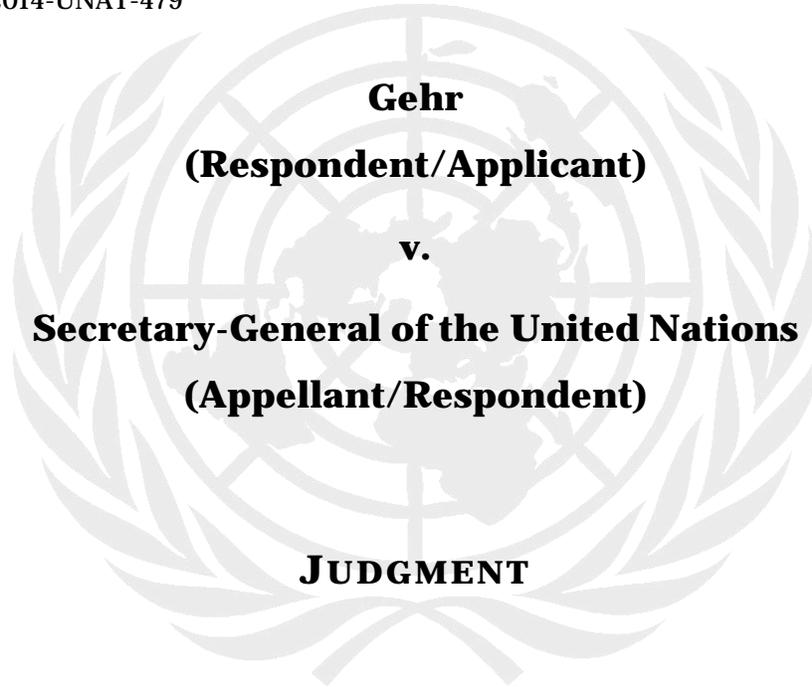




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2014-UNAT-479



Before:	Judge Mary Faherty, Presiding Judge Richard Lussick Judge Inés Weinberg de Roca
Case No.:	2014-553
Date:	17 October 2014
Registrar:	Weicheng Lin

Counsel for Mr. Gehr:	Self-represented
Counsel for Secretary-General:	Zarqaa Chohan

JUDGE MARY FAHERTY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgment No. UNDT/2013/135, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 31 October 2013, in the case of *Gehr v. Secretary-General of the United Nations*. The Secretary-General appealed on 6 January 2014 and Mr. Walter Gehr answered on 9 January 2014.¹

Facts

2. The facts set out in the Dispute Tribunal Judgment, and which are not disputed, are as follows:²

... The Applicant joined the [United Nations Office on Drugs and Crime (UNODC)] in Vienna in 2002 and, in 2007, was appointed as a Crime Prevention and Criminal Justice Officer at the Terrorism Prevention Branch (“TPB”), Division of Treaty Affairs (“DTA”). His fixed-term appointment was extended several times until 31 December 2011, when he was separated from service.

... In the fall of 2009, the Chief, TPB, and the Officer-in-Charge, DTA, announced to TPB staff that the Branch was to be reorganised. In early November 2009, the Chief, TPB, and the Officer-in-Charge, DTA, were the Applicant’s First and Second Reporting Officers respectively (“FRO” and “SRO”).

... On 3 November 2009, the Applicant’s supervisors signed off the mid-point review for the performance cycle period of 1 April 2009 to 31 March 2010 (“2009-2010 performance appraisal”).

...

... On 18 January 2010, the Officer-in-Charge, DTA, requested the Applicant to take action in order to finalise his mid-point performance review. Responding to this request, the Applicant pointed out that he had encountered technical problems with the electronic performance appraisal system (“e-PAS”) and that his e-PAS report contained some inaccuracies.

¹ The Secretary-General filed his appeal during the 2013-2014 judicial winter recess. The appeal was therefore registered as timely received on 6 January 2014.

² Impugned Judgment, paras. 3-5, 28-42, 49-59, 8, 10, 11, 1.

... By “Special Message” dated 1 March 2010, the Chief, Human Resources Management Service (“HRMS”), UNODC, informed staff that, in view of the fact that the 2009-2010 performance appraisal was to end on 31 March 2010, end-of-cycle appraisals ought to be completed by 16 April 2010.

... On 25 March 2010, the Chief, TPB, enquired as to the Applicant’s availability to discuss his performance with a view to finalising his 2009-2010 e-PAS report. In an email sent on the same day to the Chief, HRMS, the Applicant objected to the decision to proceed with his performance appraisal, emphasising that the e-PAS only applied to staff members whose appointments were of at least one year and that the Officer-in-Charge, DTA, had not been designated as his reporting officer though he had taken part in the appraisal.

... On 15 April 2010, the Officer-in-Charge, HRMS, responded to the Applicant’s email of 25 March 2010, explaining that, though the policy governing the e-PAS process as set out in administrative instruction ST/AI/2002/3 [(Performance Appraisal System)] applied to staff holding an appointment of at least one year, the length of the Applicant’s consecutive appointments amounted to one year and covered the performance cycle. He also recommended that a meeting be convened with the Applicant and his FRO in order to finalise his e-PAS report.

... An exchange of emails ensued between the Applicant and the Officer-in-Charge, HRMS, in which the former argued that ST/AI/2002/3 was not applicable to staff members who held an appointment of less than a year at the beginning of the new performance cycle or at the time of their mid-point performance review.

... By email of 5 May 2010, the Officer-in-Charge, HRMS, advised the Applicant that, in the event he insisted to be evaluated separately for each period corresponding to extensions of his appointment, his reporting officers would proceed with his performance appraisal outside the e-PAS. In response to this email on 6 May 2010, the Applicant objected to the proposed course of action and asked to be provided with the provisions according to which such appraisal would be conducted.

... On 12 October 2010, the Chief, TPB, wrote to the Applicant, stating that, in case he persisted not to take action to finalise his e-PAS report, she and his SRO would prepare a written appraisal of his 2009-2010 performance; the document would then be shared with the Applicant and placed in his [Official Status File (OSF)]. The Applicant replied on the following day, noting that he had not received any response to his query of 6 May 2010 concerning the provisions which would apply to such performance evaluation process.

... By an email of 19 November 2010, the Officer-in-Charge, DTA, transmitted a written appraisal of his 2009-2010 performance to the Applicant and invited him to submit his comments, if any, in writing by 30 November 2010, after which the appraisal together with his comments would be placed in his OSF.

... On 24 November 2010, the Applicant enquired with the Officer-in-Charge, DTA, whether a rebuttal would be possible since his performance appraisal had been prepared outside of the framework of ST/AI/2002/3. The Officer-in-Charge, DTA, responded on the same day that, since the Applicant had declined to use the e-PAS, his performance appraisal had indeed been prepared outside of that system and the possibility of a rebuttal did not apply.

... By email of 26 November 2010 to the Chief, TPB, the Officer-in-Charge, DTA, and the Chief, HRMS, the Applicant proposed that his performance be appraised using the e-PAS only for the period from 1 April to 31 October 2009. He further asked which provisions would apply in the event that the proposed option was rejected.

... On 1 December 2010, the Applicant submitted a request for management evaluation, in which he challenged a series of “decisions” taken in relation to his 2009-2010 performance appraisal, namely the decision to carry out a single appraisal, the decision to take into consideration events which post-dated 31 March 2010, the failure to answer his queries concerning the applicable provisions and the decision not to allow him to rebut his appraisal.

... By email of 1 December 2010, the Officer-in-Charge, DTA, informed the Applicant that the option proposed in his email of 26 November 2010 had been rejected. He stated that ST/AI/2002/3 was applicable to the 2009-2010 performance cycle, that despite many requests and instructions the Applicant had repeatedly refused to use the e-PAS and that it had accordingly been decided to proceed with the written performance appraisal outside the e-PAS system. He also stated that the deadline for the Applicant to submit his comments had been extended to 10 December 2010.

... In the course of the management evaluation, the Administration of UNODC indicated in January 2011 that it would remove the written performance appraisal from the Applicant’s OSF. It added that it would prepare a revised version, which would not refer to matters pertaining to the 2010-2011 reporting cycle and which the Applicant would be entitled to rebut in accordance with sec. 15 of ST/AI/2002/3.

... Meanwhile, the Applicant, on 25 January 2011, filed an application which was assigned case No. UNDT/GVA/2011/004, challenging the same matters which he had submitted for management evaluation, because he had not received a response from the MEU.

... By letter dated 1 February 2011, the Applicant was notified of the Secretary-General’s decision to uphold the decision to carry out a single appraisal for the period from 1 April 2009 to 31 March 2010. Further, in view of the explanations provided by the Administration of UNODC in January 2011, the Secretary-General considered that the decision to take into consideration in the appraisal matters post-dating the 2009-2010 performance cycle and the decision to deny the Applicant an opportunity to rebut the appraisal had become moot.

...

... On 15 March 2011, the Applicant submitted his rebuttal statement to UNODC, HRMS, which acknowledged receipt of it on 24 March 2011 and asked for a performance appraisal document containing all signatures. HRMS further indicated that a new rebuttal panel was yet to be set up by 1 April 2011. The next day, the Applicant sent the page of his performance appraisal report containing all signatures to HRMS.

... On 30 March 2011, UNODC, HRMS, informed the Applicant that his performance appraisal would be conducted under ST/AI/2002/3 and that the list of rebuttal panel members was incomplete. On the same date, the Applicant wrote informing HRMS that since he was to be assessed under ST/AI/2002/3, the rebuttal panel members should be from the list established under ST/AI/2002/3.

... On 1 April 2011, HRMS informed the Applicant that since his 2009-2010 performance appraisal was governed by ST/AI/2002/3, he was not limited to the choice of members as per the new administrative instruction ST/AI/2010/5 [(Performance Management and Development System)].

... On 21 April 2011, a broadcast informed UNODC staff of the new list of rebuttal panel members and on 26 April 2011, the Applicant was informed of the new list and was asked to select the members to form the panel for the rebuttal of his 2009-2010 performance appraisal. He was not restricted in any way regarding his selection of panel members.

... On 12 May 2011, the Applicant selected members to compose his rebuttal panel and on 17 May 2011, HRMS informed him that it would forward his selection [...] and co-ordinate the rebuttal as per ST/AI/2002/3.

... On 25 May 2011, the Applicant received confirmation of his selection of panel members and on 31 May 2011, the rebuttal panel asked the Administration for its response to the Applicant's rebuttal statement.

... The Administration transmitted its response to the rebuttal panel on 17 June 2011. On 19 July 2011, the Chairman of the rebuttal panel recused himself, for personal reasons, and the Applicant was required to appoint another member to act as Chair.

... On 25 July 2011, the Applicant nominated one of the Director members from the list of panel members to be the Chair and, on the same date, HRMS informed him that the proposed individual was on annual leave until 27 July 2011. However on 28 July 2011, the proposed individual informed HRMS that he was on leave until 17 August 2011 and that immediately thereafter, he had to be away on a two-week mission. Additionally he indicated that he had many other tasks and declined the assignment of being the Chairman of the Applicant's rebuttal panel.

... On the same date, HRMS wrote and told the proposed individual that since he was the only person at the Director level left in the panel, he had to take up the assignment.

... On 17 August 2011, the proposed individual took up the role of Chair and was provided with the relevant materials regarding the Applicant's rebuttal. On 14 October 2011, the panel proposed to the Applicant possible dates for an interview, alternatively between 1-8 November 2011 or 28-15 December 2011.

... The Applicant indicated his availability for 13-15 December 2011 and his interview took place on 13 December 2011, while the SRO was interviewed on 31 January 2012.

...

... [O]n 23 March 2012, the rebuttal report was issued.

... On 28 March 2012, the Applicant filed [a]n application contesting the process taken by the Administration in establishing the rebuttal panel and the report of the rebuttal panel. The application was served on the Respondent on 29 March 2012 and a Reply was filed on 30 April 2012.

... On 2 April 2012, the Applicant received a revised rebuttal report.

... [Before the UNDT, the Applicant contested] the decision to finalize his performance appraisal for the performance cycle 1 April 2009 to 31 March 2010 two years after the end of the cycle. He also contest[ed] the decision to have the rebuttal of his 2009-2010 performance appraisal report conducted by rebuttal panel members from a list which had not been established in accordance with sec. 14.1 of ST/AI/2002/3 ...

The UNDT Judgment

3. While the issue of receivability of Mr. Gehr's application was not raised by the Secretary-General, the Dispute Tribunal nevertheless considered this issue, in circumstances where Mr. Gehr had not sought management evaluation concerning certain aspects of the rebuttal panel report before filing his application with the UNDT.

4. The Dispute Tribunal found that as a rebuttal panel should be considered a technical body, as provided for in Staff Rule 11.2(b), Mr. Gehr was not required to seek management evaluation of the rebuttal panel report. Accordingly, it found his application receivable.

5. On the merits, the Dispute Tribunal found that the delays in presenting Mr. Gehr firstly, with his performance appraisal, and later with the rebuttal panel report were attributable to the Administration. Moreover, the Dispute Tribunal found that the rebuttal process was conducted by a panel which was not competent to do the review. Finding the above to be violations of Mr. Gehr's rights, the UNDT awarded compensation of USD 5,000 for breach of procedural rights and the inordinate delay in issuing the performance appraisal and the rebuttal report. The UNDT also ordered that the UNDT Judgment be placed in Mr. Gehr's OSF.

Parties' Submissions

The Secretary-General's Appeal

6. The UNDT erred in concluding that Mr. Gehr's application, insofar as it related to the decision to conclude the rebuttal process only two years after his contract expired, was receivable, since he had failed to request management evaluation prior to filing his application with the UNDT.

7. The Secretary-General submits that the Dispute Tribunal erred in concluding that Mr. Gehr could benefit from the exemption in Staff Rule 11.2(b) and argues that the present case did not meet the "very limited circumstances" under Staff Rule 11.2(b) where a request for management evaluation is not required, as articulated by the Appeals Tribunal in Judgment No. 2013-UNAT-293 in the case of *Gehr v. Secretary-General of the United Nations*.

8. The Secretary-General contends that a rebuttal panel is not a technical body, as determined by the Secretary-General, nor the subject of an administrative issuance allowing for its decisions to be challenged directly before the UNDT, without a prior management evaluation request.

9. In those circumstances, Mr. Gehr's challenges to the delays are not receivable.

10. The UNDT erred in basing its award of USD 5,000 on grounds that were not compensable.

11. First, regarding the fourteen-week delay (November 2010 to March 2011) in issuing the performance appraisal, the Dispute Tribunal failed to factor in the corrective steps undertaken by the Administration following Mr. Gehr's request for management evaluation filed on 1 December 2010. The Secretary-General also submits that the different versions of the performance appraisal which Mr. Gehr received in the period in question were due to manual versions having to be created; this led to technical and clerical errors which then had to be corrected. Moreover, the issue of Mr. Gehr having received five different versions of his performance appraisal was, *inter alia*, the subject of Judgment No. UNDT/2011/211 wherein the Dispute Tribunal, *inter alia*, concluded that Mr. Gehr, although having been provided with five different versions of his performance appraisal, "has not shown that this has caused him any injury". The Appeals Tribunal Judgment No. 2012-UNAT-253 did not overturn this Dispute Tribunal finding. Accordingly, in respect of this issue, the Secretary-General pleads *res judicata*.

12. Second, regarding the Dispute Tribunal's finding of undue delay in issuing the rebuttal panel report on 23 March 2012, one year after Mr. Gehr submitted his rebuttal statement on 15 March 2011, the Secretary-General submits that the UNDT erred as follows:

It failed to take account of the fact that twenty-one weeks of that delay period were either attributable to Mr. Gehr or beyond the control of the Administration. It is submitted that with respect to the twenty-one week period, Mr. Gehr was solely responsible for almost three months' delay (i. e. twelve weeks). Thus, the UNDT erred in attributing a full year of delay to the Administration.

13. Third, the Dispute Tribunal determined that the rebuttal panel established in 2007 "was no longer competent to conduct legally valid rebuttal processes" since the panel members' membership had expired under ST/AI/2002/3. The Secretary-General alerts the Appeals Tribunal to the fact that the Administration issued a circular on 21 April 2011 which established a list of members for the new rebuttal panel and that on 12 May 2011, Mr. Gehr selected rebuttal panel members from this new list. Thus, the rebuttal panel which considered Mr. Gehr's case was in fact the 2011 newly established rebuttal panel and not the 2007 panel. As the 2007 panel did not therefore consider Mr. Gehr's case, there was no impact or prejudice to his case (irrespective of the legal status of the 2007 panel). Thus, the Dispute Tribunal erred in fact in relying on this as a basis to award compensation.

14. Lastly, the Secretary-General submits that the UNDT is precluded by the doctrine of *res judicata* from awarding compensation to Mr. Gehr on the basis of his having suffered emotional stress and anxiety arising from the inclusion in his 2009-2010 performance appraisal of matters which did not occur during the reporting period in question. In Judgment No. UNDT/2011/211, the UNDT declined to award compensation on that basis, a ruling upheld by the Appeals Tribunal in Judgment 2012-UNAT-253.

Mr. Gehr's Answer

15. Mr. Gehr requests the Appeals Tribunal to confirm the Dispute Tribunal Judgment.

16. On the receivability issue, if the Appeals Tribunal were to find that he should have requested management evaluation before making the application that led to the Dispute Tribunal Judgment, Mr. Gehr submits that the applicable Staff Rules regarding management evaluation were drafted so badly that even a Judge of the Dispute Tribunal could misunderstand them and advise that management evaluation was not required. The Administration is thus bound by the badly formulated Staff Rules and their operation should not work to Mr. Gehr's detriment.

17. If the Appeals Tribunal were to find that the rebuttal panel was not incompetent to hear his appeal of his performance appraisal, Mr. Gehr submits that the rebuttal process suffered from other procedural irregularities as set out in his applications before the Dispute Tribunal, under cases UNDT/GVA/2012/24 and UNDT/GVA/2011/28. Those procedural irregularities made the rebuttal process null and void.

Considerations

18. At the outset, it falls to the Appeals Tribunal to determine whether the UNDT erred in law in admitting Mr. Gehr's complaint concerning delays in the rebuttal process.

19. Mr. Gehr's application to the Dispute Tribunal dated 28 March 2012 detailed two decisions in respect of which he made complaint, namely (i) the decision to finalize his performance appraisal for the year ending 31 March 2010 some two years after his contract had expired, and (ii) the decision to conduct the rebuttal process with rebuttal panel members from a list which had not been established in accordance with Section 14.1 of ST/AI/2002/3.

20. In Part VI of his application, Mr. Gehr confirmed that he sought management evaluation only in respect of the latter decision, on 5 May 2011, which was responded to on 17 June 2011.

21. In his submissions before this Tribunal, the Secretary-General acknowledges that Mr. Gehr requested management evaluation of the conduct of the rebuttal process. However, he submits that the Dispute Tribunal erred in law in receiving the complaint concerning delay, in the absence of management evaluation, as required by Staff Rule 11.2(a). That rule provides:

A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

22. Reviewing the issue of receivability (although not distinguishing between the two decisions), the UNDT determined that Mr. Gehr's claims were receivable on the basis that a rebuttal panel was a technical body and thus, pursuant to Staff Rule 11.2(b), Mr. Gehr was exempted from the requirement of management evaluation as a prerequisite to invoking the jurisdiction of the UNDT.

23. Staff Rule 11.2(b) provides as follows:

A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation.

24. The Dispute Tribunal found support for its finding that rebuttal panels qualified as "technical bodies" in the wording of ST/AI/2010/5. Section 14.1 of which states that rebuttal panel members "must have adequate knowledge and experience required to review the appraisal and its rating".

25. There was no evidence before the Dispute Tribunal (nor before this Tribunal) that the Secretary-General had made a determination pursuant to Staff Rule 11.2(b) designating rebuttal panels as "technical bodies".

26. In the absence of such designation and having regard to the specific provisions of Staff Rule 11.2(b) and the overarching import of Staff Rule 11.2(a) (especially when read together with Article 8(1)(c) of the Dispute Tribunal Statute), the Appeals Tribunal finds that the UNDT had no legal or evidential basis to justify its determination that a rebuttal panel constituted a technical body, thus exempting Mr. Gehr from the mandatory first step of management evaluation. Moreover, even absent any designation process by the Secretary-General, the particular requirements set out in Section 14.1 of ST/AI/2010/5 do not persuade the Appeals Tribunal that the Secretary-General intended that a rebuttal panel should be considered as a technical body.

27. In circumstances, therefore, where Mr. Gehr, as he acknowledged in his application to the Dispute Tribunal, did not seek management evaluation of the decision to complete his performance appraisal only by March 2012, the complaint pertaining to delay was not receivable and the UNDT erred in law in finding otherwise.

28. Consequently, it follows that the substantive findings of the Dispute Tribunal regarding delay have no legal basis and the Appeals Tribunal does not find it necessary to further address the Secretary-General's arguments on this issue.

The rebuttal process

29. By virtue of Mr. Gehr having requested management evaluation of the rebuttal process not having been in accordance with Section 14 of ST/AI/2002/3, the Dispute Tribunal was seized of jurisdiction with regard to that issue.

30. The Secretary-General contends that the Dispute Tribunal committed an error in awarding compensation to Mr. Gehr for, *inter alia*, the fact of his having his rebuttal process conducted by a rebuttal panel established in 2007 which "was no longer competent to conduct legally valid rebuttal processes" since the panel members' membership had expired under ST/AI/2002/3.

31. Pursuant to ST/AI/2002/3, a rebuttal panel had been established on 16 March 2007 with a two-year mandate. During the hearing before the UNDT, the Secretary-General conceded that that rebuttal panel's term expired on 16 March 2009 but explained that after its expiry it continued *de facto*.

32. The Dispute Tribunal found no legal basis for the Secretary-General's contention of a *de facto* existence for the 2007 panel post 16 March 2009 and concluded that after 16 March 2009, that panel was no longer competent to conduct legally valid rebuttal processes. The UNDT also went on to find that "the rebuttal panel established on 21 April 2011 could not legally conduct [Mr. Gehr's] performance rebuttal process, since it lacked the competence to do so".

33. Mr. Gehr submitted his rebuttal statement on 15 March 2011. On 21 April 2011, a broadcast informed UNODC staff of the new list of rebuttal panel members and on 26 April 2011, Mr. Gehr was informed of the new list and asked to select the members to form the panel for the rebuttal of his 2009-2010 performance appraisal.

34. Prior to its establishment, on 24 March 2011, Mr. Gehr was advised that the Administration was in the final stages of establishing the new rebuttal panel and reference was made to the "outgoing rebuttal panel", although incomplete because of depletion in its numbers, remaining in place until the establishment of the new panel.

35. Mr. Gehr's response of 25 March 2011 was that he would not select panel members from this depleted panel and that he would choose members from the new rebuttal panel list "if and when it is properly established".

36. On 30 March 2011, it was again made clear to him that, were he to select from the 2007 panel list, he would not have a choice of persons whom he would like to serve as only one member nominated by the Staff Council remained on the panel list. He was advised that the 2011 panel afforded a larger pool from which to choose. On the same date, Mr. Gehr responded stating that in view of the limitations of the 2007 rebuttal panel list he would not choose his rebuttal panel "from such a truncated list".

37. HRMS e-mailed Mr. Gehr on 1 April 2011 noting "[hi]s willingness to await the establishment of the new Panel" to select the members for his review. He was reminded that given his performance appraisal was governed by ST/AI/2002/3/ he would not be confined by the structures imposed by Section 15.2 of the instrument.³

³ The e-mail explained: "This means that you are not limited by the requirement to select members as per section 15.2 of ST/AI/2010/5, which in your case would have limited you to selecting only members at the D-1 level (or higher). (ST/AI/2002/3 does not contain such requirement)."

38. There is no suggestion that the 2011 rebuttal panel was not properly established in accordance with ST/AI/2010/5. This instrument abolished ST/AI/2002/3. Provision was however made for performance appraisals relating to the 2009-2010 cycle as follows:

“ST/AI/2002/3 is hereby abolished. However, performance appraisals anterior to the performance cycle 2010-2011 shall be conducted and completed in accordance with the procedures described in ST/AI/2002/3.” (Section 18.2)

39. Reviewing Mr. Gehr’s 2009-2010 performance appraisal therefore, for it to be in strict compliance with Section 18.2, required a properly constituted panel pursuant to ST/AI/2002/3.

40. On 12 May 2011, Mr. Gehr provided HRMS with the names of three staff members selected by him from the 2011 rebuttal panel. The rebuttal panel’s report was duly produced on 23 March 2012.

41. The Secretary-General appeals the UNDT’s award of compensation to Mr. Gehr based on its finding that the reviewing panel lacked competence for the task. To some extent, the Secretary-General’s grounds of appeal conflate two findings made by the Dispute Tribunal, but the basic premise of the appeal is that whatever the legal status of the 2007 panel in 2011, Mr. Gehr’s rights were not affected as his review was undertaken by the 2011 rebuttal panel. As already set out, the Dispute Tribunal impugned the latter process also, for lack of competence, and found Mr. Gehr’s rights were breached such as to merit a compensatory award.

42. As the *de facto* 2007 panel did not review Mr. Gehr’s performance appraisal, the Appeals Tribunal refrains from adjudicating on its status in 2011.

43. Having analysed the sequence of events pertaining to the composition of the rebuttal panel which in fact reviewed Mr. Gehr, and noting Mr. Gehr’s engagement between May 2011 and December 2011 with the rebuttal process, the question to be determined is whether he was prejudiced or discommoded by the fact that his rebuttal was conducted by the rebuttal panel established in 2011. From the available record, as outlined above, in particular Mr. Gehr’s willingness to await the establishment of the 2011 rebuttal panel, we do not find that the fact that Mr. Gehr was obliged to engage with a panel established pursuant to ST/AI/2010/5 is, of itself, sufficient to merit an award of compensation, in the absence of

specific harm or prejudice arising therefrom. In the instant case the breach of itself was not of sufficient seriousness to merit a compensatory award.⁴

44. Accordingly, the UNDT's award of compensation was not merited.

Judgment

45. The Judgment of the Dispute Tribunal is vacated in its entirety.

⁴ See *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-309, para. 36.

Original and Authoritative Version: English

Dated this 17th day of October 2014 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 22nd day of December 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar