



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

Judgment No. 2015-UNAT-540

**Aliko
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Rosalyn Chapman, Presiding Judge Richard Lussick Judge Sophia Adinyira
Case No.:	2014-618
Date:	2 July 2015
Registrar:	Weicheng Lin

Counsel for Mr. Aliko:	Self-represented
Counsel for Secretary-General:	Amy Wood

JUDGE ROSALYN CHAPMAN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2014/042, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 15 April 2014, in the case of *Aliko v. Secretary-General of the United Nations*. On 18 July 2014, Mr. Artan Aliko filed his appeal and on 12 September 2014, the Secretary-General of the United Nations filed his answer.

Facts and Procedure

2. On 1 March 2009, Mr. Aliko joined the United Nations Office for Project Services (UNOPS), within the Switzerland Operations Center (SWOC), in Geneva, as Portfolio Manager of the Environment Portfolio, at the P-3 level. In May 2011, the SWOC Director assigned Mr. Aliko to the Water-Sanitation and Hygiene (WASH) portfolio.

3. The UNDT made the following undisputed factual findings:¹

... On 15 December 2010, a “Committee”, composed of the Executive Director, UNOPS, the Deputy Executive Director, UNOPS, and the Director, Outreach and Partnerships Group (“OPG”) endorsed the decision to assign, effective 1 January 2011, the Project Manager, Small Grants Program, North America Office ..., P-4 level, from New York to the OPG, UNOPS Headquarters in Copenhagen as Community Grants Advisor. This assignment was later extended, several times, until the end of 2012. The incumbent of the post of Community Grants Advisor was subsequently selected for the disputed post. ...

... On 29 February 2012, an Investigator, Internal Audit and Investigation Group (“IAIG”), informed several UNOPS staff member[s], including [Mr. Aliko], that the IAIG had received a complaint regarding a contract with the Renaissance Mumbai Convention Center, and that it had decided to conduct an initial assessment in order to determine if it warranted an investigation.

4. On 1 June 2012, Mr. Adam Bouloukos was appointed the SWOC Director. He was formerly the Director, OPG. On 7 August 2012, he advised Mr. Aliko that the latter’s position would be upgraded to the P-4 level and invited him to apply, and that his current appointment at the P-3 level would not be extended beyond 30 September 2012. Mr. Aliko’s appointment expired on 30 September 2012, and he separated from service.

¹ Impugned Judgment, paras. 9 and 10.

5. On 8 August 2012, UNOPS advertised Vacancy Announcement VA/2012/B5108/987 for the position of Portfolio/Grants Manager (P-4 level), Europe and Middle East, Geneva (the Post). It listed the following key functions: Fund management coordination (overall coordination); grant management (advisory guidance and support); operational portfolio management; partnership and client relations; implementation support (programme development and business acquisition activities of SWOC); support to the Representative and the SWOC Director; and knowledge management.

6. Mr. Aliko applied for the Post. He passed a written examination and was interviewed on 18 September 2012. The interview panel consisted of: (1) the SWOC Director, who was the Chair and Hiring Manager; (2) the Programme Manager, Global Sanitation Fund (GSF), Water Supply & Sanitation Collaborative Council (WSSCC) (Programme Manager), who was the client representative; (3) the Director, IAIG, who was the technical representative; and (4) a Human Resources Manager, SWOC.

7. A total of 134 individuals applied for the Post. The interview panel shortlisted ten candidates, who were given a written examination. The top five candidates, all of whom were UNOPS personnel, were interviewed by telephone. The interview panel set a “minimum threshold” of 75 out of a maximum 100 points for the interview. All candidates were asked the same series of ten questions, worth ten points each, that assessed the candidates’ “motivational fit for the post, core values, competencies and technical knowledge”. In this regard, the panel considered motivational fit, professionalism, integrity, client orientation, team work, leadership, vision, programme management, solution orientation and project management. Three of the five candidates interviewed, including Mr. Aliko, did not receive a passing score of 75. The selected candidate received a score of 88 and the alternative selected candidate received a score of 81.

8. On 13 October 2012, Mr. Aliko was advised in writing that he had not been selected for the Post.

9. On 10 December 2012, Mr. Aliko submitted a request for management evaluation by UNOPS of the decision “not to select [him] for the position of the Portfolio/Grants Manager P-4, SWOC, UNOPS”. On 24 January 2013, UNOPS denied Mr. Aliko’s request.

10. On 23 April 2013, Mr. Aliko, proceeding *pro se*, filed an application before the UNDT, which the Dispute Tribunal split into two, separate applications. The UNDT Registry assigned Case No. UNDT/GVA/2013/021 to Mr. Aliko's challenge to the decision not to select him for the Post. In the application, Mr. Aliko claimed that the upgrade of his position as Portfolio Manager from P-3 to P-4 was unjustified and was motivated by the SWOC Director's intent to transfer a former colleague to SWOC for the purpose of selecting that person for the Post. Mr. Aliko further challenged the composition of the panel, which he alleged had been decided on to secure the selection and appointment of the Director's preferred candidate. On 31 May 2013, the Respondent filed a reply to the application.

11. On 19 June 2013, counsel appeared on behalf of Mr. Aliko and filed a motion to file a rejoinder. The UNDT granted the motion and on 19 September 2013, Mr. Aliko filed his rejoinder. The Respondent requested the opportunity to file comments to the rejoinder, and the UNDT also granted that request. On 11 October 2013, the Respondent filed his comments.

12. An oral hearing was held on 26 March 2014, at which counsel for the parties appeared.

13. On 15 April 2014, the Dispute Tribunal issued Judgment No. UNDT/2014/042, denying Mr. Aliko's application.

14. On 18 July 2014, Mr. Aliko, proceeding *pro se*, filed his appeal of the UNDT Judgment, and on 12 September 2014, the Secretary-General filed his answer.

Submissions

Mr. Aliko's Appeal

15. Mr. Aliko claims that the UNDT erred in not finding that three of the four panel members had conflicts of interest that biased them against him: the SWOC Director, the Programme Manager, and the Director, IAIG. Mr. Aliko asserts that the SWOC Director had a preferred candidate he had previously worked with and whom he wanted selected for the Post. To assure the selection of his preferred candidate, the SWOC Director arranged for the preferred candidate, who held a P-4 level position, to be transferred to Europe and

reassigned a Project Manager role with UNOPS; upgraded the Post from the P-3 to the P-4 level, when there was no reason to do so; added the requirement of grant-management experience to the terms of reference for the Post; and selected members of the panel who would agree to choose his preferred candidate.

16. Mr. Aliko asserts that the Programme Manager had a conflict of interest with him due to the fact that, over the past year or so, Mr. Aliko regularly rejecting requests made by the Programme Manager. Further, Mr. Aliko contends that the Programme Manager had a moral obligation to the selected candidate stemming from sitting on the same panel that had previously selected the Programme Manager for his position.

17. Mr. Aliko asserts that the Director, IAIG, had a conflict of interest with him due to the fact that, in his capacity with IAIG, he was investigating a matter that was within Mr. Aliko's portfolio. Additionally, Mr. Aliko asserts that the Director, IAIG, was not qualified to be a "technical expert" on the panel. He claims that the Director, IAIG, showed bias when he asked a question during the interview that distressed him.

18. Mr. Aliko claims that the UNDT also erred when it did not find that the selected candidate may have had early access to the written test and interview questions, citing the interview notes from the panel.

19. Finally, Mr. Aliko claims that the UNDT erred when it did not find that, prior to the selection process for the Post, the SWOC Director avoided and isolated him and undermined his authority. As examples, Mr. Aliko cites a communication banning him from directly communicating with the IAIG about the audit of the matter within his portfolio, the refusal to send him to a course, and the failure to defend him when he was accused of inappropriate behavior in dealing with Human Resources personnel.

20. Mr. Aliko seeks compensation in the amount of two years' salary as compensatory and punitive damages for the procedural irregularities occurring during the process of filling the Post.

The Secretary-General's Answer

21. The UNDT correctly held that the selection process was lawful in all respects. Mr. Aliko received full and fair consideration, all proper procedures were followed,

all relevant material was taken into consideration, and there was no discrimination and bias. Mr. Aliko did not meet his burden to show by a preponderance of the evidence bias or conflicts of interest on the part of the panel members.

22. As to the SWOC Director, the UNDT correctly found that the terms of reference for the Post, including grants management experience, were justified by the actual activities performed at SWOC and were not tailored for any candidate. There was no evidence proffered to show a hostile working relationship with the SWOC Director, and, as the UNDT found, Mr. Aliko had never previously complained about the Director's actions or conduct, thus undercutting his claims of prior ongoing discrimination.

23. As to the other panel members, the UNDT properly found that sitting on an interview panel in the past did not preclude a panelist from being neutral in another selection exercise. And moreover, Mr. Aliko admitted he had a cordial relationship with the Programme Manager. The UNDT correctly determined that the Administration had discretion to determine who is a "technical expert" on a selection panel.

24. The UNDT correctly found that there was no evidence to support Mr. Aliko's claim that the selected candidate may have had early access to the test and interview questions. This is pure speculation on the part of Mr. Aliko.

25. Mr. Aliko has shown no errors of fact or law warranting a reversal of the Judgment. The claims on appeal merely repeat the claims before the Dispute Tribunal; the appeal is an attempt to relitigate the case. Mr. Aliko offers only speculation and suspicion, rather than evidence.

26. The UNDT properly found that certain matters pre-dating the selection exercise were not before it since Mr. Aliko had not sought management evaluation of those matters. For example, Mr. Aliko's challenges of the decisions to upgrade his position from P-3 to P-4 and to transfer the selected candidate to SWOC from his previous UNOPS position were never exhausted by management evaluation. Any claims of systematic harassment not attendant to the selection exercise were not properly before the UNDT, as the UNDT found.

27. Finally, Mr. Aliko's request for compensation is without foundation since he has not shown that the selection process was unlawfully conducted and that his rights were breached. Moreover, punitive damages are not allowed under the UNDT and Appeals Tribunal Statutes.

Considerations

28. It is an axiom that the appellant has the burden on appeal to establish that the UNDT judgment is defective within the meaning of Article 2(1) of the Appeals Tribunal Statute. This means that:²

[w]hen the Appeals Tribunal hears an appeal, it does not simply re-try the case. ... It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective. It is not sufficient for an appellant to state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the Dispute Tribunal.

29. The Appeals Tribunal determines that Mr. Aliko has not raised claims under the Appeals Tribunal Statute – in fact, he does no more than refer to the Appeals Tribunal Statute in one paragraph of his appeals brief. This is not sufficient. Moreover, throughout his appeals brief, Mr. Aliko reargues the claims he presented to the UNDT, which dismissed them for lack of merit; he does not explain how the UNDT erred in deciding his claims.³ On this basis alone, the Appeals Tribunal dismisses the appeal.

30. “[I]t is not the function of the Dispute Tribunal [...] to take on the substantive role with which the interview panel was charged.”⁴ Rather, the Dispute Tribunal reviews the challenged selection process to determine whether a “candidate[] ha[s] received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration”.⁵ The burden is on the candidate challenging the selection process to “prove through clear and convincing evidence” that he or she did not receive full and fair consideration of his or her candidacy, the applicable procedures were not followed, the members of the panel exhibited bias, or irrelevant material was considered or relevant material ignored.⁶

² *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

³ *Hassan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-504, para. 18; *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-096, para. 21; *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035.

⁴ *Fröhler v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-141, para. 32.

⁵ *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, para. 20.

⁶ *Ibid.*, para. 21.

31. The Dispute Tribunal correctly applied the foregoing principles in considering Mr. Aliko's challenge to the selection process for the Post. As discussed in more detail below, the UNDT did not make any errors of law or fact in denying Mr. Aliko's application and concluding that "the selection procedure was correctly followed, ... the candidature of [Mr. Aliko] was fully and fairly considered and ... there was no bias or procedural flaw".⁷

32. The UNDT found that "no clear and evident" abuse of discretion could be found in the terms of reference for the Post, e.g., the additional grant management requirement. Rather, the UNDT found that "the documents on file show that the profile of the post as advertised in the vacancy announcement was justified by the actual activities performed at SWOC. Therefore, [Mr. Aliko's] argument that the terms of the vacancy announcement itself were adjusted only to fit the successful candidate has no merit."⁸ Mr. Aliko presented no evidence to the contrary before the Dispute Tribunal and we cannot find any error in the UNDT's conclusion.

33. The Dispute Tribunal fully and carefully considered Mr. Aliko's several claims of conflict of interest and bias against the panel members and found those claims were unsupported. We find no errors of fact or law by the Dispute Tribunal in reaching these conclusions. As to the claim of bias regarding the SWOC Director, the UNDT properly found that Mr. Aliko "did not prove that the Director, SWOC, unduly influenced the selection decision to his detriment ... [and] that his acting as Chair of the Interview Panel and Hiring Manager in the selection procedure constitutes a procedural flaw".⁹ To the contrary, the UNDT found:¹⁰

... [Mr. Aliko] did not file, at the time of or before the selection procedure, any complaint against the Director, SWOC, which might have given weight to his claims. Further, ... the minutes of the Interview Panel do not lead to conclude that undue influence was exercised by the Director, SWOC, on the other Panel members in favour of or against one of the candidates. ...

⁷ Impugned Judgment, para. 34.

⁸ *Ibid.*, para. 23.

⁹ *Ibid.*, para. 26.

¹⁰ *Ibid.*

34. Regarding the Programme Manager, the UNDT properly found:¹¹

... [It is] reasonable that a client representative with substantive knowledge of the subject matter was added to the Panel, *inter alia*, to assess the potential interaction of the candidates with clients. This is particularly so since the vacancy announcement stated under summary of key functions “partnership and client relations” and listed client orientation as one of the competencies required for the post. ... [T]he Tribunal cannot find any grounds to conclude that the Programme Manager ... was biased against [Mr. Aliko]. This conclusion is further supported by the fact that [Mr. Aliko] admitted that he and the Programme Manager ... had a “cordial relationship”.

... Moreover, the Tribunal does not find any merit to [Mr. Aliko’s] claim that the Programme Manager ... was biased in favour of the selected candidate, on the grounds that the latter had been a member of the interview Panel who had selected him as Programme Manager. ... The Tribunal stresses that this kind of situation can arise in any Administration and this fact alone cannot support the conclusion that the person sitting on such a Panel is not neutral and/or has to recuse her/himself, which, most importantly, is not provided for by the applicable rules. ...

35. And regarding the Director, IAIG, the Dispute Tribunal correctly found:¹²

... [Mr. Aliko] was not the subject of the investigation but a mere fact witness; the question asked by the Director, IAIG, was one of those listed in the official UN interview guide and was asked in exactly the same terms to all the interviewed candidates. ... [N]othing in the rules prevents the Director, IAIG, to sit on an interview on the grounds that one of the interviewed candidates has been heard as a fact witness in an ongoing investigation. ...

36. The UNDT also quite properly found that there was no merit to Mr. Aliko’s claim that the Director, IAIG, was not qualified to be a technical expert on the panel, stating:¹³

... The Tribunal stresses that the Administration disposes of considerable discretion in determining who is an “expert” for the purpose of [UNOPS Recruitment – Instructions and Procedures, section 14.7.3(b)(i)(2)] and considers that it can legitimately be argued that in view of the similarity of the management functions of the Director, IAIG, and those of the disputed post, the Director, IAIG, was an expert under the ... rule. Moreover, and maybe more importantly, the Tribunal finds that there can be no doubt that the Programme Manager ... though he was sitting on the Panel as a “client representative” – beyond what was required by the applicable rules

¹¹ *Ibid.*, paras. 27 and 28.

¹² *Ibid.*, para. 29.

¹³ *Ibid.*, para. 31.

– also fulfilled the criteria of a technical expert. ... Indeed, ... he certainly had in-depth knowledge with respect to the skills and expertise required for the disputed post. This is supported by the fact that it was in fact him, together with the Director, SWOC, who marked the written test which [Mr. Aliko] ... passed successfully. ...

37. As to Mr. Aliko’s claim that the selected candidate may have had early access to the test and panel questions, the UNDT correctly concluded that Mr. Aliko:¹⁴

... does not provide any evidence for this allegation, and stresses that [Mr. Aliko] was one of the candidates who successfully passed the written test and who was invited to the interview. ...

... Moreover, with respect to the interview itself, the Tribunal notes that the selected candidate was not the only one recommended for the post, but that, in case the selected candidate would not take on the post, the Panel also recommended a female candidate, who at the interview had a score (81 points) above the threshold. ...

... [T]he minutes of the Interview Panel show [] that the Panel was unanimous with respect to [Mr. Aliko] not obtaining at least the passing score of 75. ...

38. Lastly, the UNDT properly refused to address Mr. Aliko’s various claims related to harassment on the ground Mr. Aliko “did not establish any proof of harassment against him, let alone how these allegations might have impacted on his non-selection of the disputed post”.¹⁵ The UNDT did not err in reaching this conclusion. The allegations of prior discrimination were not set forth in the detailed request for management evaluation Mr. Aliko made on 10 December 2012; thus, the UNDT had no competence to address them. Moreover, as the UNDT properly found, such claims were of general discrimination, rather than “demonstrating *specific* discrimination when [Mr. Aliko] was denied appointment to” the Post;¹⁶ thus, they did not affect the selection process.

39. Our conclusion that the UNDT did not make any errors of law or fact in denying Mr. Aliko’s challenge of the decision not to select him for the Post precludes Mr. Aliko from seeking compensation.

¹⁴ *Ibid.*, paras. 32-34.

¹⁵ *Ibid.*, para. 35.

¹⁶ *Ibekwe v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-179, para. 29 (emphasis in original); *Planas v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-049, paras. 20-21.

Judgment

40. The appeal is dismissed and Judgment No. UNDT/2014/042 is affirmed.

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Adinyira

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar