



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

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Judgment No. 2019-UNAT-933

**Olubowale  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Deborah Thomas-Felix, Presiding Judge Sabine Knierim Judge Richard Lussick
Case No.:	2019-1229
Date:	28 June 2019
Registrar:	Weicheng Lin

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Counsel for Mr. Olubowale:	George G. Irving
Counsel for Secretary-General:	Patricia C. Aragonés

**JUDGE DEBORAH THOMAS-FELIX, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment on Receivability No. UNDT/2018/120 issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 3 December 2018 in the case of *Olubowale v. Secretary-General of the United Nations*. Mr. Olusegun Ayodele Olubowale filed the appeal on 29 January 2019 and the Secretary-General filed his answer on 1 April 2019.

**Facts and Procedure**

2. The following facts are uncontested:<sup>1</sup>

... On 24 August 2002, the Applicant joined [the Office of the United Nations High Commissioner for Refugees (UNHCR)] as an Administrative Officer in Kigali, Rwanda, at the P-3 level on an indefinite appointment.

... The Applicant is currently assigned and serving in Yangon, Myanmar, as Senior Administrative and Finance Officer at the P-4 level.

... UNHCR advertised job opening No. 12807 for the position of Head of Sub-Office, Jam Jang, South Sudan, at the P-5 level, position No. 10020845, in the September 2016 Compendium. The Applicant applied for the position.

... The Division of Human Resources Management (“DHRM”), UNHCR, identified and short-listed eleven eligible candidates, including the Applicant, for the P-5 post. The Applicant had a telephone conversation with the Hiring Manager about the post to assess his interest therein. On 8 November 2016, DHRM held a meeting in which it recommended another candidate.

... On 16 and 17 November 2016, the Joint Review Board (“JRB”) scrutinized the selection procedure and concluded that it had complied with all procedural and fairness requirements.

... On 7 December 2016, the Director, DHRM, released the Summary of Decisions of the High-Commissioner in an email communicated to all staff members, including the Applicant. The Summary of Decisions contained the selection decision of another candidate to the above-referenced P-5 position and did not list the Applicant’s name.

... On 9 December 2016, the Applicant requested the documentation associated with the three recruitment processes for the posts to which he had applied, including for the above-referenced P-5 post.

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<sup>1</sup> Impugned Judgment, paras. 3-12.

... On 24 February 2017, DHRM provided the Applicant with documentation from the recruitment process for the contested position.

... On 11 April 2017, the Applicant submitted a management evaluation request contesting the non-selection decision for the above referenced P-5 post.

... On 10 July 2017, the Deputy High Commissioner replied to the Applicant's request for management evaluation and upheld the non-selection decision. In her answer, the Deputy High Commissioner informed the Applicant that his challenge was time-barred.

3. On 31 July 2017, Mr. Olubowale filed an application with the UNDT contesting the decision not to select him for the P-5 position of Head of Sub-Office, Jam Jang, South Sudan.

4. On 3 December 2018, the UNDT issued Judgment on Receivability No. UNDT/2018/120 rejecting Mr. Olubowale's application as not receivable *ratione materiae*. The UNDT found that Mr. Olubowale had been notified of his non-selection on 7 December 2016 via the Summary of Decisions of the High Commissioner, but that he had requested management evaluation only on 11 April 2017. The UNDT rejected Mr. Olubowale's argument that because pursuant to paragraph 119 of UNHCR's Revised Policy and Procedures on Assignments (UNHCR/HCP/2015/Rev.1) (PPA), applicable at the time, a staff member had to be provided with the documents from the selection process before deciding whether to submit a request for management evaluation, the deadline to request management evaluation counted only as of the receipt of that information. The UNDT found that while Mr. Olubowale could, and did, avail himself of the possibility to request information pursuant to paragraph 119 of the PPA applicable at the time, such request did not in any way impact the statutory time limit contained in Staff Rule 11.2(c). Finally, the UNDT found that the issuance of a policy after the events of the dispute was immaterial for the determination of the application.

### **Submissions**

#### **Mr. Olubowale's Appeal**

5. In rejecting his application, the UNDT erred in law and fact leading to a manifestly unreasonable decision denying him access to justice. The analysis by the UNDT is fundamentally flawed in that it flows from a misinterpretation of what the contested decision entailed. Contrary to the Secretary-General's contention, Mr. Olubowale did not only contest his non-selection and the appointment of another candidate. In *Auda*, the Appeals Tribunal reiterated its previous

understanding that for the purpose of Staff Rule 11.2(c), notification has occurred when “all relevant facts...were known, or should have reasonably been known” by the staff member.<sup>2</sup> In his request for management evaluation, Mr. Olubowale demonstrated that he was contesting the “unfair consideration and incomplete information for comparative review” and that the basis for this was his taking into consideration the documents he had received on 24 February 2017. His subsequent application made clear that he was contesting the failure to afford his candidacy full and fair consideration and the factual basis for the rejection of his candidacy.

6. It was only upon receipt of the information from DHRM that Mr. Olubowale had all the relevant facts to make a decision whether or not to formally challenge his non-selection. Furthermore, in the absence of a notification of the results, generic announcements concerning other staff members are of “dubious utility” in determining whether any particular selection process entailed a denial of fair consideration. As the Appeals Tribunal noted in *Jean*, the “knowledge of a decision is not necessarily the same thing as a staff member receiving notification of a decision”.<sup>3</sup> The provision of confidential information pursuant to an established procedure cannot be said to be a mere reiteration of a prior decision.

7. Paragraph 119 of the PPA sets UNHCR apart from the Secretariat and other United Nations agencies in that it provides a very specific avenue for redress in the event that a staff member suspects his or her candidacy has been treated unfairly. The provision in the established rules for staff selection in UNHCR differs from the United Nations Secretariat and other agencies that only agree to disclose such confidential information later in the formal process at the direction of the Tribunal. In contrast, UNHCR instructs its staff to use this procedure as a condition precedent for making the specific claim that one’s candidacy has not been given full and fair consideration. The UNDT erred in adopting a restrictive interpretation contrary to the interests of judicial economy in that the implied alternative is to request management evaluation and bring an appeal for every post to which a staff member applies.

8. Mr. Olubowale’s initial request was made on 9 November 2016, immediately after the announcement of appointments to several posts excluding his name. He requested information on all the posts he had applied for and received a response on 23 November 2016 enabling him to determine that there was no apparent irregularity. On 9 December 2016, he requested the same information for the same purpose following the announcement two days earlier for

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<sup>2</sup> *Auda v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-746, para. 31.

<sup>3</sup> *Jean v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-743, para. 23.

three vacancies to which he had applied. But in this case, no response was provided until 24 February 2017, and no explanation was given for the delay. In addition to annex 7 to the application, the full e-mail trail is attached as annex 3 to the appeal, and the Appeals Tribunal is requested to admit it into evidence.

9. The UNDT's finding that the wording of paragraph 119 did not allow for concluding that there was a suspension or waiver of the statutory deadline for a management evaluation was based on a fundamental misinterpretation of when the final decision arose. It also begs the question as to what purpose the instruction serves if by delaying the provision of necessary information for more than 60 days, the Administration can preclude access to justice, given the presumption of regularity surrounding the exercise of discretionary authority. This interpretation is inconsistent with Article 8 of the Universal Declaration of Human Rights holding that everyone has the right to an effective remedy for a violation of legal rights.

10. It is well established that once challenged to show that an applicant has received fair consideration, the burden is on the Administration to demonstrate that the process was fair. This can only be determined from the records in the Administration's possession which document the factors that were considered in evaluating the applicant's candidacy. The disclosure of documents provided by DHRM on 24 February 2017 is central to Mr. Olubowale's arguments that the relevant line manager suppressed and distorted Mr. Olubowale's record of service.

11. Mr. Olubowale documented with evidence the effects on his career and health of the mistreatment he received from the Organization. He requests payment of costs in the amount of USD 5,000 for his appeal due to the delay occasioned by the Secretary-General. He further requests that the Appeals Tribunal receive into evidence the additional documentation submitted with his appeal, as annex 3, consisting of the full e-mail exchange regarding his requests for information. Mr. Olubowale requests that the Appeals Tribunal vacate the UNDT Judgment on Receivability and remand the case for a determination on the merits.

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

12. The UNDT correctly concluded that Mr. Olubowale had failed to timely request management evaluation, and on that basis, dismissed the application as not receivable *ratione materiae*. The UNDT correctly found that Mr. Olubowale had contested the decision not to select him for the position and that he had been notified of the contested decision by

UNHCR's Summary of Decisions issued on 7 December 2016, which was the form of communication used by UNHCR to communicate selection decisions to its staff members, including Mr. Olubowale. Under Staff Rule 11.2(c), Mr. Olubowale had 60 days, i.e. until 5 February 2017, to submit a request for management evaluation; yet, he did not submit such a request until 11 April 2017, more than two months after the deadline.

13. Mr. Olubowale has not established any errors warranting a reversal of the Judgment. Contrary to Mr. Olubowale's assertions, a plain reading of his request for management evaluation and application to the UNDT demonstrates that the UNDT correctly interpreted his submissions as challenging his non-selection and correctly determined that he had been notified of his non-selection on 7 December 2016. His e-mail dated 9 December 2016 requesting information about the position makes clear that he had learned of his non-selection for the position. Furthermore, Mr. Olubowale's submission that the disclosure of the requested information on 27 February 2017 constituted the notification of the contested decision is without merit. Contrary to Mr. Olubowale's contentions, *Auda* lends no support to his submissions. The UNDT correctly recalled that the Appeals Tribunal has consistently held that receipt of information concerning the rationale for an earlier administrative decision does not reset the time limits. In *Rahman*, the Appeals Tribunal held that the appellant's argument that the time limit began to run only when he had been provided with a reasonable belief that there were grounds to request management evaluation was contrary to the applicable law.<sup>4</sup>

14. Moreover, there is no basis in paragraph 119 of the PPA to support Mr. Olubowale's contention that paragraph 119 is a condition precedent to a staff member's requesting management evaluation of a non-selection decision and that, therefore, he could not bring a request for management evaluation until after he had received the information requested. There is no reference to management evaluation in paragraph 119, nor is there any statement that indicates or otherwise suggests that requesting documentation from DHRM is a mandatory first step for a staff member wishing to contest a non-selection decision. The UNDT correctly found that paragraph 119 of the PPA simply establishes the duty of the Administration to provide, upon request, the non-selected candidates with documents with respect to a particular selection process.

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<sup>4</sup> *Rahman v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-260, para. 24.

15. There is no merit in Mr. Olubowale's submission that the UNDT erred in adopting a restrictive interpretation that is contrary to the interests of judicial economy, in that the implied alternative is to request management evaluation and bring an appeal for every post to which a staff member applies. Indeed, this is the procedure mandated by the Organization. As the UNDT correctly established, paragraph 119 simply establishes a disclosure obligation independent of the management evaluation. Nothing precluded Mr. Olubowale from submitting a request for management evaluation while waiting for the disclosure of the documentation he had requested. Mr. Olubowale has not been denied access to justice other than his own failure to timely comply with the requirement for a management evaluation. Finally, Mr. Olubowale's arguments presented on appeal are essentially the same as those included in his application to the UNDT. Consequently, Mr. Olubowale has failed to establish any error warranting a reversal of the UNDT Judgment.

16. Mr. Olubowale has failed to satisfy the requirements for the production of new evidence before the Appeals Tribunal. The additional evidence Mr. Olubowale now seeks to introduce reflects Mr. Olubowale's prior requests regarding his non-selection to other vacancies to which he had applied and to which he refers in his appeal. Mr. Olubowale has failed to provide any explanation as to why there are exceptional circumstances and why the provision of additional documentary evidence at this stage would be in the interest of justice and the efficient and expeditious resolution of the proceedings. The documentation, all of which had been available to him at the time he filed his application before the UNDT, is immaterial and essentially has already been presented by Mr. Olubowale and accepted by the Secretary-General before the UNDT. Consequently, the documentary evidence introduced on appeal should be rejected.

17. Mr. Olubowale has not justified any of his claims for relief. There was no error by the UNDT when concluding that the application was not receivable and consequently, there is no basis upon which to grant the requested relief. Furthermore, Mr. Olubowale has neither identified the statutory basis for his request for an award of costs, nor has he provided an explanation for the "further delay" by the Secretary-General.

### Considerations

18. The Secretary-General requests that the Appeals Tribunal affirm the UNDT Judgment and dismiss the appeal in its entirety.

19. The Appeals Tribunal affirms the UNDT's finding that the contested administrative decision to be examined was the non-selection decision which was communicated to Mr. Olubowale on 7 December 2016. According to Staff Rule 11.2(c), Mr. Olubowale, like all other staff members, was afforded 60 days within which to submit a request for management evaluation; he, however, did not submit such a request until 11 April 2017.

20. The Appeals Tribunal has consistently stated that a request for management evaluation (a mandatory first step in the resolution of issues) must be done within the time limit prescribed by Staff Rule 11.2(c).<sup>5</sup>

21. In the instant case, the request for management evaluation was made on 11 April 2017, more than two months after the prescribed deadline. The arguments which Mr. Olubowale advanced do not in any way provide an exception to the Staff Rule.

22. It is the ruling of the Appeals Tribunal that Mr. Olubowale's request for management evaluation was time-barred and that the UNDT correctly ruled that his application was not receivable *ratione materiae*.

23. In light of the foregoing, the additional evidence Mr. Olubowale seeks to submit on appeal bears no relevance to the case. His request in this regard is therefore rejected.

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<sup>5</sup> *Newland v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-820, paras. 28 and 29.

**Judgment**

24. The appeal is dismissed and Judgment on Receivability No. UNDT/2018/120 is affirmed in its entirety.

Original and Authoritative Version: English

Dated this 28<sup>th</sup> day of June 2019 in New York, United States.

*(Signed)*

Judge Thomas-Felix,  
Presiding

*(Signed)*

Judge Knierim

*(Signed)*

Judge Lussick

Entered in the Register on this 19<sup>th</sup> day of August 2019 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar