



**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2010-119

**Rolland**  
**(Appellant and Respondent on Cross-Appeal)**

**v.**

**Secretary-General of the United Nations**  
**(Respondent and Appellant on Cross-Appeal)**

**JUDGMENT**

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**Before:** Judge Kamaljit Singh Garewal, Presiding  
Judge Sophia Adinyira  
Judge Luis María Simón

**Judgment No.:** 2011-UNAT-122

**Date:** 11 March 2011

**Registrar:** Weicheng Lin

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**Counsel for Catherine Rolland:** Gritakumar E. Chitty

**Counsel for the Secretary-General:** Amy Wood

**JUDGE KAMALJIT SINGH GAREWAL, Presiding.**

**Synopsis**

1. Catherine Rolland (Rolland) was an unsuccessful candidate for the three posts of Senior Human Resources Officer within the Field Personnel Division of the newly created Department of Field Services (DFS) at the P-5 level in New York. She was interviewed, but was not among the six candidates who were found suitable for the posts.
2. Rolland challenged the administrative decision on several grounds before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), but her application was dismissed, save for an award of nominal damages of USD 500 for the Administration's failure to notify her of her non-selection.
3. Rolland has challenged the UNDT Judgment on various grounds. The Secretary-General has filed a cross-appeal against the award of damages.
4. We hold that the selection process conducted by an interview panel can be rescinded under rare circumstances. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the selection shall be upheld.
5. We also hold that there is always a presumption that official acts have been regularly performed. This is called the presumption of regularity, but it is a rebuttable presumption. If the management is able to even minimally show that the appellant's candidature was given a full and fair consideration, then the presumption of law is satisfied. Thereafter the burden of proof shifts to the appellant who must be able to show through clear and convincing evidence that she was denied a fair chance of promotion. Rolland has failed to discharge this burden.
6. However, failure of notification of non-selection may have a serious impact on the future career development of a staff member. Therefore, the award of damages, though nominal, was just and fair.
7. The appeal is dismissed. The cross-appeal is also dismissed.

**Facts and Procedure**

8. Rolland joined the Organization in 1975 as a general service staff member and retired in December 2008 as a professional at the P-4 level.

9. On 22 September 2007, a vacancy announcement was issued for three posts of Senior Human Resources Officer located within the Field Personnel Division (FPD) of the newly-created DFS at the P-5 level in New York. Rolland applied for each of the three posts within the time limit. At that time she was Chief, Recruitment and Outreach Unit, FPD in New York. Prior to that she had served in peacekeeping missions and received a Special Post Allowance (SPA) at the P-5 level while on mission in the Democratic Republic of Congo from July 2001 to January 2005.

10. On 25 October 2007, Rolland was interviewed for the three vacant P-5 posts. According to the evaluation documents compiled by the interview panel, 11 candidates were considered and interviewed (one 15-day candidate and ten 30-day candidates). Rolland was ranked lower than the top half of the candidates interviewed. Six candidates were assessed as suitable for the posts and three of them were selected, including one who had been acting as Officer-in-Charge (OIC) of the unit almost two months before the advertisement of the position. Rolland was neither found suitable for the posts nor was she rostered.

11. But Rolland was not formally notified of her non-selection. She did not become aware of her non-selection for any of the three P-5 posts until 26 June 2008, when she obtained a copy of an internal staff list.

12. On 5 November 2008, after she had requested administrative review and had been informed that the selection process for the three P-5 posts had been free from error, Rolland filed an incomplete appeal to the Joint Appeals Board (JAB). The JAB did not have an opportunity to review Rolland's appeal before its abolition at the end of June 2009. The case was subsequently transferred to the UNDT.

13. On 18 May 2010, the UNDT rendered Judgment No. UNDT/2010/095, in which Adams, J., dismissed Rolland's application. He considered that the assessment of candidates against the established criteria "must involve a high degree of judgment and experience which will not be replicated by a judge in [his] position. In the nature of things, therefore, unless there is some obvious anomaly or evidence that irrelevant material was taken into

account, relevant material ignored, or of a mistake of fact or law, the Tribunal will not be able to conclude that the process was significantly flawed or a value judgment mistaken. It is, after all, not the Tribunal's role to determine the outcome of a promotion or appointment process."

14. Judge Adams reviewed the issues related to Rolland's attributes, the fact that one of the selected candidates was OIC of the unit, the gender balance, and the evaluation documents, but did not detect evidence that would give rise to concern. However, Adams, J., did find the lack of notification to Rolland about her non-selection to constitute a breach of specific obligations towards her, and awarded Rolland the sum of USD 500 as nominal damages, though "[Rolland] suffered no loss or additional anxiety arising out of the inappropriate and discourteous way in which she became aware of her non-selection".

15. On 30 June 2010, Rolland wrote to the Registry requesting a three-week extension of the time limit until 24 July 2010 to file an appeal from the UNDT Judgment cited above. Her request was granted. She filed an appeal that did not conform to the filing requirements on 24 July and perfected it on 12 August.

16. A copy of Rolland's appeal was forwarded to the Secretary-General on 12 August for an answer by 27 September 2010, which he did not do.

17. By email dated 20 October 2010, the Secretary-General requested leave to file an answer on or by 19 November 2010. He explained that due to an oversight, Rolland's appeal as transmitted by the Appeals Tribunal's Registry had not been forwarded internally within the Office of Legal Affairs until 20 October 2010. The request for extension of the time limit was exceptionally granted to 12 November.

18. On 12 November 2010, the Secretary-General filed an answer to Rolland's appeal. He also filed a cross-appeal against the UNDT's award of USD 500 as nominal damages based on non-notification.

19. In a letter dated 31 December 2010, Rolland's counsel stated that he was not able to prepare an answer to the cross-appeal because he had not been able to contact Rolland for instructions and he did not know where she was. He asked for a 30-day extension in order to prepare the answer. No further communication has been received to date.

**Submissions and Considerations**

20. The Dispute Tribunal possesses jurisdiction to rescind a selection or promotion process, but may do so only under extremely rare circumstances. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection/promotion.

21. All candidates before an interview panel have the right to full and fair consideration. A candidate challenging the denial of promotion must prove through clear and convincing evidence that procedure was violated, the members of the panel exhibited bias, irrelevant material was considered or relevant material ignored. There may be other grounds as well. It would depend on the facts of each individual case.

22. The impugned Judgment of Judge Adams is very detailed and exhaustive. To succeed the Appellant must bring her case under one or more of the five grounds mentioned in Article 2 of the Statute of the Appeals Tribunal. Therefore, the questions which arise in this appeal are whether the Dispute Tribunal exceeded its jurisdiction or competence; failed to exercise jurisdiction vested in it; erred on a question of law; committed an error in procedure, such as to affect the decision of the case; or erred on a question of fact, resulting in a manifestly unreasonable decision.

23. Rolland was one of the candidates seeking promotion from P-4 to one of the three P-5 posts that were advertised. At the relevant time, Rolland was holding a P-4 position and was thus a 30-day candidate, like all others, barring a solitary 15-day candidate. She was interviewed on 25 October 2007, but was unsuccessful in being included among the six candidates found suitable for the posts. Three out of the six short-listed candidates were selected.

24. Rolland challenged her non-promotion and the validity of the selection process on eight grounds detailed in paragraph 16(c) of the Dispute Tribunal Judgment. Firstly, one of the selected candidates was acting as OIC before the post was advertised; this amounted to prejudgment of his suitability. Secondly, some of the selected candidates were less qualified than her in technical knowledge of human resources management. Thirdly, the discrepancy between her excellent Performance Appraisal Reports and her interview evaluation should

have been taken into account by the interview panel. Fourthly, only two of the selected candidates met the highly desirable requirement of at least one year in a United Nations peacekeeping or other field operation. Fifthly, none of the three selected candidates had knowledge of French, despite the linguistic requirement of the vacancy of a second United Nations language, preferably French, whereas Rolland was French-speaking. Sixthly, all three selected candidates were male; this did not comply with the gender policy of the Organization. Seventhly, the evaluation criteria were inconsistent with the vacancy announcement. The selection criteria were not specified in a separate document as required. And lastly, eligibility requirements regarding time-in-grade and time-in-post were inappropriately taken into account contrary to Administrative Instruction ST/AI/2006/3.

25. The above grounds are quite contentious, and cannot be decided in the absence of the successful candidates, and without the examination of the interview panel's record. There may be some parts of the record which must be kept confidential to maintain the independence and the integrity of the selection/promotion exercise. Similarly, some of the other grounds of challenge have been dealt with by the UNDT. It is up to Rolland to show how the Judgment is in error on a question of law, or fact or procedure.

26. There is always a presumption that official acts have been regularly performed. This is called a presumption of regularity. But this presumption is a rebuttable one. If the management is able to even minimally show that the Appellant's candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter the burden of proof shifts to the Appellant who must show through clear and convincing evidence that she was denied a fair chance of promotion.

27. Rolland argues that she was denied the written record of hearings held by the UNDT. When she enquired from the UNDT Registry she was informed that the Tribunal did not have transcripts of the hearing. Instead she was offered an audio recording. She claims that this record was incomplete and was edited. Only a short review of the recording was possible.

28. In our view, Rolland has not shown that the procedural lapses were such as to affect the decision of the case. In the circumstances of the present case, the failure to keep a written record or transcript of the audio proceedings does not affect the decision or the final outcome. The proceedings took place in the presence of the parties; every procedural step

taken by the Tribunal was open and transparent. In such a situation it cannot be said that there were procedural lapses affecting the decision.

29. Reference has been made to the testimony of the Assistant Programme Manager (APM) that Rolland's evaluations were of her performance at the P-4 level. This, according to Rolland, showed that her evaluations at the senior level while on mission had not been considered. It was also wrong of the APM to say that the P-5 responsibilities in the field were not equivalent to those at the Headquarters. The UNDT did not find evidence showing that the interview panel had presumed that Rolland's performance had not been fully successful, or that its evaluation was mistaken. As for the point regarding the P-5 level posts in the field and the Headquarters not being the same, the UNDT correctly held that this was not an issue before the Tribunal and would not show that the result of the interview was in any way improper.

30. This appeal stems largely from the fact that Rolland was unsuccessful before UNDT. The grounds mentioned under the fundamental breaches of due process, the review mechanisms and recourse mechanisms are quite vague. Rolland does not explain how any of these grounds can validly succeed in upsetting the UNDT Judgment. Rolland states that the conclusions by the UNDT were at odds with the principles of law, but offers no explanation. Of course, the withholding of notification of the selection result was held to be a breach of her rights and we find no reason to hold otherwise. The non-notification was wrong in view of the provisions of Administrative Instruction ST/AI/2006/3, Annex II, paragraph 5, which states that "Programme Managers must inform all interviewed candidates who have not been selected of their non-selection and/or placement on the roster".

31. Failure of notification of non-selection may have a serious impact on the future career development of a staff member by delaying preparation for seeking other positions. It also delays the administrative review/management evaluation of the case. For this lapse she has been sufficiently compensated with an award of damages of USD 500 by the UNDT. We do not interfere with this award.

32. The remaining grounds of appeal are more in the realm of the abstract, rather than legal field. Reference was made to certain paragraphs of the Judgment to challenge some of the findings of the Dispute Tribunal, but we do not find any of these grounds valid. Rolland has not been able to show how the selection process was vitiated.

33. In view of the above, the appeal is dismissed. The cross-appeal challenging the award of damages is also dismissed.

**Judgment**

34. The UNDT Judgment is affirmed. The appeal is dismissed. The cross-appeal is also dismissed.

Original and Authoritative Version: English

Dated this 11<sup>th</sup> day of March 2011 in New York, United States.

*(Signed)*

Judge Garewal, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Simón

Entered in the Register on this 19th day of April 2011 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar