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Judgment No. 2022-UNAT-1209



Edoardo Gianotti  
(Appellant)

v.

Secretary-General of the United Nations  
(Respondent)

## JUDGMENT

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Before: Judge Kanwaldeep Sandhu, Presiding  
Judge Graeme Colgan  
Judge Martha Halfeld

Case No: 2021-1540

Date: 18 March 2022

Counsel for Appellant: George G. Irving  
Counsel for Respondent: Francisca Lagos Pola

JUDGE KANWALDEEP SANDHU , PRESIDING .

1.

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11. Upon inquiry on 16 June 2020, the Appellant found out that the recommendation for his candidacy was not approved. He submitted a request for management evaluation of the Executive Secretary's decision to reject his successful candidacy for the P4 Post, after he was recommended by the Hiring Manager and endorsed by th-1.5 (e)-3.4n[2 (h1.7 (r th)tF( b)0.5 (y)8.6 ( t)2.9 (h)0.8 (-1

Submissions

Mr. Gianotti's Appeal

17. The Appellant argues the UNDT erred and failed to distinguish his case from the precedents cited in its Judgment. In particular, he points out that the Executive Secretary effectively vetoed his selection on two occasions, after he had been recommended as the sole successful candidate. This action on the part of the Executive Secretary in effect deprived the Appellant of the full and fair consideration that he was entitled to receive. As a result, the action of the Administration yielded direct consequences on his terms of employment.

18. Furthermore, the Appellant says that the instruction of the Executive Secretary on the second occasion to include "at least 1 woman candidate" was in clear violation of the rules and policies as it was in fact directing the Hiring Manager to include in his recommendation: candidates who did not meet the requirements of the post and who failed in the competitive process.

19. The Appellant submits that the rejection of his selection for the P-4 Post and the *de facto* cancellation of the selection process were appealable administrative decisions affecting his terms and conditions of employment. The Appellant therefore requests rescission of the Contested Decision rejecting his candidacy and given that his chances as the *sole* successful candidate were 100 percent, he requests immediate appointment of his promotion with retroactive effect.

The Secretary-General's Answer

20. As a preliminary matter, the Secretary-General first informs the Tribunal that the Job Opening for the P-4 Post was cancelled on 20 May 2021 over concerns regarding the confidentiality and integrity of the selection process. Regarding the merits of the appeal, the Secretary-General argues the UNDT correctly held that the application was not receivable.

21. He also argues that the recruitment process for the P-4 Post was still ongoing at the time and that there had been no final selection yet. As such, the non-approval by the Executive Secretary of the Hiring Manager's recommendation to select the Appellant did not constitute a final decision but was an action taken in an ongoing selection exercise. In the absence of a final selection

decision, the Secretary-General argues the UNDT correctly found that the Contested Decision did not constitute an administrative decision that is subject to judicial review.

22. Additionally, the Secretary-General says the Appellant did not discharge his burden of satisfying the Appeals Tribunal that the Impugned Judgment is defective. The Secretary-General notes the Appellant's appeal brief is a word-for-word repetition of the arguments presented before the UNDT. As such, the Appellant is rearguing his case or requesting the Appeals Tribunal to consider original arguments before the UNDT *de novo* and to come to a different conclusion.

23. The Secretary-General requests the Appeals Tribunal to reject the appeal as the Appellant has failed to identify any error by the UNDT and does not demonstrate any of the grounds for appeal under Article 2(1) of the Appeals Tribunal Statute (Statute).

*Additional Evidence*

24. On 4 October 2021, the Secretary General was informed by the Executive Office of UNECE that the Appellant had been selected for the P-4 Post. The Secretary-General followed up with the Appeals Tribunal and sought to introduce additional evidence to that effect. Specifically, the evidence consisted of an e-mail from UNECE with an Inspira screenshot showing that Mr. Gianotti was selected for the post. The e-mail dated 4 October 2021 said: "Please be advised that the selection of Mr. Gianotti against Inspira job opening #123535 has been completed now."

25. Additionally, the Secretary-General notes since the Appellant had sought rescission of the Contested Decision and considering his eventual selection, his request for relief has become moot, and as such, the appeal should be dismissed in its entirety.

26. Although the Appellant does not object to the additional information, he says that the information is incomplete. He explains that he was first notified of the cancellation of the job opening on 21 May 2021. He thereafter filed a request for management evaluation regarding the cancellation, and the MEU informed him on 6 October 2021 that the cancellation had been rescinded and that he was selected for the post.

27. The Appellant submits that his appeal is not completely moot and requests: "In view of the time that has been expended thus far and the continuing loss to the Appellant's legitimate career expectations, the Appellant requests rescission of the contested decision rejecting his candidacy

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35. In addition, since that time, the final selection has occurred. The Appellant was selected as the successful candidate for the ~~P4~~ Post. Therefore, the Appellant has now received that which he had sought, namely being the selected for the post.

36. The Dispute Tribunal did not err when it held that the application was non-receivable *ratione materiae*. We note the role of judicial review by the Appeals Tribunal is clearly set out in Article 2(1) of the Statute, namely to determine if the Dispute Tribunal has made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction. In addition, the appellant has the burden of satisfying the Appeals Tribunal that the judgment rendered by the Dispute Tribunal was defective on these grounds, and it is not sufficient for a party to simply re-try or reargue the case before the Appeals Tribunal because they disagree with the outcome.<sup>9</sup> This is what the Appellant has done.

37. Nevertheless, the Appellant seeks compensation. Specifically, he seeks the differential in pay for 17 months, which is computed from the time the second recommendation was made on 10 June 2020 until his promotion took effect on 1 November 2021.

38. Article 9(1) of the Statute specifies the remedies available to the Appeals Tribunal:

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40. Therefore, we decline to award the requested relief.

Judgment

41. The appeal is dismissed, and Judgment No. UNDT/2021/013 is upheld.

Original and Authoritative Version: English

Dated this 18<sup>th</sup> day of March 2022.

*(Signed)*

Judge Sandhu, Presiding  
Vancouver, Canada

*(Signed)*

Judge Colgan  
Auckland, New Zealand

*(Signed)*

Judge Halfeld  
Juiz de Fora, Brazil

Entered in the Register on this 29<sup>th</sup> day of April 2022 in New York, United States.

*(Signed)*