



1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General against Judgment No. UNDT/2012/065, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 8 May 2012 in the case of *Farr v. Secretary-General of the United Nations*. The Secretary-General filed his appeal on 5 July 2012, and Ms. Badiha Farr filed her answer on 29 August 2012.

**Facts and Procedure**

2. Ms. Farr joined the Organization in 1981 and currently holds a G-6 post at the United Nations Office in Vienna (UNOV).

3. In August 2010, she applied for the “G to P” examination (recruitment to the professional service category) in the occupational group “human rights”. Her application was initially rejected but, following the intervention of the Ombudsman, admitted.

4. By letter dated 25 May 2011, the Chair of the Central Examinations Board (Board) informed Ms. Farr that she was the only candidate from the general service category who had been admitted to an oral exam in her occupational group.

5. By e-mail dated 31 May 2011, the Office

did not have sufficient command

the occasional group “human rights”. The UNDT rejected Ms. Farr’s request for compensation.

### **The Secretary-General’s Appeal**

14. The Secretary-General submits that the UNDT erred in evaluating Ms. Farr’s qualifications and exceeded its competence by directly ordering that Ms. Farr’s name be placed on the roster. The UNDT erred in substituting its own findings for those of the Administration in an appointment-related matter.

15. The UNDT erred in evaluating the chances that Ms. Farr would have had, had the procedural irregularity not occurred. By doing so, the UNDT excluded the oral exam from an evaluation.

16. The Secretary-General acknowledges that Ms. Farr was denied the opportunity to take her oral exam in French. He suggests that, in order to remedy this irregularity, Ms. Farr be given the opportunity to take the oral exam again, in French and before a Board composed of members who have command of the French language. Should she obtain sufficient points and succeed the exam, her name will be placed on the roster with retroactive effect to 14 July 2011, the date of the letter that informed her that she had failed the exam.

17. The Secretary-General requests that the Appeals Tribunal grant his appeal and annul the order to place Ms. Farr’s name on the roster.

### **Ms. Farr’s Answer**

18. Ms. Farr contends that the UNDT committed no error in reaching its conclusion that she would have had a very high chance to be placed on the roster had the procedural irregularity not occurred. Contrary to the Secretary-General’s contention, the UNDT considered several factors related to the oral exam, such as the specific competencies that the Board evaluated, the competencies with respect to which she did not obtain the required points, as well as the related conduct of the exam. The UNDT based its findings on both witness testimony and documentary evidence and it had sufficient evidence before it to make an informed decision.

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25. There was no legal basis to include Ms. Farr's name on the roster, given that she had not obtained the required number of points. Awarding her more than she is entitled to constitutes a benefit to her far beyond what is lawful. It must be considered that her candidacy has already been endorsed by allowing her to take an oral examination, despite the fact that she would have failed the written exam had the Board not lowered the applicable standard. This is also an advantage to her, due to the administrative decision to lower the performance standard or else no candidate would be admitted to the oral examination.

26. Compared with similar situations within the Organization, and to ensure consistency in standards, the Appeals Tribunal considers it inadvisable that those charged with assessing the necessary requirements for professional service positions would follow so lenient a policy as that adopted in the present case.

27. Moreover, this Tribunal finds no actual merit in Ms. Farr's submissions about a potential lack of anonymity or fair treatment if she were not to be directly placed on the roster, because there are no valid reasons for her to assume that the Administration would not be able to adopt adequate measures in order to grant her an appropriate oral exam, respecting both the rights of the staff member and the needs of the Organization.

### **Judgment**

28. The appeal is allowed, the UNDT Judgment is vacated with regard to the order that Ms. Farr's name be placed on the roster. The Tribunal orders the Administration to set a new oral exam in French to be taken by Ms. Farr and to take all the necessary appropriate measures, without delay, to afford her fair treatment.

Original and Authoritative Version: English

Done in New York, United States.

*(Signed)*

Judge Simón, Presiding  
28 June 2013

*(Signed)*

Judge Weinberg de Roca  
21 June 2013

*(Signed)*

Judge Faherty  
28 June 2013

Entered in the Register on this 26<sup>th</sup> day of August 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar