



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

Case No. 2010-171

**Vangelova
(Respondent/Applicant)**

v.

**Secretary-General of the United Nations
(Appellant/Respondent)**

JUDGMENT

Before: Judge Inés Weinberg de Roca, Presiding
Judge Mark P. Painter
Judge Jean Courtial

Judgment No.: 2011-UNAT-172

Date: 21 October 2011

Registrar: Weicheng Lin

Counsel for Respondent/Applicant: Not represented

Counsel for Appellant/Respondent: Phyllis Hwang

JUDGE INÉS WEINBERG DE ROCA, Presiding.

Synopsis

1. An irregularity in promotion procedures will only result in the rescission of the decision not to promote a staff member when he or she would have had a significant chance for promotion. Thus, where the irregularity has no impact on the status of a staff member, because he or she had no foreseeable chance for promotion, he or she is not entitled to rescission or compensation.

Facts and Procedure

2. Ms. Petia Vangelova joined the Office of the United Nations High Commissioner for Refugees (UNHCR) in June 1992 as a Senior Secretary at the G-5 level. In January 2000, she was promoted to the P-2 level and her appointment was converted into an indefinite one. In July 2001, she was promoted to the P-3 level. Since February 2009, Ms. Vangelova has been stationed in Goma, the Democratic Republic of the Congo (DRC), as a Field Officer (Protection).

3. From 15 March 2009 to 21 March 2009, UNHCR conducted the 2008 annual promotion session (2008 session) in accordance with the promotions methodology for that session developed by the Appointments, Postings and Promotions Board (APPB). As far as Ms. Vangelova was concerned, there were 42 slots for promotion from P-3 to P-4.

4. On 28 April 2009, UNHCR published a list of promoted staff. Ms. Vangelova was not among those promoted to the P-4 level.

5. On 26 May 2009, Ms. Vangelova initiated a recourse before the APPB against the decision not to promote her during the 2008 session.

6. The APPB reviewed Ms. Vangelova's request at its recourse session in June 2009. On 28 July 2009, UNHCR announced the results of the APPB's recourse session. Ms. Vangelova was not among the staff members who were promoted following the recourse session.

7. On 25 September 2009, Ms. Vangelova filed a request for management evaluation of the decision not to promote her during the 2008 session and recourse session. By memorandum dated 4 December 2009, the Deputy High Commissioner informed

Ms. Vangelova of outcome of the management evaluation, namely, that the impugned decision had been taken in conformity with the regulations and rules of the Organization.

8. On 4 March 2010, Ms. Vangelova appealed the decision by the Deputy High Commissioner to the United Nations Dispute Tribunal (UNDT or Dispute Tribunal).

9. In Judgment No. UNDT/2010/179 dated 14 October 2010, Judge Cousin ordered the rescission of the contested decision, or in lieu thereof, the payment of 8,000 Swiss francs. Judge Cousin did not sustain Ms. Vangelova's contentions regarding the promotion process, the promotions methodology, the basis of the contested decision, her SIBA (staff in between assignments) status, the promotion of candidates who had obtained lower scores than she had, or her performance appraisal reports. But Judge Cousin did find merit in Ms. Vangelova's claim about the promotion to the P-4 level of a staff member who was not eligible and whose candidacy had not been examined by the APPB. In the view of Judge Cousin, by promoting such a staff member, the High Commissioner "committed an irregularity which vitiates necessarily the legality of the decision to deny [Ms. Vangelova] a promotion, since there was a limited number of promotion slots". Judge Cousin specified that the 8,000 Swiss francs awarded to Ms. Vangelova as an alternative to the rescission of the contested decision "must be considered as compensation for the loss of salary due to the denial of promotion in 2008". Regarding Ms. Vangelova's claim for moral damages, Judge Cousin considered that seeing that her chances for promotion at the 2008 session were "close to zero", there was no need to compensate her for any moral damages that she might have suffered.

10. On 29 November 2010, the Secretary-General filed an appeal against Judgment No. UNDT/2010/179. Ms. Vangelova filed her answer on 5 January 2011.

Submissions

Secretary-General's Appeal

11. The Secretary-General submits that the UNDT erred in law and exceeded its competence by concluding that the procedural irregularity committed during the 2008 session rendered the decision not to promote Ms. Vangelova unlawful and warranted its rescission, or the payment of compensation in lieu thereof, when Ms. Vangelova would have had no chance of being promoted even if the procedural irregularity had not occurred. The Secretary-General stresses that the 42 slots initially allotted for promotion from P-3 to

P-4 did not operate as an absolute bar to the promotion of additional candidates following the recourse session. Indeed, 20 additional staff members were promoted to the P-4 level following the recourse session. Although the reexamination of Ms. Vangelova's case resulted in her being awarded 60 points, as opposed to her initial 47 points, she was not promoted since there were 192 candidates who had obtained a higher score than she had. Seeing that Ms. Vangelova's chances for promotion during the 2008 session were "close to zero", as found by the UNDT, even if the procedural irregularity had not occurred, the UNDT's award of compensation in lieu of rescission, especially "for the loss of salary due to the denial of promotion in 2008", was inconsistent with the principles on compensation established by the United Nations Appeals Tribunal (Appeals Tribunal) in *Warren, Ardisson, Solanki and Wu*.¹ The Secretary-General maintains that the same reasoning that led the UNDT to conclude that moral damages cannot be awarded also compels the conclusion that no compensation can be awarded as an alternative to rescission of the contested decision.

12. The Secretary-General also submits that the UNDT erred in law by failing to examine the nature and severity of the procedural irregularity and by failing to analyze whether the procedural irregularity had any relevance to the impugned decision. The Secretary-General stresses that the practical implication of the approach adopted by the UNDT in this case and in *Allen and Ostensson*² is that it imposes upon the Administration a standard of procedural perfection, and that the Organization could be held liable for lapses even in cases where the correction of the procedural irregularity would not change the outcome of the decision under appeal.

Ms. Vangelova's Answer

13. During the 2008 session, UNHCR failed to give proper points to her candidacy in terms of her superior performance at both the P-3 and P-4 levels (as an under-filler) and her SIBA status. Ms. Vangelova avers that her chances for promotion during the 2008

¹ *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059; *Ardisson v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-052; *Solanki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-044; *Wu v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-042.

² *Allen v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/009; *Ostensson v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/120.

session were close to zero and will remain zero if UNHCR does not change its “proven corrupt practices”.

14. Ms. Vangelova submits that a procedural irregularity done to one or two individuals remains a procedural irregularity.

15. Ms. Vangelova requests that the Appeals Tribunal grant her claim as made before the UNDT for the “maximum material compensation commensurate with the continuous damages – career, moral, material”, and consider awarding her additional moral damages for the aggravation resulting from the Secretary-General’s appeal.

Considerations

16. The UNDT did not sustain Ms. Vangelova’s contentions regarding the promotion process, the promotions methodology, the basis of the contested decision, her SIBA status, the promotion of candidates who had obtained lower scores than she had, or her performance appraisal reports. However, the UNDT did find merit in Ms. Vangelova’s claim that UNHCR promoted to the P-4 level a staff member who was not eligible and whose candidacy had not been examined by the APPB. Those findings have not been appealed.

17. Ms. Vangelova was not promoted as a result of the fact that 192 candidates had obtained a score higher than she had. As the UNDT held, her chances for promotion during the 2008 session were “close to zero”, even if no procedural irregularities had occurred. There is consequently no link between the irregularity in the procedure and her non-promotion. Therefore, there was no need to either rescind the non-promotion or to compensate her—as she suffered no damage.

18. The UNDT may order that the decision not to promote Ms. Vangelova be rescinded, and in that event it must set an amount to be paid by the Secretary-General in lieu of the rescission. But a chance for promotion must exist.

19. The direct effect of an irregularity will only result in the rescission of the decision not to promote a staff member when he or she would have had a significant chance for promotion. Thus, where the irregularity has no impact on the status of a staff member, because he or she had no foreseeable chance for promotion, he or she is not entitled to rescission or compensation. That was the case here.

20. Although there was a flaw in the procedure, there was none in not promoting Ms. Vangelova. For this reason, the award of compensation in lieu of the rescission of the contested decision, especially “for the loss of salary due to the denial of promotion in 2008”, is reversed.

21. The UNDT should not have rescinded the decision not to promote Ms. Vangelova, nor awarded her compensation.

Judgment

22. We grant the appeal and reverse the UNDT Judgment.

Original and authoritative version: English

Done this 21st day of October 2011 in New York, United States.

(Signed)

(Signed)

(Signed)

Judge Weinberg de Roca, Presiding

Judge Painter

Judge Courtial

Entered in the Register on this 2nd day of December 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar