UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2021-UNAT-1125

Samir Nazih Amineddine
(Respondent/Applicant)

v.

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

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Martha Halfeld Judge Dimitrios Raikos
Case No.:	2020-1443
Date:	25 June 2021
Registrar:	Weicheng Lin

Counsel for Mr. Amineddine:	Bassam Hasan Abu Dirhamayn
Counsel for Secretary-General:	Jiyoung Kwon/Angélique Trouche

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Mr. Amineddine (the "Applicant"), a Field Language Assistant with the United Nations Truce Supervision Organization ("UNTSO"), contests his non-selection for Job Opening 87864 – Information Technology Assistant ("JO 87864") with the United Nations Interim Force in Lebanon ("UNIFIL"). Initially, the Applicant had challenged his non-selection for two other positions. He had applied to the United Nations Dispute Tribunal (the "Dispute Tribunal" or "UNDT") to contest all three non-selections, which applications were dismissed on the grounds they were not receivable.[1] On appeal, the United Nations Appeals Tribunal (the "Appeals Tribunal" or "UNAT") allowed the appeal on JO 87864 and remanded this non-selection to the Dispute Tribunal for adjudication.[2]

2. On the remand, in Judgment No. UNDT/2020/110, the Dispute Tribunal found the Applicant had not been fully and fairly considered for JO 87864 on the basis that the Administration ignored his pre-interview request for the names of the assessors in the selection process. The Dispute Tribunal ordered compensation in lieu of rescission as well as awarded compensation for moral harm (the "Judgment"). The Secretary-General appeals and requests the Judgment be vacated in its entirety, while the Applicant cross appeals and requests an increased compensation.

3. For reasons set out below, we allow the Secretary-General's appeal and dismiss the cross-appeal.

Facts and Procedure

4. On 10 July 2009, the Applicant entered into service with UNIFIL as a Language Assistant at the G-4 level in Naqoura, Lebanon. On 1 July 2017, he was reassigned as a Field Language Assistant with UNTSO under a fixed-term appointment at the G-4 level.

5. From 2016 to 2017, he applied for three advertised job openings: job openings 2016/38, 2016/026, and JO 87684 (which is at issue). He was not selected for any of the three.

[1] *Amineddine v. Secretary-General of the United Nations*, Judgment No. UNDT/2019/043.
[2] *Amineddine v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-962.

6. This appeal concerns only the selection process for JO 87684.[3]

7. As noted above, the Applicant applied for JO 87684, Information Technology Assistant with the UNIFIL Regional Information and Communications Technology Section (RICTS) at the G-5 level, which UNIFIL advertised on 26 October 2017. He was short-listed for a written assessment on 1 February 2018. The Applicant, along with 10 other applicants, passed the written assessment and was invited for a competency-based interview.

8. In an e-mail dated 15 February 2018, the Applicant confirmed his availability for interview, and asked UNIFIL to send him "the names of the assessors as promised as a guarantee to ensure transparency of this multi-step process, which we were assured that it was going to insure accountability at every step". There was no response to this request.

9. Competency-based interviews were conducted on 19 and 20 February 2018 by an assessment panel (the "Panel"). The Panel was chaired by an RICTS Information Systems Officer (FS-6) (the "Panel Chair") and included an RICTS IT Assistant (FS-5) and an Associate Environmental Engineer from the Environmental Unit. An *ex-officio* from UNIFIL's Human Resources and a note-taker were also present during the interviews. The Panel assessed 11 candidates against the competencies of professionalism, client orientation and technological awareness.

10. The Panel rated the Applicant as partially meeting the requirements for the competency of client orientation and gave a "satisfactory" rating for his professionalism and technological awareness.

11. On 21 February 2018, the Applicant wrote to UNIFIL to "register [his] reservation regarding the non[-]inclusion of the names of the assessors in the [interview] invitation and the non[-]response to [his] request in this regard". In the same e-mail, he questioned the

[3] Mr. Amineddine challenged his non-selection for the three posts to the Management Evaluation Unit, which held that his applications for JOs 2016/038 and 2016/026 were time barred, and that his application for JO 87684 had received full and fair consideration. Mr. Amineddine pursued his appeal to the Dispute Tribunal, which held that his applications to review his three non-selections were not receivable (Judgment No. UNDT/2019/043). Mr. Amineddine appealed that UNDT decision to the Appeals Tribunal. In Judgment No. 2019-UNAT-962 dated 25 October 2019, the Appeals Tribunal found that the UNDT had correctly held that it had no jurisdiction to consider Mr. Amineddine's application regarding JOs 2016/038 and 2016/026. But the Appeals Tribunal vacated the Dispute Tribunal's decision dismissing Mr. Amineddine's application regarding JO 87684 and remanded Mr. Amineddine's case in respect of JO 87684 to the Dispute Tribunal for consideration on the merits.

impartiality of the Panel Chair, as "he [was] going to defend his position in a pending case between [Mr. Amineddine] and UNIFIL at the docket of the UNDT in Nairobi". There was no response to this e-mail.

12. On 28 March 2018, the Chief/RICTS informed UNIFIL that the Panel recommended eight candidates to the Mission Review Panel for selection for the position. The Applicant was not recommended.

13. On 10 April 2018, the Mission Review Panel endorsed the recommendation. On 23 April 2018, the Head of Mission approved the selection of two of the recommended candidates and the rostering of the remaining six recommended candidates.

14. On 27 April 2018, UNIFIL's Human Resources Department informed the Applicant of his non-selection for JO 87684 (the "contested decision").

15. The Applicant received a Special Post Allowance to the G-5 level effective 1 July 2019, and he was promoted to the G-5 level on 1 November 2019.

The Dispute Tribunal's Judgment

16. In the Judgment, the Dispute Tribunal held the Applicant's candidacy for JO 87684 had not been fully and fairly considered. It found that his concerns about the potential bias of the Panel Chair had not been properly addressed prior to the interview due to the Administration's lack of response to his request for the assessors' names. The Dispute Tribunal found the Administration had "promised" [4] the Applicant during a pre-interview presentation that the names of the assessors would be provided, and this raised a legitimate expectation that he could raise his concerns of prejudice and bias of the Panel members. Considering that rescission of the contested decision was not an appropriate remedy in view of the lapse of time, the Dispute Tribunal ordered that the Applicant be paid an in-lieu compensation in the amount of 13 months of 22 per cent of the difference between his net base salary and the amount he would have received had he been selected for JO 87684. The Dispute Tribunal also ordered payment of one month's net base salary in compensation for stress and the resulting medical ailments.

[4] Impugned Judgment, para. 45.

Submissions

The Secretary-General's Appeal

17. The Secretary-General submits the Dispute Tribunal erred in law by reversing the burden of proof in holding the Applicant was not fully and fairly considered for JO 87684.

18. The Administration had showed the selection process for JO 87684 had been regularly performed in accordance with UNIFIL's Guidelines for the Selection of Locally Recruited Staff Members ("Guidelines"). This raises the presumption of regularity. The burden then shifts to the staff member to rebut this presumption. The Secretary-General argues this presumption cannot be rebutted by an inference but by clear and convincing evidence of irregularities.[5] The lack of response to the pre-interview request for the composition of the Panel is irrelevant to a finding of whether the Panel conducted the interviews properly or whether the Panel Members acted in a biased or discriminatory manner.

19. The Applicant had also failed to provide sufficient evidence to show bias on the part of the Chair, or any other member, of the Panel. The Applicant's concern primarily related to the possibility that the Panel Chair would be a witness in the other non-selection applications, but this does not mean the Panel Chair would automatically be biased or conflicted.

20. Finally, the Secretary-General says the Applicant was not entitled to be informed of the names of the Members of the Panel in advance of the interview.[6] Also, the factual circumstances of the present case are distinguishable to those in *Asariotis*.

21. The Secretary-General submits the Dispute Tribunal erred in awarding compensation in lieu of rescission of the contested decision and ordering an award of moral damages. The Applicant has not suffered from any illegality and has failed to prove harm directly caused by the contested decision. His doctor's notes pertaining to his dental, ophthalmologist and vitiligo treatment cannot be said to be directly related to the treatment of harm caused by the

[5] Citing to *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, paras. 4-5.
[6] Citing to *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-496, para. 20.

contested decision. Also, the Dispute Tribunal erred in fact and law when it held the Secretary-General had not disputed the validity of the medical evidence. It erred in law by receiving the supporting medical evidence of harm *ex parte* without giving the Administration an adequate opportunity to dispute that evidence.

The Applicant's Answer

22. The Applicant requests the Appeals Tribunal dismiss the appeal and increase the award of compensation to more than double the amount awarded in *Asariotis*.[7] He also requests the Appeals Tribunal remand the case to the Dispute Tribunal "in order to complete the disclosure of evidence and render a fair judgment" if it does not believe that the evidence is sufficient to support the doubling of the compensation award.

23. The Applicant submits the Dispute Tribunal's disregard of his request for evidence constitutes an error in law. He requests that all documentation related to his previous case for which the Appeals Tribunal issued Judgment No. 2019-UNAT-962 and his case related to his UNDT case under No. UNDT/2017/NBI/013 be made available to the Appeals Tribunal. This includes an RICTS organization chart that shows a clear hierarchical relationship between the Chair of the Panel and the note taker and another member of the Panel.

24. He also submits that the Dispute Tribunal correctly found the Administration had a duty to respond to his e-mail messages and to give him the names of the assessors, which is an entitlement arising not from the Inspira manual but from justice and transparency. This is not a transfer of the burden of proof.

25. He requests that UNIFIL be ordered to produce a copy of the training guide prepared by a member of the Panel including maps with colors indicating religious affiliations of the Lebanese regions.

26. Finally, the Applicant says the Secretary-General did not provide any basis for the argument to vacate UNDT's monetary compensation. He had more than enough time to object to the medical evidence.

[7] The Dispute Tribunal awarded Ms. Asariotis USD 8, 000 as material damages and USD 6,000 as moral damages. In Judgment No. 2015-UNAT-496, UNAT upheld the Dispute Tribunal's decision and awards.

The Applicant's Cross-Appeal

27. The Applicant submits the Dispute Tribunal disregarded important issues in its Judgment, particularly evidence on who should be allowed to conduct interviews, who should prepare interview questions, and how desired skills and qualifications should be decided. He was allotted only half an hour for the interview though the interviews spanned over two days. There were many examples of irregularities in the OIOS audit report.[8] Failure to consider issues of irregularities and harm to staff on the part of the Dispute Tribunal, and the Appeals Tribunal for that matter, has prevented the elimination of corruption in UNIFIL.

28. He says the Dispute Tribunal disregarded his requests for document disclosure. It failed to consider his two motions for that purpose. Its approach was the most unfavourable possible to his case. UNIFIL should be required to produce the documents that he has requested, which will demonstrate that UNIFIL attempted to circumvent the law to achieve its objectives previously through corruption. There was inadequate verification of the qualifications of all the candidates. UNIFIL did not provide the curriculum vitae or the last three performance evaluations of all the candidates to the Panel. The Applicant submits his concern is justified, and the facts demonstrate that the successful candidates had been selected in advance.

29. The Applicant requests the compensation be increased and the basis for calculation be the month in which the Dispute Tribunal handed down its Judgment plus five per cent interest. In addition, he asks that compensation be based on his higher salary at the time of the Judgment.

The Secretary-General's Answer to Cross-Appeal

30. The Secretary-General requests the Appeals Tribunal reject the cross-appeal in its entirety. The Applicant does not characterize any errors of fact or law warranting a reversal of the Judgment.

[8] Mr. Amineddine attached to his answer an OIOS audit report dated 13 January 2009 on the recruitment of national staff at UNIFIL. The OIOS found that the internal controls within UNIFIL over the recruitment and promotion of national staff were not adequate.

31. The Applicant again raises two motions for disclosure that the Dispute Tribunal had dismissed as irrelevant as they related to the 2016 selection exercises. The Applicant should not reargue the matter.

32. The Dispute Tribunal adequately considered the Applicant's claims concerning the alleged irregularities in the selection process for JO 87864. It had no obligation to review each claim in order to reach its conclusion that he had not been fully and fairly considered for JO 87864.

33. The Secretary-General also says the Applicant's new claims about the Second Reporting Officer to the successful candidates having designed the skills and profile for JO 87864, being only allotted half an hour for the interview, the UNIFIL Manual being in violation of administrative instruction ST/AI/2010/3 (Staff selection system), and the failure to provide the candidates' last three performance evaluations, were not part of the case before the Dispute Tribunal and are therefore not receivable. As such, they should be rejected.

34. Finally, the Secretary-General says the Applicant has failed to demonstrate any error by the Dispute Tribunal in awarding compensation. The Dispute Tribunal has discretion to determine the amount of compensation and the Appeals Tribunal will not lightly interfere unless there is a compelling argument that the Dispute Tribunal erred on a question of law or fact.[9] As for an award of interest, if the Appeals Tribunal were to award such, the Secretary-General notes that the current US prime rate is 3.25 per cent, and not five per cent as requested.

Considerations

Preliminary Matters

35. The Applicant requests an oral hearing to summon witnesses, including the Representative of the Secretary-General in the present case (the "UNIFIL lawyer") and the Chief of Mission Support of UNIFIL to be questioned on his "promise" to inform staff at large of the names of the assessors in selection processes. He also wishes to support his right to more compensation. Finally, he says the Secretary-General's appeal

[9] Citing, *inter alia*, to *Goodwin v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-467, para. 37.

contains misleading statements and therefore requests that a hearing be held to refute all fabricated claims.

36. The Appeals Tribunal has discretion under Article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules) to grant an oral hearing if it would "assist in the expeditious and fair disposal of the case". We find that an oral hearing would not assist in expeditiously and fairly resolving the issues on appeal. The purpose of the appeal is not to rehear the evidence or allegations but to review the Judgment for any errors of fact, law, procedure or jurisdiction as required by Article 2 of our Statute. The Applicant's request for an oral hearing is essentially a request to rehear and adduce new evidence not required to resolve the issues on appeal.

37. In addition, the Applicant requests that the Appeals Tribunal be provided with additional documentation and the testimony of the Chief of Mission Support of UNIFIL, because Dispute Tribunal erred in rejecting his motions to adduce additional evidence.

38. Article 18(1), (3) and (5) of the UNDT Rules of Procedure provides, *inter alia*, that "[t]he Dispute Tribunal shall determine the admissibility of any evidence", "[a] party wishing to submit evidence that is in the possession of the opposing party or of any other entity may, in the initial application or at any stage of the proceedings, request the Dispute Tribunal to order the production of the evidence", and "[t]he Dispute Tribunal may exclude evidence which it considers irrelevant, frivolous or lacking in probative value". The Applicant disagrees with the Dispute Tribunal's orders on his motions but provides no basis for a finding that it erred in rejecting those motions. The Dispute Tribunal's decision on the motions is within its competence as long as it did not commit an error as enumerated by Article 2 of our Statute.

39. If the Applicant is asking the Appeals Tribunal to order production of additional evidence, which is not clear from his submissions, he should make such an application pursuant to Article 10 of our Rules. Article 10 provides that the Appeals Tribunal may order production of evidence on its own volition if "it is in the interest of justice and the efficient and expeditious resolution of the case" provided the evidence was not known to the party seeking to submit the evidence and could not have been presented to the Dispute Tribunal. The Applicant's request does not meet these requirements and is denied.

Merits of Appeal & Cross-Appeal

i) Did the Dispute Tribunal err in finding that the Applicant was not fully and fairly considered?

40. For reasons set out below, we find the Dispute Tribunal erred in making this finding.

41. The Dispute Tribunal may only rescind a selection or promotion process in "extremely rare circumstances". Generally, when a candidate has received fair consideration, absent discrimination and bias, with proper procedures, and when all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection.[10] The burden of proof is on the candidate challenging the non-selection to prove with "clear and convincing evidence" that this has not occurred.[11]

42. The proper procedures in the present case are set out in ST/AI/2010/3 (Staff selection system):

> **Section 1**
>
> **Definitions**
>
> (*c*) *Assessment panel*: a panel normally comprised of at least three members, with two being subject matter experts at the same or higher level of the job opening, at least one being female and one being from outside the work unit where the job opening is located, who will undertake the assessment of applicants for a job opening.
>
> **Section 7**
>
> **Pre-screening and assessment**
>
> 7.5 Shortlisted candidates shall be assessed to determine whether they meet the technical requirements and competencies of the job opening. The assessment may include a competency-based interview and/or other appropriate evaluation mechanisms, such as, for example, written tests, work sample tests or assessment centres.
>
> 7.6 For each job opening, the hiring manager or occupational group manager, as appropriate, shall prepare a reasoned and documented record of the evaluation of the proposed candidates against the applicable evaluation criteria to allow for

[10] *Rolland*, *supra* note 5, para. 4.
[11] *Ibid.*, para. 5.

> review by the central review body and a selection decision by the head of the department/office.

43. Further, the Guidelines specific to UNIFIL provides that:

> 6.1.5. The Hiring Manager shall be responsible for establishing an assessment panel. Each assessment panel shall have a minimum of three staff members at the same or at a higher level than the vacant position and hold appointments under the Staff Regulations and Rules other than temporary assignments; at least one (1) female and one (1) staff member from outside the organizational unit where the vacant position is located. The Hiring Manager of the vacant position may participate in the assessment panel. All interview panelists [sic] must have completed the mandatory training on competency-based selection and interviewing skills.

44. In reviewing administrative decisions regarding appointments and promotions, the Appeals Tribunal has established the factors to be considered: (a) whether the procedure as laid down in the Staff Regulations and Rules was followed; (b) whether the staff member was given fair and adequate consideration; and (c) whether the applicable Regulations and Rules were applied in a fair, transparent and non-discriminatory manner. The Tribunal's role is not to substitute its decision for that of the Administration.[12]

45. If the Administration is able to even minimally show that the applicant's candidature was given a full and fair consideration, then the presumption of regularity applies and the burden of proof shifts to the applicant who must show through clear and convincing evidence that he or she was denied a fair chance of promotion or selection.[13]

46. In this case, the Dispute Tribunal did not find the procedures in the Staff Regulations and Rules or the Guidelines had not been followed. The facts indicate that the selection and recruitment process proceeded according to the Guidelines and policies. The Panel was properly constituted and there is no evidence that relevant considerations were not considered or that irrelevant considerations were taken into account in the contested decision.

[12] *Savadogo v. Registrar of the International Tribunal for the Law of the Sea*, Judgment No. 2016-UNAT-642, para. 40.
[13] See *Rolland*, *supra* note 5, para. 5.

47. As for not responding to the Applicant's pre-interview request for the names of the assessors, there is no requirement that applicants must be informed of the names of the assessment panels. Section 7.5 of ST/AI/2010/3 governs the interview process, and this instrument does not impose an obligation on the Administration to inform the staff member of the composition of the assessors prior to the interview.[14] Therefore, the Dispute Tribunal's finding in the present case that the Administration's non-response or "silence" to the Applicant's pre-interview request for the names of the Panel Members led to an "inference, and in fact a finding, of impropriety" was in error.[15] As there was no legal obligation to provide these names, the Administration's "silence" was not improper or contrary to the established procedure.

48. The Dispute Tribunal also held the Applicant had a "legitimate expectation" based on a "promise" of the names of the assessors during a pre-interview presentation. However, there is no evidence of this "promise" by the Administration. There is no evidence on the nature of the presentation, when it occurred, who attended, and what exactly was said. There is no evidence that any of statements made in the presentation was confirmed in writing. Without knowing the details and circumstances of the statement being relied upon, the Applicant's general statement alleging a general "promise" to staff cannot raise a legitimate expectation to this individual staff member for this particular selection process. Therefore, the Dispute Tribunal's inference of impropriety was baseless particularly as there was no procedural obligation to provide the names of the assessors. If the Administration has no obligation in established procedures or accepted practice to provide the names and if the circumstances do not raise a legitimate expectation, the lack of response to the Applicant's request alone cannot raise an inference of impropriety or unlawfulness.

49. As there is no obligation to provide these names and the Administration has minimally shown that the Applicant's candidature was given a full and fair consideration by following the established procedures in the Staff Regulations and Rules, the burden of proof is on the Applicant to show through clear and convincing evidence that he was denied a fair and adequate consideration in the selection process. We find that the failure to provide the assessors' names prior to the interview and any resulting inference does not meet this

[14] See *Asariotis*, *supra* note 6, para. 20.
[15] Impugned Judgment, para. 40.

threshold. We find the Dispute Tribunal did not appropriately apply the standard of review and burden of proof as outlined in *Rolland*, and this constitutes an error of law.

50. Further, in the Judgment, the Dispute Tribunal erred when it found there was an "alleged failure of the [UNIFIL Administration] to implement promised checks and balances to ensure transparency in the interview process, thereby allowing [Mr. Amineddine] to raise timely concerns about potential bias".[16]

51. In making this finding, the Dispute Tribunal failed to consider the "checks and balances to ensure transparency" instituted in established procedures as outlined in the Guidelines and the ability of the Applicant to raise timely concerns about potential bias after the interview. There is a process to ensure applicable procedures are followed and mistakes and irregularities such as conflict of interest and bias are protected against.

52. For example, the Mission Review Panel's role is to review the unranked list of recommended candidates to ensure the evaluation criteria have been properly applied and the applicable procedures were followed.[17] The Mission Review Panel specifically considers whether the recommendation of candidates is "reasoned and objectively justifiable", there was no "mistake of fact or mistake of procedure, prejudice or improper motive that could have prevented a full and fair consideration of the candidates' requisite qualifications", and the record contains a "fully justified analysis of each of the competencies".[18] Where the Mission Review Panel has found that the evaluation criteria were properly applied and the applicable procedures were followed, it will inform the Chief Human Resources Officer who will forward the matter to the Head of Mission and recommend the Head of Mission approve the filling of the vacancy from amongst the list of recommended candidates.[19] Where the Mission Review Panel has questions or doubts regarding the applicable procedures, it shall request necessary information to resolve the questions.[20] Where the Mission Review Panel has found that the evaluation criteria were improperly applied and/or the applicable procedures were not followed, it will transmit this finding and its recommendations to the Director, Field Personnel Division for review and decision.[21]

[16] *Ibid.*
[17] The Guidelines, para. 6.2.5.
[18] *Ibid.*, para. 6.2.7.
[19] *Ibid.*, para. 6.2.8.
[20] *Ibid.*, para. 6.2.9.
[21] *Ibid.*, para. 6.2.10.

53. Therefore, even though the Applicant had not received the names of the Panel members before the interview, he still had an opportunity to raise any concerns about bias or conflict of interest after the interview, which concerns could have been reviewed by the Mission Review Panel.

54. Notably, in the Judgment, the Dispute Tribunal found no evidence of discrimination based on religion or ethnicity and made no finding of whether potential bias was present in the selection process.

55. Finally, the Dispute Tribunal held the Applicant's concerns of potential bias were similar to those in *Asariotis*. We disagree.

56. The Appeals Tribunal in *Asariotis* held that, although Administrative Instruction ST/AI/2010/3, Section 7.5, does not impose an obligation on the Administration to inform the staff member of the composition of the interview panel prior to the interview, the factual matrix of that case was such that the failure of the Administration to advise the staff member of the names of the interview panel in advance vitiated the entire process.[22] Those facts included the staff member having been interviewed several times for the same post in question and the ongoing proceedings before the UNDT regarding her challenge to an earlier selection process for that post. The post in question had been advertised and readvertised. On the readvertisement, the Geneva Central Review Board found the selection process was flawed and recommended the post be readvertised once again. The staff member applied once again to the same post and requested that she not be evaluated by the same members as previously. This request was against the background of a legal challenge to a prior selection process concerning the same post whose previous process the Geneva Central Review Board could not endorse. The Dispute Tribunal found the presence of at least two of the members of the panel could justifiably create the appearance of a conflict of interest. It was these facts that led the Appeals Tribunal to find the failure to formally communicate the names of the panel members deprived Ms. Asariotis of the possibility to contest the composition of the panel.

57. The factual matrix in the present case is not the same. The Applicant's concern of the composition of the Panel did not relate to any ongoing litigation regarding the selection process for the same post with the same Hiring Manager; it was rather related to different

[22] See A*sariotis*, *supra* note 6, paras. 23-24 and 30.

selection processes for different job openings. The Applicant alleged that the Chair of the Panel was expected to defend his position in a pending litigation before the Dispute Tribunal on the challenge of the other job openings and this was a conflict of interest. However, the Applicant's challenges for the different job openings were not successful. Also, there was no evidence that the Panel Chair's involvement put him in conflict just because of his involvement in another selection process for a different job opening for which the selection process had never been previously considered irregular.

58. Therefore, we find the Dispute Tribunal erred in its consideration of *Asariotis* and when it held that the Applicant's concerns were based on similar concerns of potential bias as in *Asariotis*.

59. As a result of these errors, we vacate the Judgment.

ii) Did the Dispute Tribunal Err in the Award of Compensation?

60. Given we have vacated the Judgment, the award of compensation must also be vacated as the finding of illegality of the contested decision was in error.

61. It follows then that the Applicant's request for an increase of the amount of compensation to more than double the amount awarded in *Asariotis* is denied.

62. However, as an aside, we accept the Secretary-General's submission that the Dispute Tribunal erred in relying on *ex parte* evidence, namely, the three doctors' notes. We accept that the Secretary-General received the translated copies of the doctors' notes from the Dispute Tribunal Registry on 1 July 2020, only two days before the issuance of the impugned Judgment. This violates the principle of *audi alteram partem*, which requires a party to know the case against him or her and to be given an adequate opportunity to respond. The Secretary-General was not given an adequate opportunity to respond to the medical evidence before the Dispute Tribunal. Therefore, we find the Dispute Tribunal committed an error of procedure to affect the decision of the case pursuant to Article 2(e) of our Statute.

63. But because the Judgment is vacated, this procedural error has no impact on the final result and outcome of this appeal.

Judgment

64. We vacate Judgment No. UNDT/2020/110 in its entirety.

Original and Authoritative Version: English

Dated this 25th day of June 2021.

(Signed)	*(Signed)*	*(Signed)*
Judge Sandhu, Presiding Vancouver, Canada	Judge Halfeld Juiz de Fora, Brazil	Judge Raikos Athens, Greece

Entered in the Register on this 15th day of July 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar