



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

Judgment No. 2020-UNAT-1054

**Felix Ross
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge John Raymond Murphy Judge Martha Halfeld
Case No.:	2020-1363
Date:	30 October 2020
Registrar:	Weicheng Lin

Counsel for Mr. Ross: Self-represented

Counsel for Secretary-General: Francisca Lagos Pola

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Mr. Ross contested the decision of the Administration not to select him for the job opening 57267. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) rejected his application as without merit. For reasons set out below, we affirm the UNDT Judgment.

Facts and Procedure

2. Mr. Ross, a former staff member in the United Nations High Commissioner for Refugees (“UNHCR”) at the P-4 level, filed an application with the UNDT in which he contested “[t]he decision to appoint another candidate to the position of Senior Inter-Agency Coordination Officer, P-4 level, Office of Human Resources Management, Nairobi, job opening 57267 [“the Post”].

3. At an unknown date, the job opening for the Post was advertised. The job opening required, *inter alia* under the heading “Essential minimum qualifications and professional experience required”:

- a. “Work experience, including in large field operations, that enables credible representation of UNHCR in the inter-agency context and with government partners”; and
- b. “Understanding of recent inter-agency developments, notably the IASC [presumably, the Inter-Agency Standing Committee] humanitarian reform”.

4. Regarding the background for the role of the Senior Inter-Agency Coordination Officer, under the heading, “Organization context”, the political and refugee situation in Burundi as per 31 October 2015 was explained and the “Regional Refugee model” was presented. It was also indicated that “[t]he specialist areas span the following: refugee status determination, registration, geographic information systems, resettlement, women and children, public health, HIV/AIDS, reproductive health, nutrition, physical planning, water-sanitation-and-hygiene, public information and financial management”.

5. In February 2016, Mr. Ross applied for the Post. Mr. Ross stated in pertinent part in his motivation letter for his application to the Post as follows:

As Senior Protection Officer in Kassala, I have previously coordinated all protection and assistance interventions of UNHCR, implementing partners and other UN agencies for more than 85,000 persons of concern in Eastern Sudan. I therefore believe I would be well suited for the position of Senior inter-Agency Coordination Officer. In addition I have previously worked with [the International Organization for Migration (IOM)] in Geneva and Colombia and thus also possess experience from outside UNHCR, which could be very useful for the position.

6. UNHCR then assessed the job candidates' suitability for the Post in a "Shortlisting Matrix" of April 2016. In respect of Mr. Ross, the manager first stated that he did not recommend Mr. Ross for the Post, indicating that Mr. Ross had "5 years experience with UNHCR in the field of protection and legal affairs" but did not have "any demonstrated experience and/or competency in inter-agency coordination or in making recommendation on strategies and programme implementation". In the column next to the manager's comments, Mr. Ross' level was stated as "P3A". In the Division of Human Resources Management (DHRM)'s "Final Recommendation Meeting Minutes", Mr. Ross' candidature for the Post was rejected as it was found that he "does not have the inter-agency experience required for this position". It was further indicated that "Mr. Felix ROSS has been serving as Senior Protection Officer in Morocco since July 2015. From January 2013 - July 2015 he served as Legal Officer in Nairobi, Kenya and from 2010-2012 as Senior Protection Officer in Kassala, Sudan. In 2008 he joined UNHCR as Legal Officer (Human Resources). He was promoted to P-4 in 2015".

7. Further, with regard to the selected candidate, the manager stated:

[s]ince January 2012, he has been serving as Executive Assistant to the Bureau Director at UNHCR New York, assuming responsibilities which are directly relevant to the position of Senior Inter-Agency Coordination Officer in Nairobi. He is notably responsible for providing legal and policy advices on select portfolio issues, covering thematic portfolios, representing UNHCR in various New York fora on country specific, regional or thematic issues, including issues arising in the Central and Great Lakes region. According to his fact sheet, he is commended for his capacity to build and develop productive relationships with various actors, such as UN agencies, civil society actors, academia, NGOs and advocacy groups to contribute to a greater understanding of UNHCR's mandate and operations.

8. In Judgment No. UNDT/2019/173, the Dispute Tribunal dismissed Mr. Ross' application by finding that he had been given full and fair consideration during the selection process. Moreover, the UNDT did not find evidence that the decision was manifestly wrong, arbitrary, or otherwise unreasonable, and lastly concluded that Mr. Ross did not have foreseeable and significant chance for selection.

9. Mr. Ross appealed the above-referenced UNDT Judgment on 7 February 2020 to the United Nations Appeals Tribunal (Appeals Tribunal or UNAT). The Secretary-General filed an answer on 24 April 2020.

Submissions

Mr. Ross' Appeal

10. Mr. Ross contends that the UNDT erred in law to find he had received full and fair consideration in the selection process, as he did in fact have the necessary inter-agency coordination experience but was excluded from the process based on erroneous considerations by the manager and the DHRM. Mr. Ross' former supervisor with 25 years of experience with UNHCR confirmed his inter-agency coordination experience in an affidavit attached to the appeal. The Secretary-General never disputed this fact before the UNDT for more than three years of the life of this litigation, but argued this for the first time at closing arguments without checking its veracity. Mr. Ross objected to the late pleadings and asked for leave to submit the affidavit. However, the UNDT rendered its judgment without granting his request.

11. Further, Mr. Ross submits that he clearly stated he had inter-agency experience in his motivation letter. The DHRM could have easily checked with Mr. Ross or his prior supervisors. Instead, the DHRM relied on the fact sheet, which only reflected a limited number of objectives. Thus, the UNDT erred when it concluded from the minutes of the review meeting that the DHRM had thoroughly reviewed his candidacy. The minutes stated he "[did] not have the inter-agency experience required for this position." These minutes do not support that the DHRM substantively reviewed his candidacy but rather show the DHRM did not properly review his credentials as it was stated clearly in his motivation letter. Thus, the DHRM falsely concluded he did not have inter-agency coordination experience. In turn,

the UNDT erred in fact when it concluded that “the Applicant nowhere explicitly indicated in his motivation letter that he had the necessary inter-agency experience”.¹

12. The UNDT erred in law at paragraph 29 of the Judgment that “no such evidence is necessary at this stage, because what is important is the information in front of the decision-maker at the time of the decision and not what is before the Tribunal now”. The DHRM had Mr. Ross’ crystal-clear statement that he possessed the requisite experience. It was not reasonable to negate Mr. Ross’ statement in his motivation letter, but the DHRM should have verified and checked whether his assertion that he had the requisite experience was accurate.

13. The UNDT erred in procedure by not allowing him to submit his former supervisor’s affidavit.

14. Therefore, Mr. Ross requests the Appeals Tribunal to vacate Judgment No. UNDT/2019/173 and rescind the decision to appoint another candidate to the Post. As an alternative to the rescission, Mr. Ross requests that the Appeals Tribunal order the Respondent to pay him one-year net base salary plus pension fund contributions from both sides as well as an additional compensation for damaged career prospects in the amount of three months’ net base salary.

The Secretary-General’s Answer

15. The Secretary-General requests that the Appeals Tribunal dismiss the appeal and affirm the UNDT Judgment. The Secretary-General contends that the UNDT correctly dismissed Mr. Ross’ application. The Secretary-General has broad discretion in staff selection per Article 101(1) of the United Nations Charter. It is not the role of the Tribunals to substitute the Secretary-General’s discretion in the absence of evidence of bias, discriminatory practices or *mala fides*.² In reviewing appointment and promotion decisions Tribunals examine i) whether the procedure as laid down in the Staff Regulations and Rules

¹ Impugned Judgment, para. 25.

² Here, the Secretary-General cites *Bofill v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-383, para. 21.

were followed, and ii) whether the staff member was given fair and adequate consideration.³ There is a presumption that official acts have been regularly performed.⁴

16. The selection process for the Post was governed by UNHCR's Revised Policy and Procedures on Assignments (UNHCR/HCP/2015/2). The process was followed. The selection of the selected candidate was reasonable, objective and supported by the record.

17. Mr. Ross did not provide clear and convincing evidence to rebut the presumption of regularity. The UNDT correctly concluded that Mr. Ross had been given full and fair consideration and held that there was no evidence that the decision was manifestly wrong, arbitrary, or otherwise unreasonable.

18. Mr. Ross has not established any errors by UNDT warranting a reversal. He reiterates his arguments made and already considered by UNDT.

19. Mr. Ross argues the UNDT erred in law in concluding he had been given full and fair consideration because he "did not possess the necessary inter-agency coordination experience". Mr. Ross also argues that "he was excluded from the selection process on the basis of erroneous considerations by the manager and DHRM". He further argues the UNDT also erred in fact when it concluded that he had not indicated in his motivation letter that he had the necessary inter-agency experience. He asserts the manager and the DHRM did not read his letter or thoroughly review his candidature. The Secretary-General argues these are factually inaccurate assertions. And as noted they were already put forth to, and considered by, the UNDT.

20. There is no obligation in the UNHCR policy for the hiring manager to check with Mr. Ross or his former supervisors to ascertain the extent of his inter-agency experience and thus this is not acting in bad faith. The onus of showing one has the requisite credentials for the position is on the candidate. There is thus no evidence that UNHCR acted in bad faith.

³ Citing *Dhanjee v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-527, para. 24; *Ljungdell v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-265, para. 30; *Majbri v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-200, para. 35; *Abaassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, para. 23.

⁴ Citing *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, para. 26.

21. Mr. Ross fails to show the UNDT committed an error of procedure when it did not allow him to submit an affidavit from his former supervisor addressing his inter-agency experience as he did not request to submit such evidence before the UNDT.

22. Mr. Ross' request to submit additional evidence before the UNAT should be denied as it has not been introduced in accordance with Article 2(5) of the Appeals Tribunal's Statute. Furthermore, the views of Mr. Ross' former supervisors are not decisive for the consideration of his candidacy as they were not the decision-maker.

Considerations

Preliminary issues

23. The request of the Secretary-General not to admit the additional document annexed to Mr. Ross' appeal (Affidavit of his former supervisor in Sudan) must be granted. This document was not filed with the UNDT and Mr. Ross has not made out any case in terms of Article 2(5) of the Appeals Tribunal Statute that exceptional circumstances justify the receipt of the additional evidence in the interest of justice and the efficient and expeditious resolution of the proceedings. Moreover, the affidavit of Mr. Ross' former supervisor in Sudan, referring to Mr. Ross' qualifications for the Post at issue, was evidence outside the record considered by the Administration in making the impugned decision and, therefore, to no avail for Mr. Ross,⁵ since it was not decisive evidence for the consideration for the Post.

Merits

24. The issue on appeal is whether the UNDT erred in law or fact resulting in a manifestly unreasonable decision when it concluded that the administrative decision not to select Mr. Ross for the Post was lawful.

25. We recall the Appeals Tribunal's jurisprudence that, in terms of the discretion vested in the Administration, under Article 101(1) of the Charter of the United Nations and Staff Regulations 1.2(c) and 4.1, the Secretary-General has broad discretion in matters of staff selection. The jurisprudence of this Tribunal has clarified that, in reviewing such decisions, it is the role of the Tribunals to assess whether the applicable Regulations and Rules were

⁵ See *Lemonnier v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-762, para. 37.

applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration.⁶

26. We have also stated that:⁷

... The Dispute Tribunal possesses jurisdiction to rescind a selection or promotion process, but may do so only under extremely rare circumstances. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection/promotion

... All candidates before an interview panel have the right to full and fair consideration. A candidate challenging the denial of promotion must prove through clear and convincing evidence that procedure was violated, the members of the panel exhibited bias, irrelevant material was considered or relevant material ignored. There may be other grounds as well. It would depend on the facts of each individual case.

... There is always a presumption that official acts have been regularly performed. This is called a presumption of regularity. But this presumption is a rebuttable one. If the management is able to even minimally show that the Appellant's candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter the burden of proof shifts to the Appellant who must show through clear and convincing evidence that she was denied a fair chance of promotion.

Alleged procedural errors

27. Mr. Ross argues that the UNDT committed an error of procedure by not allowing him to submit an affidavit from his former supervisor. In this regard, he submits that he had already stated in his UNDT Application of 16 August 2016 that he possessed the necessary inter-agency coordination experience, and that the Administration did not dispute this for three years until its last submission of 27 November 2019.

28. With regard to Mr. Ross' requested leave from UNDT to provide an affidavit from one of his former supervisors in Sudan as evidence of his "inter-agency" experience, the UNDT Judge noted that no such evidence was necessary at that stage, because what was important

⁶ *Verma v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-829, para. 13; *Al-Mussader v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-771, para. 15; *Riecan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-802, para. 13 and citations therein.

⁷ *Verma v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-829, para. 14, citing *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, paras. 20-21 and 26.

was the information that was in front of the decision-maker at the time of the decision and not what was before the Dispute Tribunal. The UNDT Judge went on to state:⁸

If the Applicant failed to provide some important information in his motivation letter, he cannot expect the manager or the decision-maker to rectify such mistake—it is for a job applicant to present her/his qualifications in his job application in a convincing manner, and not the manager or the decision-maker to do so in their appraisals.

29. We detect no error in the UNDT’s holding warranting the intervention of this Tribunal. We recall that, whether a non-selected candidate can meet his burden to show that he did not receive full and fair consideration for a job opening depends for the most part on the evidence the Administration reviewed in making the selection decision; not evidence outside the record of which the Administration was not aware. And certainly not evidence outside the record relating to the qualifications of the selected candidate. Of course, this does not mean that a staff member cannot present evidence outside the administrative record to show bias or ill motive against him or her in favour of the selected candidate. That is a different matter.⁹ In this context, contrary to Mr. Ross’ contentions, the UNDT properly exercised its broad discretion under Article 18(1) of its Rules of Procedure in determining the admissibility as well as the evidentiary value and weight of the proffered affidavit.

Whether Mr. Ross’ candidacy was given full and fair consideration

30. Next, the UNDT correctly applied the foregoing jurisprudential principles in considering Mr. Ross’ challenge to the selection process. As discussed in more detail below, the UNDT did not make any errors of law or fact in dismissing his application.

31. In the case at hand, in the job opening, under the heading, “Essential minimum qualifications and professional experience required” were, *inter alia*, listed the following:

- a. “Work experience, including in large field operations, that enables credible representation of UNHCR in the inter-agency context and with government partners”; and
- b. “Understanding of recent inter-agency developments, notably the IASC [presumably, the Inter-Agency Standing Committee] humanitarian reform”.

⁸ Impugned Judgment, para. 29.

⁹ *Lemonnier v. Secretary-General of the United Nations*, Judgment No.2017-UNAT-762, para. 38.

32. Regarding the background for the role of the Senior Inter-Agency Coordination Officer, under the heading, “Organization context”, the political and refugee situation in Burundi as per 31 October 2015 was explained and the “Regional Refugee model” was presented. It was also indicated that “[t]he specialist areas span the following: refugee status determination, registration, geographic information systems, resettlement, women and children, public health, HIV/AIDS, reproductive health, nutrition, physical planning, water-sanitation-and-hygiene, public information and financial management”.

33. In the first place, in reviewing the veracity of the factual basis for the impugned administrative decision, the UNDT noted, *inter alia*, that:¹⁰

The Tribunal notes that in the job opening, UNHCR specifically required that a job candidate should be able to represent UNHCR in the “inter-agency context” and understand “recent inter-agency developments”. In DHRM’s final assessment in the “Shortlisting Matrix”, the Applicant’s candidature was then rejected as it was found that he “does not have the inter-agency experience required for this position”, and UNHCR specifically referred to some of the job experiences that the Applicant had listed in his motivation letter, including his position as a Senior Protection Officer. While the Applicant submits that this job experience in particular provided him with the necessary “inter-agency experience”, the Tribunal finds that UNHCR’s explicit mention of this position together with some of his other listed job experiences demonstrates that UNHCR indeed did consider the Applicant['] previous work history but apparently did not find that any of the functions he had undertaken adequately satisfied the inter-agency role that was specific to the advertised position as Senior Inter-Agency Coordination Officer.

34. The UNDT went on to find that:¹¹

.. by a minimal showing, the Respondent has demonstrated that the Applicant’s candidature was given full and fair consideration (...) When studying the background for role of the Senior Inter-Agency Coordination Officer and comparing it with the Applicant’s listed job experiences, in particular his former role as Senior Protection Officer (...) the Tribunal further observes UNHCR’s decision to reject the Applicant’s candidature for the Post would not seem to be manifestly wrong, arbitrary or otherwise unreasonable. It is therefore clear that the Respondent has demonstrated that in the process he assessed,

a. the Applicant’s grade level;

¹⁰ Impugned Judgment, para. 24.

¹¹ *Ibid.*, para. 25.

- b. the information regarding the Applicant included in the “Shortlisting Matrix” and the fact sheet;
- c. the Applicant’s competencies and job experience; and
- d. applied the Policy to the Applicant’s job application for the Post.

35. Finally, the UNDT, having regard to these findings, determined that Mr. Ross’ candidature for the Post had properly been given a full and fair consideration.¹²

36. Mr. Ross submits the UNDT erred in fact and in law when it concluded that he had received full and fair consideration, as he “did possess the necessary inter-agency coordination experience” for the job opening, and “he was excluded from the selection process on the basis of erroneous considerations by the manager and DHRM.” Mr. Ross further argues that the UNDT erred in fact in finding that he had not indicated in his motivation letter that “he had the necessary inter-agency experience”, while his motivation letter clearly indicated that he had the inter-agency coordination experience required for the job opening. In this connection, Mr. Ross submits that probably neither the manager nor the DHRM had ever read his motivation letter or thoroughly reviewed his candidature.

37. We do not find these arguments persuasive for the following reasons.

38. First, the Dispute Tribunal has broad discretion under Article 18(1) of its Rules of Procedure to determine the admissibility of any evidence and the weight to be attached to such evidence. The findings of fact made by the UNDT can only be disturbed under Article 2(1)(e) of the Appeals Tribunal Statute when there is an error of fact resulting in a manifestly unreasonable decision, which is not the case here. This Tribunal is mindful that the Judge hearing the case has an appreciation of all the issues for determination and the evidence before it. We hold that the UNDT’s conclusion is consistent with the evidence. Mr. Ross has not put forward any persuasive grounds to warrant interference by this Tribunal.

39. Secondly, the UNDT properly reviewed the contested decision in accordance with the applicable law and established the critical facts of the case. It was cognizant of the Appeals Tribunal’s relevant jurisprudence governing the exercise of discretionary authority

¹² *Ibid.*, para. 30.

by the Administration and applied correctly the right test that the latter had to pass, without substituting its own assessment for that of the Administration.

40. Specifically, the UNDT embarked on an analytical fact-finding exercise by thoroughly examining the documents on file and assessing the ensuing evidence. In this respect, the UNDT took into consideration that twenty-five candidates had expressed an interest in the job opening. The DHRM sent a list of 13 shortlisted candidates for the job opening to the manager of the position. The manager reviewed the shortlisted candidates against the requirements of the job opening and provided his views on their suitability for the Post to the DHRM. In assessing Mr. Ross' suitability for the Post, the manager stated: "[t]he candidate has 5 years of experience with UNHCR in the field of protection and legal affairs. He does not have any demonstrated experience and/or competency in inter-agency coordination or in making recommendation[s] on strategies and programme implementation. Therefore, he is not recommended for the position." In the column next to the manager's comments, Mr. Ross' level was stated as "P3A". In the DHRM's "Final Recommendation Meeting Minutes", Mr. Ross' candidature for the Post was rejected as it was found that he "does not have the inter-agency experience required for this position". It was further indicated that "Mr. Felix ROSS has been serving as Senior Protection Officer in Morocco since July 2015. From January 2013 - July 2015 he served as Legal Officer in Nairobi, Kenya and from 2010-2012 as Senior Protection Officer in Kassala, Sudan. In 2008 he joined UNHCR as Legal Officer (Human Resources). He was promoted to P-4 in 2015". With regard to the selected candidate, the manager stated:

[s]ince January 2012, he has been serving as Executive Assistant to the Bureau Director at UNHCR New York, assuming responsibilities which are directly relevant to the position of Senior Inter-Agency Coordination Officer in Nairobi. He is notably responsible for providing legal and policy advices on select portfolio issues, covering thematic portfolios, representing UNHCR in various New York fora on country specific, regional or thematic issues, including issues arising in the Central and Great Lakes region. According to his fact sheet, he is commended for his capacity to build and develop productive relationships with various actors, such as UN agencies, civil society actors, academia, NGOs and advocacy groups to contribute to a greater understanding of UNHCR's mandate and operations.

41. Based on these findings, the UNDT proceeded to the conclusion, challenged by Mr. Ross on appeal, that the impugned administrative decision was lawful. Contrary to Mr. Ross' contentions, we do not find any reason to differ from that conclusion. In particular, given the factual circumstances of the case at hand, as correctly and thoroughly established by the UNDT, the Appeals Tribunal holds that the facts underpinning the administrative decision to not select Mr. Ross for the Post show that his candidature was given full and fair consideration, therefore putting in motion its presumption of regularity. Moreover, a review of the same evidence before the Dispute Tribunal shows that Mr. Ross did not meet his burden to demonstrate, by clear and convincing evidence, that the challenged administrative decision that he was not qualified for the Post, due to him not having the required inter-agency coordination experience, was unlawful or that the Administration did not give full and fair consideration to his candidacy for the Post.

42. Eventually, while Mr. Ross insists on his contention that he possesses that kind of experience and this was indicated in his motivation letter, we recall our jurisprudence that the presumption of regularity accorded to the challenged administrative act is not rebutted by simply satisfying the "balance of evidence" standard, which is a lesser standard of proof than clear and convincing evidence.¹³ In the present case, Mr. Ross did not meet even the lesser preponderance of the evidence standard.

43. We further reject as misplaced Mr. Ross' submissions that the manager and the DHRM were under an obligation to check whether he had "inter-agency coordination experience", as well as that they could have checked with him or one of his former supervisors in terms of this experience and that by not checking whether he had such experience the Respondent acted in bad faith. Mr. Ross does not point to any relevant authority putting such an obligation on the Administration, nor is there such an obligation provided for in UNHCR's Revised Policy and Procedures on Assignments for the manager or the DHRM to check a candidate's qualifications and professional experience beyond what is presented and proved by the candidate. Mr. Ross' application and his fact sheet do not indicate that he had the required inter-agency coordination experience and, as already noted, he has not responded to his onus of showing that he possessed this kind of requirement for the Post, or that the Administration acted in bad faith, or that the assessment by the manager or the DHRM was partial or biased. On the contrary, the record shows that the assessment of

¹³ *Lemonnier, op cit.*, para. 36.

Mr. Ross' candidacy was based on the information he had provided when applying to the Post and that his candidature received full and fair consideration by the Administration.

44. The Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and, thus, is not an opportunity for a dissatisfied party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed before the lower court. The function of the Appeals Tribunal is to determine if the Dispute Tribunal made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Appeals Tribunal Statute. An appellant has the burden of satisfying the Appeals Tribunal that the judgment he or she seeks to challenge is defective. It follows that an appellant must identify the alleged defects in the impugned judgment and state the grounds relied upon in asserting that the judgment is defective.¹⁴

45. It is obvious that Mr. Ross was not satisfied with the UNDT's decision. He has failed, however, to demonstrate any procedural or substantive error in the UNDT's Judgment in that the challenged administrative decision to not select him for the Post was lawful. Mr. Ross merely voices his disagreement with the UNDT's findings and repeats his submissions to the Appeals Tribunal. He has not met the burden of proof for demonstrating an error in the impugned Judgment such as to warrant its reversal.

46. Accordingly, the appeal fails.

¹⁴ *Cherneva v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-870, para. 30, citing *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 19.

Judgment

47. The appeal is dismissed and Judgment No. UNDT/2019/173 is hereby affirmed.

Original and Authoritative Version: English

Dated this 30th day of October 2020.

(Signed)

Judge Raikos, Presiding
Athens, Greece

(Signed)

Judge Murphy
Cape Town, South Africa

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

Entered in the Register on this 8th day of December 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar