



THE UNITED NATIONS APPEALS TRIBUNAL

able to make at least a minimal showing that the staff member's statutory right was honoured in good faith in that the Administration gave 'the fullest regard' to it."²

5. Sefraoui filed no answer to the appeal.

Submissions

Secretary-General's Appeal

6. The Secretary-General raises several legal contentions and alleges at least five errors of law. The submissions are interconnected. The Secretary-General submits that although the outcome of the case was correct, the way in which the principle of preponderance of probability was applied by the UNDT departed from the settled jurisprudence.

7. The UNDT erred in finding that there was a contradiction between the two distinct lines of jurisprudence of the former Administrative Tribunal regarding the standards for reviewing challenges to selection decisions and claims of prejudice or other improper motives. The UNDT failed to uphold that the Administration may demonstrate that a candidate received full and fair consideration for a post by making at least a minimal showing (the minimal showing principle). The UNDT erred in failing to hold that the burden of proving prejudice or improper motivation rests with the party making the allegation (the burden of proof principle). The UNDT did not accept the jurisprudence of the former Administrative Tribunal in this case, whereas no such departure was intended as part of the reform of the N3s

be tainted by prejudice or other extraneous factors. However, the initial burden of proving prejudice or improper motivation rested with the party making such allegations.

9. The Secretary-General submits that on the basis of the minimal showing principle and the burden of proof principle enunciated by the former Administrative Tribunal, the Administration devised and followed elaborate steps for analyzing a challenge to a selection decision, and United Nations' officials take into account the established and consistent jurisprudence of the former Administrative Tribunal as part of their decision-making.

10. However, the Dispute Tribunal questioned the utility of the former Administrative Tribunal Judgment No. 362, *Williamson* (1986) rendered by the former Administrative Tribunal and, by implication, its progeny, as it found itself bewildered by the term "minimal showing" in *Williamson*. It also found the language in the former Administrative Tribunal Judgments No. 447, *Abbas* (1989) and No. 1188, *Agbele* (2004) confusing and unhelpful.

11. The Secretary-General stresses that the propensity of the Dispute Tribunal to ignore the former Administrative Tribunal's jurisprudence is troubling, not only because such a dramatic change was not envisaged by the General Assembly, but also because of its grave implications for the rule of law. He maintains that it would be untenable to hold United Nations' officials liable for not complying with the former Administrative Tribunal's jurisprudence in some cases and for acting in reliance on established jurisprudence in others.

significant departure from the jurisprudence of the former Administrative Tribunal. A departure from an established and consistent body of jurisprudence should be taken only when there are compelling reasons to do so, which was not the case in *Sefraoui*.

14. The Secretary-General respectfully requests that this Tribunal uphold and confirm the applicability of the minimal showing principle and the burden of proof principle of the former Administrative Tribunal. He also respectfully requests that this Tribunal uphold the Dispute Tribunal's conclusion that Sefraoui had received full and fair consideration for the posts and that Sefraoui's application

Judgment

19. The appeal is dismissed.

Dated this 1st day of July 2010 in New York, United States.

Original: English

(Signed)

Judge Garewal, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Courtial

Entered in the Register on this 17th day of August 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar
United Nations Appeals Tribunal