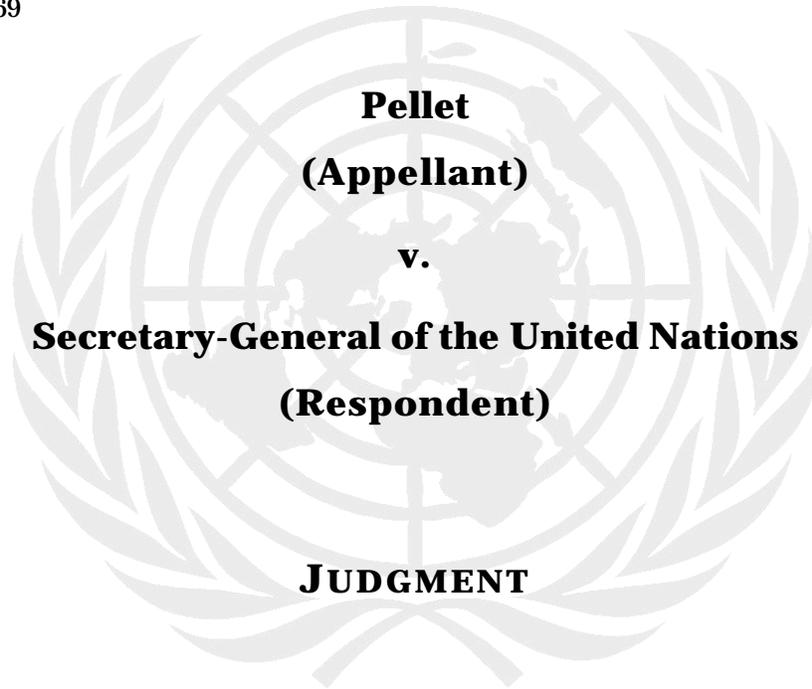




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2010-069



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<b>Before:</b>	Judge Rose Boyko, Presiding Judge Mark P. Painter Judge Inés Weinberg de Roca
<b>Judgment No.:</b>	2010-UNAT-073
<b>Date:</b>	29 October 2010
<b>Registrar:</b>	Weicheng Lin

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<b>Counsel for Appellant:</b>	Amal Oummih
<b>Counsel for Respondent:</b>	Phyllis Hwang

**JUDGE ROSE BOYKO**, Presiding.

### **Synopsis**

1. Roger Pellet (Pellet) sought to challenge the non-advertisement of certain vacant posts which he says denied him the opportunity to apply for these positions. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) refused to hear his challenge on the grounds that his application was not receivable. Pellet argues in his appeal that the Dispute Tribunal wrongly decided that his application was not receivable because he was not eligible to apply for the positions in question and therefore had no legal standing to contest the administrative decision not to advertise the vacancies for these positions.

2. This Tribunal finds that it was open to the Dispute Tribunal to consider the preliminary issue of whether Pellet had legal standing to even challenge the administrative decision not to advertise the vacancies in question. We find no error in its decision that Pellet was not entitled to contest the administrative decision since he was not an eligible candidate for any of the vacant posts. Pellet had no stake in the administrative decision as his rights and terms of employment were not affected by the fact that the vacant posts were not advertised.

3. The appeal to this Tribunal must therefore fail on the ground that Pellet had no legal standing to challenge the administrative decision. For the reasons given above the appeal is dismissed.

### **Facts and Procedure**

4. Pellet is a staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR). On 12 June 2007, UNHCR announced the relocation of a number of administrative services from Geneva, Switzerland, to Budapest, Hungary. On 8 October 2007, Pellet was appointed as Senior Programme Assistant at the G-7 level in the Department of Operations, Africa Bureau, Sudan and Chad Operations, at UNHCR's Headquarters in Geneva.

5. On 22 October 2007, the High Commissioner adopted the "Guidelines for the Implementation of Comparative Review Process for General Service Staff at Headquarters" (Guidelines), which establish the procedures to be followed if the necessities of service

require reduction of the staff in the General Service category in Geneva. On 15 January 2008, the Comparative Review Panel met to review the status of 12 unplaced General Service staff members who could be placed against 12 vacant posts. Following the review, the Deputy High Commissioner filled those vacant posts on 29 February 2008.

6. On 28 April 2008, Pellet requested administrative review of the Deputy High Commissioner's decision. On 6 August 2008, Pellet filed an appeal with the JAB, which concluded that the appeal was inadmissible *ratione materiae*. The JAB's recommendation was accepted by the Deputy Secretary-General on 9 June 2009. On 9 September 2009, Pellet filed an application with the UNDT challenging the Deputy High Commissioner's decision.

7. On 27 January 2010, the Dispute Tribunal issued Judgment No. UNDT/2010/013, which found that the application was not receivable. The UNDT did not accept Pellet's contention that the impugned decision infringed his rights because the vacancies for the posts were not advertised. The Dispute Tribunal found that under the Appointments, Postings and Promotions Committee (APPC) Procedural Regulations, only staff members who have served for a minimum of one year in their present post may apply for vacancies. On the date of the contested appointments, Pellet could not have been appointed to any of the posts as he did not meet the one year minimum requirement. The UNDT concluded, without ruling on the lateness of the application, that the decision contested by Pellet could not have infringed his rights under his contract or terms of employment and that the application must be declared non-receivable.

8. Pellet filed an appeal against the Dispute Tribunal's Judgment on 15 March 2010. After receiving the appeal on 25 March 2010, the Secretary-General filed an answer to the appeal on 3 May 2010.

### **Submissions**

#### **Pellet's Appeal**

9. Pellet submits that the Dispute Tribunal erred in law in declaring his application to be non-receivable by taking into account the merits of his case and confusing considerations relating to the merits in deciding on the issue of receivability. Pellet contends that, in denying jurisdiction on the basis that he could not have applied for one of the posts filled as

part of the comparative review process, the Dispute Tribunal went beyond the issue of receivability and considered the merits of the matter.

10. Should the Appeals Tribunal conclude that the Dispute Tribunal did not err in its approach, Pellet submits that Dispute Tribunal erred in finding that the matter was not receivable on the basis that the impugned decision could not have infringed his rights. Pellet contends that he was not accorded equal treatment with another staff member, Ms. Famy (Famy). Famy was permitted to take part in the comparative review process despite the fact that she, like Pellet, had occupied her post for less than a year. As Pellet was not allowed to take part in the comparative review process, the Secretary-General treated him less favourably than another staff member, thus violating his rights. Pellet argues that the Dispute Tribunal failed to properly consider the issue of unequal treatment. Pellet submits that there was a potential breach of his employment rights and the application was receivable on this basis.

11. Pellet requests that the Appeals Tribunal reverse the decision of the Dispute Tribunal and return the matter to the Dispute Tribunal for consideration on the merits.

#### **Secretary-General's Answer**

12. The Secretary-General submits that the Dispute Tribunal correctly determined that the application was not receivable. Pellet challenges the conduct of the comparative review process even though he was not eligible for the vacancies under consideration as he had not served on his post for one year. Therefore Pellet had no personal interest at stake in the conduct of the comparative review process.

13. The Secretary-General submits that Pellet has not identified any errors that would require a reversal of the Dispute Tribunal's determination. The obligation to treat staff members equally arises only when staff members are in the same circumstances, and the situation of Famy was different from that of Pellet. Famy was appointed to the post of Programme Assistant at the G-6 level in the Africa Bureau on 8 October 2007, following the APPC session in September 2007. Famy was only appointed as a replacement at that session and her appointment would have ended in April 2008. Famy was not aware of the temporary nature of the post. At its session in October 2007, the APPC considered that the temporary nature of the post should have been advertised in accordance with the APPC

Procedural Regulations. The APPC waived the requirement for Famy to serve for one year in her post of Programme Assistant.

14. At the end of the APPC's session in October 2007, Famy had not been selected for any post and she was automatically included in the comparative review process. Posts were created within the Africa Bureau and included in the comparative review process in order to allow the placement of a maximum number of unplaced staff members and with a view to reducing involuntary separations. Famy was selected as Senior Programme Assistant in the Africa Bureau at the G-7 level in accordance with paragraph 7 of the Guidelines.

15. The Secretary-General contends that Pellet did not encumber a post of a temporary nature and there was no impediment to the fulfillment of the requirement to serve on his post for one year. The Dispute Tribunal did not err in its conclusion that Pellet was required to serve for one year on his post and was therefore ineligible to be considered for the 12 posts considered during the comparative review process.

16. The Secretary-General requests that the Appeals Tribunal make a number of findings and dismiss the appeal in its entirety.

### **Considerations**

17. At issue is whether Pellet was entitled to a review of the administrative actions to fill 12 posts under the comparative review process conducted by the management of UNHCR. Pellet sought to challenge the administrative decision on the basis that the correct procedure was not followed during the comparative review process, in particular that the posts were not advertised and he was denied the opportunity to apply for the vacancies.

18. The Dispute Tribunal ruled on the issue of receivability, without addressing the issue of whether Pellet's application was time-barred, and addressed the threshold issue of whether Pellet had legal standing, in other words whether he was even an eligible candidate for the posts in question, such that the non-advertisement of these posts could give him any right to contest the administrative procedures followed and the administrative decisions taken to fill the available vacancies.

19. The Dispute Tribunal found that, under the Procedural Regulations of APPC, only staff members who had served for a minimum of one year in their present posts could apply

for vacancies. On the date of the contested appointments, Pellet could not have been appointed to any of the posts as he did not meet the one year minimum requirement and was therefore not an eligible candidate.

20. This Tribunal finds that it was open to the Dispute Tribunal to consider the preliminary issue of whether Pellet had legal standing to even challenge the administrative decision not to advertise the vacancies in question. We find no error in its decision that Pellet was not entitled to contest the administrative decision since he was not an eligible candidate for any of the vacant posts. Pellet had no stake in the administrative decision as his rights and terms of employment were not affected by the fact that the vacant posts were not advertised.

21. This appeal must fail on the ground that Pellet had no standing to challenge the administrative decision. This Tribunal finds that no error in fact or law was made and upholds the decision of the Dispute Tribunal.

**Judgment**

22. For the reasons given above the appeal is dismissed.

Dated this 29<sup>th</sup> day of October 2010 in New York, United States.

Original and authoritative version: English

*Signed*

Judge Boyko, Presiding

*Signed*

Judge Painter

*Signed*

Judge Weinberg de Roca

Entered in the Register on this 29<sup>th</sup> day of December 2010 in New York, United States.

*Signed*

Weicheng Lin, Registrar