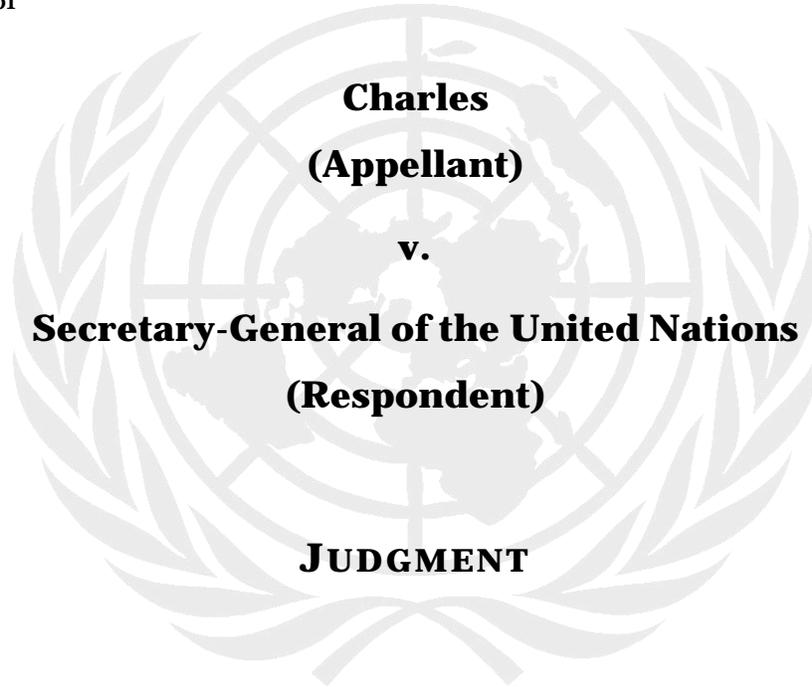




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2011- 261



**Charles
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Kamaljit Singh Garewal Judge Mary Faherty
Judgment No.:	2012-UNAT-242
Date:	29 June 2012
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Amy Wood

JUDGE SOPHIA ADINYIRA, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Mr. Lestrade Charles on 13 October 2011 against Judgment No. UNDT/2011/159 rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 8 September 2011. The Secretary-General filed his answer on 2 December 2011.

Synopsis

2. In 2006, Mr. Charles, a P-3 Financial Management Officer at the time of the events, applied for a P-3 Legal Officer post in the Secretariat of the former Joint Appeals Board (JAB) and Joint Disciplinary Committee (JDC). He was not selected for an interview on the basis that he did not possess the mandatory qualifications required. The UNDT found that Mr. Charles' application had been given full and fair consideration.

3. Mr. Charles appeals the UNDT Judgment. He submits that the vacancy announcement for the legal post stated that priority consideration would be given to internal candidates and candidates who had passed a competitive recruitment examination. He submits that he fulfilled those criteria and that, as an internal candidate seeking a lateral move, the UNDT erred in not making a finding that the New York JAB Secretariat failed to give priority consideration to his candidacy in accordance with the letter and spirit of the Staff Rules and guidelines for the proper conduct of the staff selection process.

4. In *Megerditchian*,¹ this Court ruled:

It should be emphasized that "priority consideration" cannot be interpreted as a promise or guarantee to be appointed or receive what one is considered in priority for. To hold otherwise would compromise the highest standards of efficiency, competency and integrity required in selecting the best candidate for staff positions under Article 101 of the Charter.

5. We cannot fault the UNDT for affirming the JAB panel's findings that the allegations of manipulation of the selection criteria were not well founded, and that the selection process was conducted in a proper manner.

6. There is no merit in the appeal. We affirm the UNDT Judgment.

¹ *Megerditchian v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-088.

Facts and Procedure

7. In 1994, Mr. Charles successfully passed the National Competitive Recruitment Examination (NCRE). At the time relevant to the appeal, Mr. Charles was serving as a P-3 Financial Management Officer.

8. On 18 February 2006, the Appellant applied for the post of a P-3 Legal Officer with the Secretariat of the former JAB and JDC.

9. On 8 December 2006, the selected candidate was notified of his appointment to the Legal Officer post. On 23 February 2007, the Appellant requested administrative review, inter alia, of the decision to fill the P-3 Legal Officer post without having given his application full and fair consideration.

10. On 2 May 2007, the Appellant appealed to the New York JAB. On 4 May 2007, the Secretary of the New York JAB informed the Appellant that, given the involvement in this case, the Secretariat of the New York JAB would not be in a position to provide effective assistance to a JAB panel. The appeal was subsequently transferred to the JAB in Geneva. In its report dated 6 June 2008, the Geneva JAB dismissed the Appellant's appeal and, on 22 August 2008, the Appellant was informed of the Secretary-General's decision to accept the JAB's findings.

11. On 28 October 2008, the Appellant filed an application with the former Administrative Tribunal. His application was not considered before the abolition of the former Administrative Tribunal on 31 December 2009, and was subsequently transferred to the UNDT in New York.

12. On 8 September 2011, the UNDT rendered Judgment No. UNDT/2011/159. The UNDT found that the selection process was conducted in a proper manner. The requirement of relevant experience was appropriate and necessary for the P-3 Legal Officer vacancy; and, in light of the duties of the Legal Officer, the Administration was entitled to insist on such experience as a mandatory requirement. The Appellant did not have the requisite minimum years of professional legal experience. The UNDT further noted that the JAB report reflected that the successful candidate satisfied the requirement of a minimum of five years of legal professional experience.

13. The UNDT further held that the JAB's review of the decision not to select the Appellant was proper. The JAB addressed the appropriate legal principles, and in applying those principles to the facts of the case, it asked the correct questions and considered the appropriate authorities.

The JAB considered that the Appellant did not have the required experience; and that his volunteer experience at the JAB and JDC was insufficient to satisfy the requirement of a minimum of five years of legal professional experience. It concluded that the Secretary-General had given full and fair consideration to Mr. Charles' application, had properly exercised his discretion, and that the decision not to select the Applicant for the post in question was not tainted by any procedural flaw.

14. The UNDT also rejected the Appellant's allegation of an actual or perceived conflict of interest. It noted that, contrary to the Appellant's assertion, the legal officer who advised the Under-Secretary-General for Management on the JAB recommendations had not been involved in the recruitment process. In fact, that legal officer was deliberately assigned to the case, because he had not been involved in the selection process. Accordingly, the UNDT rejected the application.

Submissions

Mr. Charles' Appeal

15. Mr. Charles contends that the UNDT failed to give timely consideration to his application.

16. Mr. Charles alleges that the UNDT violated his due process rights by failing to inform the parties of the reassignment of the case to another judge or the withdrawal or recusal of the assigned judge.

17. Mr. Charles alleges that the UNDT erred in law and fact causing him "grave injustice and injury", in not finding that the JAB Secretariat:

- failed to act in accordance with the letter and spirit of the Staff Rules and guidelines for the proper conduct of the staff selection process;
- undertook an unfair and incomplete evaluation of his candidature, and its evaluation report omitted information and contained errors;
- failed to give priority consideration to his application and engaged in an unreasonable delay in evaluating his candidature;
- failed to timely notify him of the outcome of the recruitment process; and
- failed to notify him that it granted the Secretary-General an extension of time to submit his reply.

18. Mr. Charles alleges that the UNDT erred in law and fact in finding that there was no appearance or actual bias of the legal officers who were involved in the recruitment process and who also advised the Deputy Secretary-General on the JAB recommendations.

19. Mr. Charles seeks compensation for violation of his rights under the Staff Regulations, Rules, and administrative issuances for “non-pecuniary damage, procedural violations, stress, and moral injury”.

Secretary-General’s Answer

20. The Secretary-General submits that the selection process was properly conducted and that the Appellant’s application had been given full and fair consideration.

21. The Secretary-General recalls that the UNDT properly applied its standard of review by considering whether the Appellant’s candidacy received full and fair consideration; and whether the selection process was tainted by lack of due process. By demonstrating that the selection criteria were job-related, that there was no evidence that the criteria were manipulated, and that the Appellant was deficient in an area that the selected candidate was not, the UNDT was properly satisfied that the Administration had given full and fair consideration to the Appellant’s candidacy and had respected his due process rights.

22. The Secretary-General further submits that the Appellant failed to establish any error that would warrant a reversal of the UNDT Judgment. Contrary to the Appellant’s assertion, the UNDT did not err in failing to dispose of his appeal in a timely manner. Neither the Statute nor the Rules of Procedure require that the UNDT dispose of a case in a certain time frame. Also, Mr. Charles has not asserted that it would have affected the decision of the case in any way.

23. The Secretary-General also submits that the UNDT committed no error by failing to notify the parties of the recusal, reassignment or withdrawal of the judge to whom the case had originally been assigned. Neither the UNDT Statute nor its Rules of Procedure require that the parties be notified when a judge is assigned or reassigned to a particular matter. Further, the Appellant has not demonstrated how this would have affected the decision in his case.

24. The Secretary-General avers that the UNDT did not err in rejecting the Appellant’s contention that, as an internal candidate seeking a lateral transfer, he should have been given priority consideration; and that he did not need to fulfill the minimum qualifications. It is well

established that a staff member has no right to be appointed, only to full and fair consideration of his or her application. The Secretary-General submits that the Appellant was fully and fairly considered; but he did not meet the minimum qualifications for the post.

25. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

26. Pursuant to Article 2(1) of the Statute of the Appeals Tribunal, Mr. Charles appealed the UNDT Judgment on the grounds that the UNDT (i) committed errors in procedure such as to affect the decision of the case; (ii) erred on a question of law; (iii) erred on question of facts, resulting in a manifestly unreasonable decision; and (iv) erred on several issues in both law and fact.

(i) Errors in Procedure

27. Mr. Charles submits that the UNDT committed errors in procedure such as to cause him injury and to adversely affect the fair and expeditious resolution of the case by failing to give timely consideration to his application, and by failing to notify the parties of the recusal, reassignment or withdrawal of the judge to whom the case was originally assigned.

28. The Secretary-General submits that neither the UNDT Statute nor its Rules of Procedure require the UNDT to dispose of a case in a certain time frame and to notify the parties when a matter is reassigned to a particular judge. As such Mr. Charles' assertions do not give rise to any procedural error to warrant a reversal of the UNDT Judgment.

29. This Tribunal holds the view that despite the non-provision in the Statute or the Rules of Procedure of a time frame for the disposal of cases, it expects that legal disputes between staff and the Administration are resolved in a timely and efficient manner. Inordinate delays do not only adversely affect the administration of justice, but on occasions can inflict unnecessary anxiety and suffering on an applicant. Timely and efficient administration of justice is not only a requirement of the rule of law, but it also provides for a congenial working relationship among staff and management.

30. We recall that the new system of administration of justice was to replace the former which was considered to be slow, cumbersome and costly. We expect the General Assembly to well resource the UNDT and the Appeals Tribunal to enable them to administer justice effectively and in a timely manner, as justice delayed is justice denied.

31. On the issue of notification, we consider it is best practice if parties are notified of the re-assignment of cases at the Tribunals. In any event, Mr. Charles has not shown how these lapses are errors in procedure and how they affected the outcome of the UNDT Judgment. This ground of appeal is therefore dismissed.

(ii) Errors on questions of law

32. The vacancy announcement for the Legal Officer Post stated that priority consideration would be given to internal candidates and candidates who had passed the NCRE. Mr. Charles submits that he fulfilled those criteria and that, as an internal candidate seeking a lateral move, the UNDT erred in not making a finding that the New York JAB Secretariat failed to give priority consideration to his candidacy in accordance with the letter and spirit of the Staff Rules and guidelines for the proper conduct of the staff selection process.

33. In *Megerditchian*,² this Court ruled:

It should be emphasized that “priority consideration” cannot be interpreted as a promise or guarantee to be appointed or receive what one is considered in priority for. To hold otherwise would compromise the highest standards of efficiency, competency and integrity required in selecting the best candidate for staff positions under Article 101 of the Charter.

34. Further, in reviewing the Secretary-General’s exercise of his discretionary authority in matters of staff selection and promotion, the UNDT is to consider, whether the staff member’s candidacy was given full and fair consideration and whether the procedure set forth in the Staff Regulations and Rules was followed.³ Mr. Charles merely repeats arguments he raised before the UNDT and does not show how the UNDT erred.

35. The UNDT in its Judgment set as its task to see whether the stipulated criteria were or were not job-related or whether they were deliberately manipulated in order to disadvantage the

² *Megerditchian v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-088.

³ See *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110.

applicant or to favour a preferred candidate. The UNDT expressly found that Mr. Charles' candidacy was considered, but that he was not selected for the interview because it was determined that he did not possess the relevant professional qualification which was a pre-requisite to the selection for the post.

36. Mr. Charles did not possess the relevant professional qualification. We cannot fault the UNDT for affirming the JAB panel's findings that the allegations of manipulation of the selection criteria were not well founded, and that the selection process was conducted in a proper manner.

37. On the whole, Mr. Charles has not made out a case to show that the process of the evaluation undertaken and the decision not to select him were tainted by lack of due process, extraneous factors or any improper motives. We affirm this decision as Mr. Charles has not been able to establish that the UNDT committed any error of law that would warrant a reversal of the Judgment. The appeal on this ground also fails.

(iii) Error on questions of fact resulting in a manifestly unreasonable decision

38. Under this ground of appeal, Mr. Charles' submissions appear to focus on the point that because his candidacy was entitled to priority consideration, he did not need to possess the minimum qualifications for the post. Thus, if he was not selected for an interview on this basis, it constituted a violation of his right to full and fair consideration. He submits that the UNDT's focus on the requirement of professional legal experience resulted in a manifestly unjust judgment. We dismiss this submission as it is without merit as the findings by the UNDT were not based on a mistake of facts.

(iv) Error in law and fact

39. Further, Mr. Charles submits that the UNDT erred in law and fact in finding that the legal officer who advised the Under-Secretary-General for Management on the Geneva JAB report had not been actively involved in the recruitment process. In his view, this resulted in an appearance of or actual conflict of interest. The UNDT rejected this allegation, noting that the legal officer reviewing the Geneva JAB report had been deliberately chosen because that legal officer had no previous involvement in the selection process. Mr. Charles has not put forward any valid arguments to warrant overturning the finding of the UNDT on this issue.

40. In conclusion, we note that Mr. Charles has merely repeated his submissions before the JAB and the UNDT and while voicing his disagreement with the conclusions, he did not succeed to establish any errors committed by the UNDT.⁴

Judgment

41. The appeal is dismissed in its entirety and the UNDT Judgment is affirmed.

⁴ *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-051.

Original and Authoritative Version: English

Dated this 29th day of June 2012 in Geneva, Switzerland.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Garewal

(Signed)

Judge Faherty

Entered in the Register on this 12th day of September 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar