Judgment No. 2016-UNAT-691

[redacted]

Counsel for Mr. Krioutchkov:	Self-represented
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JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Vladislav Krioutchkov against Judgment No. UNDT/2016/013, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 24 February 2016, in the case of *Krioutchkov v. Secretary-General of the United Nations*. Mr. Krioutchkov filed the appeal on 21 April 2016. On 24 June 2016, the Secretary-General filed both an answer to Mr. Krioutchkov's appeal and a cross-appeal. No answer to the cross-appeal has been received to date.

Facts and Procedure

2. The facts established by the Dispute Tribunal in this case read as follows:[1]

> ... On 14 September 2012, a vacancy for a post of Russian Reviser (P-4), Russian Translation Section ("RTS"), Division of Conference Management ("DCM"), United Nations Office at Geneva ("UNOG"), was advertised under JO 12-LAN-UNOG-25120-R-Geneva (L) (JO 25120). The deadline for applications was 20 November 2012. The Job Opening ("JO") read, *inter alia*:
>
> > *This post is* located in the [RTS] in the [DCM]
> >
> > ...
> >
> > the Reviser will be responsible for the following duties: ...
> >
> > (emphasis added)
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> ... The Respondent claims that, since its initial introduction in the Inspira system, the corresponding JO concerned two identical posts: one to become vacant on 1 December 2012, and the other on 1 August 2013. The JO did not indicate that it concerned two posts.
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> ... The Applicant applied on 24 September 2012. Out of 40 applicants, five were screened as eligible: two from the roster of pre-selected candidates for similar positions—i.e., the Applicant and one other candidate—and three non-rostered candidates. The Applicant had an informal interview by phone on 18 December 2012 with the Hiring Manager alone.
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> ... Upon recommendation of the Hiring Manager, dated 4 January 2013, the one rostered candidate other than the Applicant was selected on 7 January 2013. The selection memorandum signed by the Director-General, UNOG, indicated that

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[1] The following text is taken from Judgment No. UNDT/2016/013, paragraphs 3-14.

"[DCM would] submit a different recommendation to fill post 500323 [the second post], which [would] be vacant on [1 August 2013]".

... On 1 February 2013, after one of the non-rostered candidates had been found not suitable, the remaining two non-rostered candidates underwent a competency-based interview. The assessment panel recommended the two interviewed candidates—giving detailed comments based on their interviews—and the Applicant "as [a] rostered candidate without formal evaluation". The

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Submissions

Mr. Krioutchkov's Appeal

6. The UNDT erred on questions

10. Mr. Krioutchkov has failed to demonstrate any error by the Dispute Tribunal in basing the amount of compensation on salary instead of earnings. In fact, compensation in lieu of rescission based on salary is fully consistent with the jurisprudence of the Appeals Tribunal.

11. Mr. Krioutchkov has failed to establish that his chances of success to be selected for the second post were of 50 per cent or even 67 per cent.

12. The Secretary-General requests that the Appeals Tribunal dismiss the present appeal in its entirety.

The Secretary-General's Cross-Appeal

13. The Dispute Tribunal erred in law and in fact by finding that Mr. Krioutchkov had requested management evaluation within the prescribed time limit and that his UNDT application was therefore receivable. Mr. Krioutchkov applied to JO 25120 and was notified of his non-selection on 23 May 2013. He should have raised his concerns by requesting management evaluation within 60 days from 23 May 2013, because the time limit started to run on 23 May 2013, and not on 5 February 2014. The fact that JO 25120 did not specify two posts involved does not affect the precise moment in time when he received the notification. Mr. Krioutchkov tried to create a new opportunity to contest his non-selection almost one year after he had been notified of his non-selection.

14. The Dispute Tribunal erred in law by ordering rescission of the contested decision in respect of the filling of the second post. There is no link between the non-advertisement of the second post and the contested decision, as such irregularity identified by the UNDT had no negative consequences on the outcome of the selection process or Mr. Krioutchkov's non-selection. In other words, had the second

23 May 2013, Mr. Krioutchkov was informed about his non-selection for the first post advertised under JO 25120 (Post No. 500319), but not about his non-selection for the second post (Post No. 500323). It is clear from the reasoning in the Judgment that the UNDT regarded the non-selection for the first post and the non-selection for the second post as two different administrative decisions.

19. The Secretary-General, on appeal, has not addressed or examined the question as to whether there was one or two separate administrative decisions and the consequences for the receivability of the application. He merely states that "the fact that JO 25120 did not specifically indicate that the Position concerned two posts does not affect the precise moment in time when he was notified of his non-selection for the Position". This allegation does not meet the standard of Article 2(1) of our Statute. The task of the Appeals Tribunal is to determine if the Dispute Tribunal has made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction. An appellant has the burden of satisfying the Appeals Tribunal that the judgment rendered by the Dispute Tribunal is defective. 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.[5] This the Secretary-General has not done.

20. Apart from that, we agree with the Dispute Tribunal. Under the relevant legal framework, the notification of an administrative decision is the decisive act to trigger the time limit for a request for management evaluation.

Article 8(1) of the UNDT Statute reads as follows:

> An application shall be receivable if:
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> ...
>
> (*c*) An applicant has previously submitted the contested administrative decision for management evaluation ...

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[5] *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, citing *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051 and *Al-Moued v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-458.

And Staff Rule 11.2(c) as set forth in ST/SGB/2011/1 reads:

> A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which