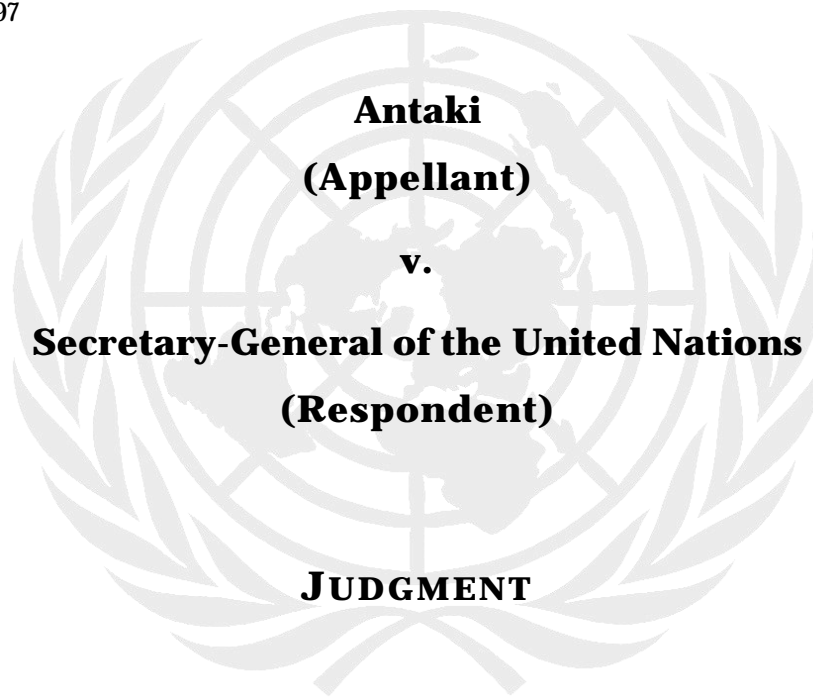




UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2010-097



**Antaki
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Luis Simón, Presiding Judge Jean Courtial Judge Sophia Adinyira
Judgment No.:	2010-UNAT-096
Date:	29 October 2010
Registrar:	Weicheng Lin

Counsel for Appellant:	François Lorient
Counsel for Respondent:	Melanie Shannon

JUDGE LUIS MARÍA SIMÓN, Presiding.

Synopsis

1. In this case, Michele Antaki (Antaki) contested an administrative decision not to appoint her to a P-5 position and requested compensation. The United Nations Dispute Tribunal (Dispute Tribunal or UNDT) considered that the decision not to appoint her was valid and lawful. This Court finds no error in the UNDT Judgment and affirms it. The Tribunal will decide the parties' submissions regarding the award, and the amount, of compensation in a separate judgment (Judgment No. 2010-UNAT-095).

Facts and Procedure

2. The promotion exercises for two P-5 positions in the Arabic Interpreters Section in New York (AIS) in the Department of General Assembly and Conference Management (DGACM) gave rise to Antaki's case before the UNDT.

3. Antaki applied for the two P-5 positions in the AIS and was interviewed in early November 2004. Subsequently, examination by the Administration of the e-PAS system in the AIS revealed fundamental shortcomings that reflected significantly on the reliability of the appraisals and the P-5 selections. It therefore decided to cancel the 2004 vacancy announcements and to recommence the selection process.

4. In April 2005, Antaki was informed that the posts had been re-advertised. However, in early November 2006, the second round of the selection process was also cancelled. On 8 November 2006, the candidates received a list of "Performance/Promotion Criteria for P-5 Interpreters". This list was referred to as "list 12" as it had already been revised twelve times in consultation with the candidates. .

5. On 12 July 2007, two P-5 vacancies were issued on Galaxy. On 24 October 2007, Antaki was interviewed by a panel of five members, including the Programme Case Officer (PCO) who was the chief of the AIS. Each interviewer took notes and scored the interviewed candidates, using tables prepared by the PCO. Following the evaluation by the interview panel members, Antaki was ranked fifth out of seven candidates.

6. During the proceedings before the UNDT, the PCO testified that after the interviews, she created a narrative, which reflected the handwritten notes of the interview panel members and the scores given to the candidates. The PCO noted that she “conven[ed] a meeting to ascertain that the narrative fairly reflected what the members had written, having first provided them with the notes to enable the comparison to be made”. She created a descriptive narrative of the interview, an interview matrix, a promotion criteria matrix, and an overall matrix, which she provided, along with several other documents relating to the selection and interview process, for review by the Under-Secretary-General for DGACM (USG/DGACM).

7. By note to the USG/DGACM dated 29 November 2007, the PCO and the Assistant Secretary-General, DGACM, specifically recommended two candidates for the two P-5 interpreter posts. Two further candidates were placed on a “recommended list” or roster. Antaki was not selected for either of the posts nor was she placed on the roster. On 26 December 2007, the Central Review Board (CRB) endorsed the recommendation and the recommended candidates were selected. In January 2008, a third P-5 post was advertised and awarded to one of the candidates listed on the roster. Antaki was notified later that month that she had not been selected for that post, either.

8. Antaki requested an administrative review of the decision not to appoint her to a P-5 post. The Administrative Law Unit rejected her claim that she had been improperly excluded from promotion. Antaki subsequently filed an appeal with the Joint Appeals Board (JAB). Subsequent to the JAB’s abolition, her case was transferred to the UNDT.

9. On 7 April 2010, the UNDT issued Judgment No. 2010/059. The UNDT concluded that the decision not to appoint Antaki as a P-5 interpreter was valid and lawful. It found that the Administrative Instruction on Special Measures for the Achievement of Gender Equality was not applicable to Antaki. Further, having considered the question of the relevance of the e-PAS evaluations in the AIS over the relevant period and the relevance of the e-PAS in the selection process, it found that the decision at the outset to exclude e-PAS evaluations was not unreasonable. It however found that there was an “inappropriate imprecision and confusion of the matrices” which contributed to Antaki’s frustration and stress and justified an award of compensation. The UNDT found that Antaki failed to achieve a promotion to which she legitimately aspired and a fundamental requirement of good faith obliged the Administration to

ensure that the outcome demonstrably complied with all the instrumental requirements, especially in light of the unfortunate mismanagement of prior attempts, which had directly involved Antaki. The UNDT noted that “[t]he transparency and logic of the process should have prevented this from occurring”. It held that the shortcomings in the process had not affected the propriety of the outcome and that therefore compensation should be nominal, but sufficient to reflect the real, and not trivial, interest of Antaki in compliance with her contractual rights. It accordingly awarded Antaki a sum of USD1,000.

10. On 10 May 2010, Antaki submitted an application for revision of judgment to the UNDT which the UNDT dismissed by Order No. 119 (NY/2010).

11. On 24 May 2010, the Secretary-General filed an appeal (case no. 2010-096), alleging that the UNDT erred in law and exceeded its competence in awarding compensation and requesting that the Appeals Tribunal reverse the UNDT Judgment to the extent that it awarded compensation in the amount of USD1,000. The same day, Antaki filed an appeal against UNDT Judgment No. 2010/59 and UNDT Order No. 119 (NY/2010), and on 30 May 2010, she filed a rectified appeal. The Secretary-General filed his answer on 16 July 2010.

12. On 25 August 2010, Antaki filed the “Appellant’s motion to strike and to allow her to reply to the answer”. In the motion, Antaki alleged that, in his answer, the Secretary-General raised several issues which were not subject of the appeal; and which either distorted the truth or constituted new facts, which had not been adduced before the Dispute Tribunal. The Duty Judge considered that it would be for the panel of Judges considering the appeal and not the Duty Judge to determine whether Antaki’s allegations were correct. She ordered that, in order to assist the panel of Judges in making this determination, it would be helpful to receive a detailed submission by Antaki on this matter. Accordingly, she granted Antaki leave to file a reply to the Secretary-General’s answer.¹ Antaki filed her reply to the Secretary-General’s answer on 10 September 2010.

¹ *Antaki v. Secretary-General of the United Nations*, Order No. 5 (2010), 31 August 2010.

Submissions

Antaki's Appeal

13. Antaki submits that the UNDT erred in law in reaching the impugned judgment. She, in particular, submits the following:

- Antaki's right to be fully and fairly considered for a promotion was violated;
- Antaki's e-PAS and rebuttals were not taken into consideration in the promotion process, in accordance with Staff Regulation 1.3 and Staff Rule 1.3;
- The Administrative Instruction on "Special Measures for the Achievement of Gender Equality" was not taken into consideration;
- The PCO manipulated the pre-approved CRB selection criteria, thereby violating Staff Rule 4.15, by excluding Antaki's e-PAS rebuttals and by drafting a narrative report limiting itself to five competencies in a 20-point interview lasting 50 minutes, by ignoring the other 160 points mandated by the "DGACM Promotion Criteria rev. 12" document, and by disregarding her outstanding PAS;
- The award of USD1,000 is not commensurate with the prejudice suffered;
- Antaki was not provided competent counsel which constituted a violation of the principle of equality of arms;
- In Order No. 2010/119, the UNDT failed to give in-depth consideration to new evidence and "hastily rejected the revision application".

14. Antaki requests that the Appeals Tribunal rescind the Secretary-General's P-5 appointment decisions; order Antaki's appointment to one of these P-5 posts; order that a new vacancy announcement for the other rescinded appointments be circulated; rule that Antaki must be compensated with a 2-year net base salary for the contractual violations and due process improprieties suffered; order, in case the Secretary-General elects not to rescind its appointment decisions, the payment of an additional compensation of 1-year net base salary, in view of the exceptional circumstances of this case; and order, in view of the abuses of procedures at DGACM and by the Secretary-

General at the JAB and the UNDT, the payment of legal costs in the amount of USD20,000.

Secretary-General's Answer

15. The Secretary-General responds that the UNDT correctly concluded that the decision not to recommend Antaki as a qualified candidate was valid and lawful. The UNDT correctly concluded that the descriptive narrative of the candidate's performance during the interview reflected the views of the interview panel and prevailed over the scores given in the matrices. It further correctly held that the evidence of the PCO was truthful and that the inconsistencies between the narrative and the scores did not affect the "propriety of the evaluation of the candidate as unsuitable". The UNDT did not err in concluding that the Administrative Instruction on Special Measures for the Achievement of Gender Equality was found not to be applicable to Antaki. And the UNDT correctly considered the relevance of the e-PAS and rebuttal to the contested e-PAS in the selection process and found that the decision to exclude e-PAS evaluations was not unreasonable.

16. Antaki established no errors which would require a reversal of the UNDT judgment. She was given full and fair consideration for promotion. She should not have been awarded compensation. It was her responsibility to secure effective legal representation.

17. The UNDT Order No. 119 (NY/2010) correctly dismissed Antaki's application for revision of judgment.

18. The Secretary-General requests the Appeals Tribunal to affirm the Judgment of the UNDT that the selection process was valid and lawful; that Antaki has not established any errors warranting a reversal of the Judgment; and reverse the Judgment's order to pay compensation.

Antaki' Reply

19. Antaki claims that the wording of the Secretary-General's answer contains "many false and misleading assertions which are not part of any evidence on record, nor have been adduced at UNDT". Antaki requests that the Appeals Tribunal strike these submissions and find that the PCO narrative was not properly established in evidence as

reflecting the Interview Panel members' scores and evaluation; reject, as unproven, the assertion that Antaki accepted that her e-PAS and rebuttal would not be part of the selection process; declare that the Secretary-General did not discharge his burden of proof to demonstrate his compliance with the selection procedures and show that Antaki's candidature was fully and fairly considered; endorse Antaki's conclusions in her appeal; with costs for the "abuse of[,] and protracted[,] procedures" by the Secretary-General.

Considerations

20. This Tribunal confirms the impugned Judgment to the effect that the decision not to appoint Antaki to the P-5 posts for which she applied was valid and lawful. As previously noted, the parties' challenges regarding the award and the amount of compensation will be considered in a separate judgment.

21. Antaki has failed to persuade this Court that there was a substantial error or flaw in the contested administrative decision, in the proceedings that lead to it, or in the UNDT Judgment, which would require the intervention by the Appeals Tribunal. An appeal is not an opportunity for the parties to reargue their case. It does not fall to the Appeals Tribunal to conduct a new trial. Antaki presents no new arguments before this Court to demonstrate that there was a substantial error or flaw in the UNDT Judgment. She merely repeats arguments already thoroughly considered and rejected by the UNDT.

22. The evidence adduced (documents and testimony) supports the conclusion that despite some minor inconsistencies (i.e. between the scores and notes and the narrative) or defects (i.e. the e-PAS issue) the proceeding leading to the decision not to appoint Antaki was lawful and did not violate her rights.

23. Additionally, it is clear from the evidence that, in any event, the outcome of the promotion process could not have been different and in favour of Antaki, because there were other candidates ranked higher than her who could have been included in the list for recommended appointments or for the roster. Some of them were not selected for the first two posts, and at least one person, even included in the roster, did not obtain the third post later awarded. Hence, Antaki was not deprived of any significant chance to be promoted.

24. In conclusion, Antaki has not demonstrated any errors in the UNDT Judgment in regard of the merits of the administrative decision warranting the intervention of the Appeals Tribunal. Neither has she demonstrated that she had not been properly represented before the UNDT.

Judgment

25. The Tribunal dismisses Antaki's appeal and affirms the UNDT Judgment with respect to her non-appointment to a P-5 position.

Dated this 29th day of October 2010 in New York, United States.

Original and authoritative version: English

(Signed)

Judge Simón, Presiding

(Signed)

Judge Courtial

(Signed)

Judge Adinyira

Entered in the Register on this 29th day of December 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar