakli retired. Prior to his departure, he named Mr. El-Shaer to be OIC of the Service, a practice he had followed on a number of occasions previously during his absences. Mr. Sekel, who then acted as OIC of the Documentation Division of which ATS was part, stated that he introduced a rotation system in the expectation that it would be a short process before a substantive appointment was made. In the event matters dragged on, and although he was not

The appeal to the Joint Appeals Board (“JAB”)

28. The JAB concluded that the selection process had not violated the Applicant’s terms of appointment.

29. The Applicant’s complaint to the JAB was that he was denied full and fair consideration for promotion to the post of Chief, ATS, by the actions of the previous Chief. It should be noted that it was not the function of the JAB panel to decide who was the most suitable candidate. Its task was to review the process and to determine if the relevant procedures appeared to have been complied with, that there was evidence that the Applicant’s candidacy was given due consideration and that the result appears to have been free from extraneous considerations and bias or prejudice. (See also the former Administrative Tribunal Judgements No. 828, *Shamapande* (1997) and No. 834, *Kumar* (1997), which are persuasive on this point, though not binding).

30. The Dispute Tribunal is, in effect, exercising an appellate jurisdiction in substitution for the former Administrative Tribunal in relation to appeals against the administrative decisions of the Secretary-General. It is not the function of the Dispute Tribunal to carry out a comprehensive investigation into the substantive complaints made before the JAB. The Tribunal’s task is to consider whether there were any procedural errors that call into question the legitimacy of the findings and/or recommendation of the JAB panel. Did the JAB panel misinterpret or misapply the relevant legal principles or ignore material evidence such that a manifest injustice may have been caused to the staff member? (See also *Bridgeman* UNDT/2010/018, para. 37.)

31. In its Report No. 1991 of 15 July 2008, the JAB panel dismissed the Applicant’s appeal, since it found that the Respondent had not violated his terms of appointment in the selection process. On 23 September 2008, the Deputy Secretary-General transmitted to the Applicant a copy of the report of the JAB panel and informed him that the Secretary-General had decided to follow the JAB panel’s

recommendation and that no further action would therefore be taken in regard to his appeal

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limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.

38. In the present case, the Applicant's complaints of unfair treatment were upheld by the investigation panel, whose report and conclusion gave rise to serious questions relating to the integrity of the system and its failure to ensure a working environment free from unfair and oppressive managerial behaviour. Yet the Applicant, as the recipient of such conduct, is left without a remedy because he did not negotiate a further hurdle of bringing a separate complaint in accordance with the applicable procedures. The question that has to be asked is whether there is an effective mechanism for redress of grievances within the United Nations. It would be wholly undesirable, and inconsistent with the underlying scheme of internal justice, if staff members were compelled to resort to formal mechanisms to resolve grievances because their management appears to seek cover behind formal processes.

(Signed)

Judge Meeran

Dated this 1st day of February 2011

Entered in the Register on this 1st day of February 2011

(Signed)

Santiago Villalpando, Registrar, New York