

were no recent e-PAS reports attached to her application¹. Nonetheless, she and 22 other candidates were short-listed. 14 candidates including Ms. Simmons were invited to participate in a written test, and 13 of them including Ms. Simmons were called for an interview.

6. On 9 June 2006, Ms. Simmons was informed that she had not been selected for the P-4 post.

Delay during appeal

7. On 9 August 2006, Ms. Simmons filed an appeal with the Joint Appeals Board (JAB) in New York. A JAB panel was not constituted until 23 October 2007. On 13 November 2007, the JAB panel met and resolved to request documents from the Central Review Committee. Due to the retirement of the panel chairperson and the relocation of the panel secretary, a new JAB panel had to be constituted in September 2008. But one of the panel members had to be replaced due to a heavy workload, in December 2008.

8. The new JAB panel met on 15 December 2008 and adopted its report on 28 January 2009. It concluded that the absence of the e-PAS reports had not affected Ms. Simmons' right to full and fair consideration during the selection process, and that the selection process had been conducted regularly. The Secretary-General endorsed the JAB's findings on 13 March 2009.

9. Ms. Simmons appealed. In Judgment No. UNDT/2011/085, the UNDT found, in respect of the selection process for the P-4 post, that Ms. Simmons' candidature was fully and fairly considered and that the unavailability of some of her e-PAS reports had no impact on the decision not to recommend her for the P-4 post. But on the issue of delays in completing Ms. Simmons' e-PAS report for 2006-2007, the UNDT concluded that there was improper delay and that the Administration was responsible for it. Moreover, the UNDT found that the Administration was also responsible for the undue delay in the JAB's constituting a panel to

¹ The delay or incompleteness of Ms. Simmons' five e-PAS reports for the periods 2001-2006 was the subject of two prior cases. On 30 September 2009, the former Administrative Tribunal issued two judgments in favour of Ms. Simmons. In Judgment Nos. 1437 and 1462, the former Administrative Tribunal awarded Ms. Simmons a combined total of 18 months' net base salary: 12 months for violation of her rights relating to the e-PAS reports for 2001-2004 and six months for violation of her rights relating to the incomplete e-PAS report for 2005-2006.

review Ms. Simmons' appeal. The UNDT awarded Ms. Simmons a total sum of USD 3,000 for those procedural violations.

Submissions

Ms. Simmons' Appeal

10. Ms. Simmons submits that the UNDT erred in law in concluding that her candidature for the P-4 post had received full and fair consideration, and that her candidacy was not prejudiced by the delay in the completion of her e-PAS report for 2006-2007. It is her case that her application for the P-4 post was unfairly evaluated, and that the evaluation of her candidacy was prejudiced and the scores were "stage-managed and manipulated".

11. Ms. Simmons also submits that the UNDT erred in awarding her USD 3,000 for violation of her contractual and procedural rights in the completion of her 2006-2007 e-PAS report and in the delay in the constitution of a JAB panel. The compensation is not commensurate with the level of stress and moral suffering to which she had been subjected and inadequate for all the breaches of her rights and moral injury.

12. Ms. Simmons maintains that the UNDT erred in not considering her allegations of retaliation and abuse of authority, and in not ordering the Respondent to pay her damages for introducing new facts and evidence in the closing statement.

Secretary-General's Answer

13. The Secretary-General submits that the UNDT correctly concluded that the missing e-PAS reports did not deprive Ms. Simmons of her right to full and fair consideration for the P-4 post. In the view of the Secretary-General, Ms. Simmons was awarded compensation for the missing e-PAS reports. But the delay in the completion of her 2006-2007 e-PAS report could not have affected the selection process for the P-4 post that was finalized in June 2006, when the said e-PAS cycle was on-going.

14. The Secretary-General also submits that the UNDT correctly concluded that

she has cited, including her two cases before the former Administrative Tribunal, ² in support of her submissions are factually distinguishable from the present case.

Considerations

16. Importance of annual e-PAS reports cannot be under-estimated. These reports are important for the staff member because they inform the staff member of how well or poorly she has performed and how her performance has been judged by her reporting officers. This gives the staff member an opportunity to improve her performance. Needless to say, the importance of these reports is self-evident. 5.2.0165 Tro/TJ 93.2787 -0 TD

20. In the present case the Appellant was awarded USD 3,000 for the delayed 2006-2007 e-PAS report. In the circumstances of the case and particularly in view of the previous violations of her rights, this award was manifestly insufficient. We increase the compensation to three months' net base pay. The compensation shall be computed on the basis of the salary the Appellant was drawing on 31 March 2007, with interest on the award of compensation at the US Prime Rate applicable on 31 March 2007, calculated from 31 March 2007 to the date of payment of the compensation. If payment of the compensation is not made within 60 days, an additional five per cent shall be added to the US Prime Rate in effect on 31 March 2007 from the date of expiry of the 60-day period to the date of payment.

Judgment

21. Appeal is allowed to the extent indicated above.

Original and Authoritative Version: English

Dated this 29th day of June 2012 in Geneva, Switzerland.

(Signed)

Judge Garewal, Presiding

(Signed)

Judge Courtial

(Signed)

Judge Faherty,

Entered in the Register on this 12th day of September 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar