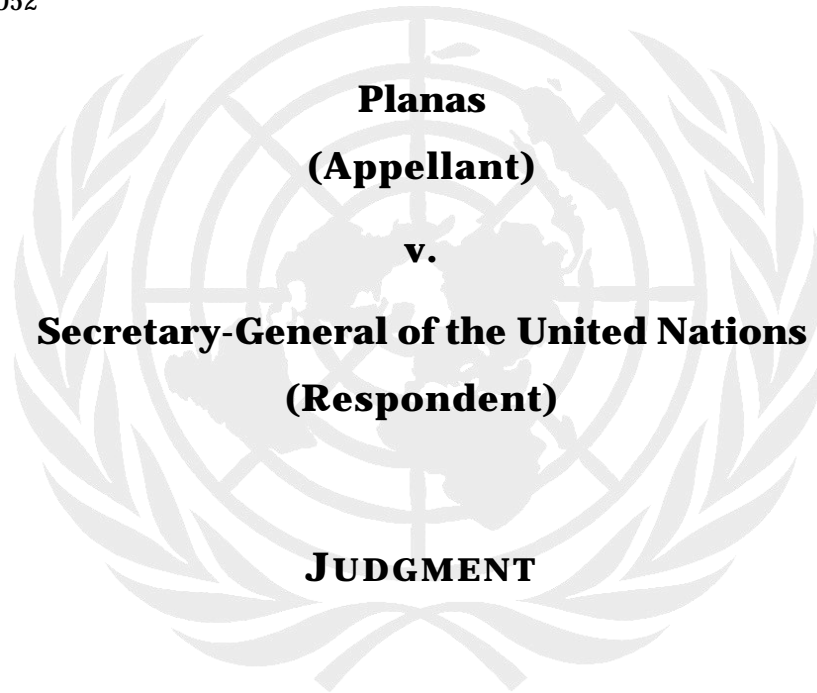




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-052



Before: Judge Luis María Simón, Presiding
Judge Mark P. Painter
Judge Kamaljit Singh Garewal

Judgment No.: 2010-UNAT-049

Date: 1 July 2010

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: John Stompor

JUDGE LUIS MARÍA SIMÓN, Presiding.

Synopsis

1. Cristina Planas (Planas), a staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR), appeals against Judgment No. UNDT/2009/086 of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal). She complained before the UNDT that the Administration had failed to implement paragraph 48(a) of the Procedural Guidelines of the Appointments, Postings and Promotions Board (APPB) concerning rotation eligibility requirements, and that as a result, she was restricted in her applications for several posts. The UNDT dismissed her application, finding that Planas did not contest any administrative decision. In her appeal, Planas requests the Appeals Tribunal to order that she be considered as a “full” candidate in applications to certain duty stations, that the allegedly discriminatory practice be brought to an end, and that she be paid compensation. The appeal is considered without merit and the UNDT Judgment is affirmed.

Facts and Procedure

2. On 12 August 2009, Planas submitted an application to the Dispute Tribunal. In her application, Planas contested the alleged non-application of paragraph 48(a) of the UNHCR Procedural Guidelines for Appointments, Postings and Promotions (Procedural Guidelines), which establishes the rotation eligibility requirements for appointments, postings and promotions in duty stations grouped into three categories, H/A, B/C and D/E.

3. Planas alleged that “non implementing [this provision] implied a disproportionate concentration in a certain type of duty stations and non recognition of the massive rotation and exposure obtained”. Further, “non implementation of the indicated paragraph [had] consistently restricted her options” and “fairness [had] not prevailed”.

4. By order dated 29 September 2009, the UNDT directed Planas to specify “in clear terms the administrative decision that she contest[ed] in her application”. The parties were informed that the UNDT intended to decide the case by summary judgment if Planas failed to provide the requested information. By e-mail dated 20 October 2009, Planas provided the information requested and stated that “the administrative decision [is] that due to the fact that [she had] been posted in Cyprus, which is considered as category H, at the completion of

[her] standard assignment length (SAL), [she could] only rotate to posts in countries categories C, D, E and not to posts in countries category H, A and B". She stated that "as a result of this decision [she had] been deprived of numerous opportunities ... to be considered for posts H, A and B".

5. On 10 December 2009, Judge Laker rendered Judgment No. UNDT/2009/086. The UNDT rejected the application in a summary judgment. Judge Laker considered that, pursuant to Article 9 of the rules of procedure of the UNDT, there was no dispute as to the material facts and the judgment was restricted to a matter of law. The matter of law was whether Planas contested an administrative decision, in accordance with Article 2(1) of the statute of the Dispute Tribunal (UNDT statute). Judge Laker considered that "an administrative decision can only be considered as such if – *inter alia* – it has direct legal consequences (effects) on an individual's rights and obligations". Judge Laker noted that, while alleged non-application of paragraph 48(a) of the APPB Procedural Guidelines may have an impact on Planas's chances to be selected for a specific post, she did not contest a specific administrative decision in her submission. The selection process for a post involved a series of steps or findings which could lead to an administrative decision. Only if Planas contested the outcome of a selection process for a specific post would the UNDT be competent to hear and pass judgment on her application. While Planas had identified posts in which she had expressed an interest, she did not contest in precise terms her non-selection for any of them. Judge Laker concluded that Planas did not identify any administrative decision in her application.

6. Planas received Judgment No. UNDT/2009/086 on 14 December 2009 and filed an appeal on 22 January 2010 that was mistakenly addressed to the former Administrative Tribunal. After corrections, Planas re-filed a completed appeal on 16 February 2010. The Secretary-General filed an answer to the appeal on 7 April 2010.

Submissions

Planas's Appeal

7. Planas sets out in her appeal a number of objections to the reply of the Secretary-General before the UNDT.

8. Planas submits that the UNDT erred in finding that no administrative decisions were identified in her application. She argues that the decisions not to include her in the list of eligible candidates for each of the applications she made to posts in H, A, and B duty stations were administrative decisions. Planas contends that the decisions were unilateral and of individual application and had direct and legal consequences “in as much as [they] locked [her] up professionally either since 2007, 2008, or 2009”. Further, Planas contends that the decisions deprived her of the opportunity to compete in “an open and transparent process” for the posts in H, A, and B duty stations that she had applied for during the period from April 2007 to July 2009, and after the commencement of the present case. She claims that she was not informed that she was not considered eligible for those posts until March 2009.

9. Planas requests the Appeals Tribunal to order that she be “considered as [a] full candidate in [her] applications to H, A and B duty stations and NOT as second tier, residual with [z]ero chances of being considered”. She also seeks compensation and an end to “the practice of discriminating the staff arbitrarily”.

Secretary-General’s Answer

10. The Secretary-General submits that the UNDT correctly held that Planas’s application failed to identify an administrative decision. The Secretary-General also submits that, while citing in her appeal her unsuccessful applications to posts from 2007 to 2009, Planas has not identified any errors of law, fact, or procedure that would require a reversal of the UNDT’s finding that she failed to identify an administrative decision that she was contesting. The Secretary-General contends that Planas continues to fail to contest in precise terms her non-selection for a specific post.

11. The Secretary-General claims that, even if Planas were to identify in her appeal an administrative decision that she contests, she would be out of time. Contesting an administrative decision requires going through a process in which the initial step is submitting an administrative decision for management evaluation, in accordance with Staff Rule 11.2, former Staff Rule 111.2(a), and Article 8(1)(c) of the UNDT statute . A condition precedent of these provisions is that the contested administrative decision must be identified.

12. The Secretary-General requests the Appeals Tribunal to affirm the UNDT's rejection of Planas's application, and to dismiss her appeal in its entirety.

Considerations

13. First, it should be noted that the appeal is not the appropriate occasion to reply to the dispute in the first instance, or to introduce new elements for consideration that were not put forward at the UNDT level.

14. For this reason, an introductory argument concerning the content of the other party's observations or aspects of administrative conduct not raised at the first instance is largely inadmissible.

15. As such matters technically do not constitute valid grounds of appeal arising from the impugned Judgment, they will not be given consideration in the present ruling.

16. Planas claims that her fault, as found by the UNDT, was that she did not identify an impugned administrative decision or act in her complaint. But she insists that she did identify such a decision.

17. This Tribunal is, however, of the view that the arguments put forward in the appeal do not shake the solid foundation of the contested Judgment, which, furthermore, will be confirmed.

18. Planas maintains in general terms that the failure to consider her as an eligible candidate in each selection process represents an administrative decision that was damaging to her.

19. Regardless of whether all the specific occasions on which Planas reportedly applied but was not considered as a candidate were detailed or justified, even assuming that in the selection process for each post she did indeed apply but was not considered, that situation in itself would not enable the proposed claim, which in large measure exceeds the powers of the UNDT, to be made.

20. In effect, the claim that she was passed over and discriminated against could only be made if the staff member, feeling that she had suffered injury after she had submitted a

specific candidacy and after another person had been selected, had contested the results of the selection process, that is, the specific appointment made.

21. Therefore, the UNDT was correct in finding that, as Planas did not contest in precise terms her non-selection for any post, she did not identify any administrative decision in her application.

22. Advancement of a claim like the one being made requires verification that a particular administrative decision taken with respect to a specific application by Planas to fill one or more specific posts, was taken contrary to law, causing her direct harm. Thus, the violation of the right she invokes would be compared with the applicable norms and with the rights of the other candidates, in order to determine whether or not the alleged violation took place.

23. This Tribunal notes the fact that at no time did Planas have recourse to management evaluation, nor did she seek administrative review as required under the former internal justice system. These steps are required to be exhausted before the jurisdiction of the UNDT can be invoked.

24. As those procedures were not followed and the complaint was general and ex post facto in nature, it was found to be groundless because a specific administrative decision that the UNDT could reverse was not identified and the conditions and procedural requirements for seeking compensation established by Articles 2, 8 and 10 of the UNDT Statute were not met.

25. Consequently, there is no other option but to affirm the UNDT decision. If Planas continues to believe that the manner in which the Administration is proceeding is damaging to her interests, she must challenge her non-selection for a specific post through the proper channels.

Judgment

26. In view of the foregoing, the Appeals Tribunal dismisses the appeal and affirms the UNDT Judgment.

Dated this 1st day of July 2010 in New York, United States.

Original: English

(Signed)

Judge Simón, Presiding

(Signed)

Judge Painter

(Signed)

Judge Garewal

Entered in the Register on this 17th day of August 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar
United Nations Appeals Tribunal