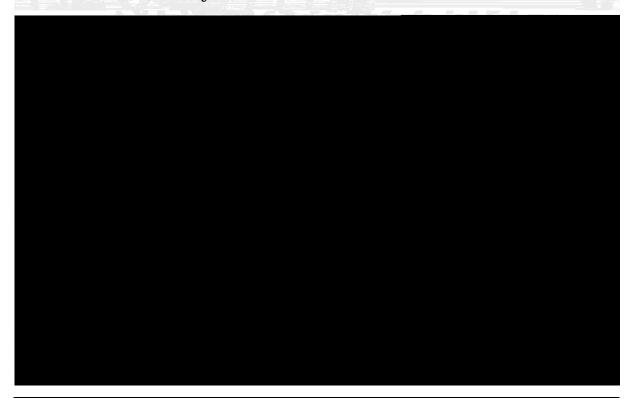


JdgentNo. 2016-UNAT-696

# Benser (Respondent/Applicant)

V.

Secretary-General of the United Nations



JdgentNo. 2016-UNAT-696

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tibral (Appea Is Tibral) has before it an appeal againts Julgent No. UNDT/2016/016, endered by he United Nations Dipter Tibral (UNDT or Dipter Tibral) in NewYok on 8 March 2016 in he case of Benser v. Secretary-General of the United Nations. The Secretary General filed he appeal on 9 May 2016, and Ms Aima Bens filed an answorn 10 June 2016.

#### **Facts and Procedure**

2. The factationed by Dis ta Tibnal ead a sfollosw The Applicantisa stff etherin he General Seize category[in he Department for General Ashhyand Conference Managerent (DGACM)]. On 2 Septher 2008, he Applicant joined he Oganization at he G-3 level on a hoterappointentin he Depatentof Manageent In 2009 he Applicant two system an Admistry Assentathe G-3 level, applied to it a competitive exem inaton forlangage efeence aissns This application was in erons to [ST/IC/2009/27] he 2009 compatitive ence ais ns That Info anton Ciclarinfoed eximaton forlangage efe aff eheshathe eximaton assbeing conducted inderhe farenck of ST/AI/1998/4 [(Coppetter eximatons for he place entof general size)] and elated categories in patclaroccpational gops[... The Applicant scessly copleted he coppetter eximation for ed on a psiof scessicandidates language reference aissintand amplac On 1 May 2011, he Applicant was propped to he G-4 level as an

# THE UNITED NATIONS APPEALS T

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appointential notlead to an ulafliand asset by he Secrety General. The Diptu to grant Ms Bensia contining appointent or copension in lieuof sh appointent. The restoral danges aske had failed to form contest decision.

neal tatantof oheroccpatonal gops
e Tibnal oderd esison of he decison not
altenatelypagntof USD 5,000 to heras
DipterTibnal, howevejected MsBensis
addee anyleadingsoreidence to howarm

### **Submissions**

The Secretary-General s Appeal

4. The Dister Tibusal ered in lawby find ing hat he eleant pangaphs in General Ashbyes Itoms 63/250 and 65/2 47 applied to stiff in the General Seisce category hathe reference to postring sec ial langage killsin Staff Rle 4.16(b) applied he twGeneral Ashlyeoltonspoided a to stff in he General Seice categogyand hat andae for he SecretagGeneral to grant co nining appointents to stiff in he General Seice categorising in language pos aftersize of onlywearon a fixed-tem appointent Thes findings we based on a im inepretation of pargraph 23, Section II, of General Ashtyresition 63/250 and par graph 50, Section VI, of General Ashlay **colton** 65/247. <sup>5</sup> The UNDT'seorts front failer to consider the 2006 Report of the Secretage General on the Copposition of the Secr etaiat(A/61/257; herinafethe 2006 Repor hatlithe definition of language pos to stff in the Profesonal category

5. Bypoiding hatconoxion to continue appointmentate old be event according to continue to continue to continue to continue appointmentation of continue to conference six such as a continue to continue to continue to continue to continue to continue to conference six such according to continue to con

<sup>&</sup>lt;sup>5</sup> General Ashhyesilton 63/25 0, Secton II, par. 23 reads " Reaffirms hat taile contining appointents are not ipherned, see Su candidates from atomatomatic eximatons and self for language sixes after to space probatomassice is continued by 4.5 appointment of the second self-section of the section of the sectio

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(Special Conditions for Recident or Copetity Extination for Possiting Special definition, cold not have been referring to

Placeent of Candidates Screen in a

l Language Skills. Thes estimons by

soft in the General Seince category

- 6. The DipterTibral end in lavin hing effered to in Staff Rue 4.16(b) are posto hired pranto scendicopheton of an PatclarOccupational GropsExtination AI is nelated to the appointent of special lang language postons that are in the Profesion (Coppetter Extinations for Recitant Language Skills in the Profesional Category the the PatclarOccupational GropsExtinat extinations administed for the other terms.
- hatpoteting pecial language kills
  thich stiff in he General Seice categorar
  extination adinisted according to he
  . Hower hatAdinistiv Inston
  age potand hasnohing to do its pecial
  al category In contasto ST/AI/1998/7
  and Placement in PotsReiting Specific
  reinaftenhe Special Language Extination AI),
  ion AI has a different pros and gowns
  order to creat return of table candidates
  and killsunging for throokkeeping

in a lage wietof General Seice copretencies including killsanging forbrookkeeping to language aistance sices

- 7. The UNDT ered on two points in determ ining hathe admistry issue coparable to ST/AI/2000/1, for stff in he General Seice category was Information CirclarST/IC/2009/27. Fisitansan eroro empe an informion ciclar it an adinistiv inston, ashe fo emholds a low poston in he nomber hierchyof he Oganizton. Secondlytaile ST/AI/2000/1 lishe postnatcan be filled existly by any of the compatitive eximations admissed according to ST/AI/1998/7 and poideserdicite feence to he condito nsforconvison to permentappointent ST/IC/2009/27, on he oher hand, applied only to one eximation shedled on 9 October 2009 and did not enton conver ison of fixed-tempointents to contining appointents
- 8. In he presented, Ms Benerarchied paints an extination admitted according to he Patclar Occupational Grou ps Extination AI; he are nothing to a postwich fall studenthe exception of him.

  Staff Ric 4.16(b). Conseptly he is not eligible for conviction to a continuing appointmental feature parts.
- 9. The Secretar General rest hat he Appeals Tibual recate Julgemt No. UNDT/2016/016.

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Ms. Benser s Answer

- 10. The Secretar General seeks to re-litigate the case by religing on new idence and agrents not be the Dipter Tibra al. Before the UNDT, he did not address the 2006 Repotase idence, nordid the agent hat the relevant General Last hyperstrons hold be interpreted by reference to the temporal base on alone, the appeal hold be dissed.
- 11. The General Ashrhyansflhyanne of h e definition of language posin he 2006 Report Yet is possible no e feence to language possas defined by he Secretary General. They referred to stiff from language sixes. Indeed, none of he possible the son containing appointments in he eincology language possor where reference to he 2006 Repost definition. The Secretary General seliance on he 2006 Repost definition is here for its rother all basis.
- 12. The su of different eimology by h e General Assishy indicates hat is estimates the effect of the senting different eimology by h e General Assishy indicates hat is estimated to seek in the effect of the effec
- 13. The UNDTsfinding hatMsBensroksin language sicesisnotconesd by he SecratyGeneal and herefor doesnotforpatof he prentappeal. Since he wiksin language siceshe relearntGeneal Ashlyrolu tonsclealyapplyo her
- 14. The pearling pactice puntl Ms Bensrasseford a contining appointmnt ass to grant language effective aistints a contining appointmnt after two syals probationassisce, is as in he case of hertwlanguage effective e aistintcolleages. The Secretar General does not contain the UNDT's finding in his egad. Consequely he cannot challenge his finding on appeal.
- 15. The Dipter Tibral corectyfond hathe community eximation by which MsBensurvecited fell underh e poissons of Staff Rle 4.16(b).
- 16. The Secrets/General has failed to identify any polygated issue hat establishes he differentiation between Gene all Seisce and Profesional stiff. The differentiation does not established by the secretary of the secretary of

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17.

	J <b>d</b> g <b>en</b> tNo. 2016-UNAT-696
Sec <b>ens</b> Gene <b>s</b> l contendshathe 2006 Repot	, <b>tw</b> ich incl <b>d</b> esa <b>s</b> cton on he definiton

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Do Staff Rules 4.14(b) and 4.16(b) apply to staff at the General Service level?

- 36. Saff Rles4.14 and 4.16 opere in internation of General Ashbyes Itons 63/250 and 65/247.
- 37. Staff Rle 4.14 on continu ng appointentspoides
  - (a) A containing appointent an open-ended appointent
  - (b) Staff ethes existed pron see State copheton of a cophette eximation points to the 4.16 hall be granted a continuing appointment after twy was on a fixed-example intent beject to attact yes ice.
  - (c) The SecretyGeneral shall presibe h e citia detiming stff rehe's eligibilitforconideration forcontning appointents
- 38. Staff Rie 4.16 on coppet it we eximation states
  - (a) Boardsof eximeses bliked by h e Secretar General hall enounte eglatity of the compatitive eximations administed in accordance it is conditions ablithed by he Secretar General.
  - (b) Boardsof eximeshall aske ecoemdations to the Secretar General in exectof the following:
    - (i) Appointent
      appointent P-1 and P-2 posthatae sejecto he synof desable
      anges and to post etims secial language commence at he
      United Nations Secretiat shall be node extinctly hogh comment to postathe P-3 level in he United Nations
      Secretiat shall be node northly hogh comments eximation;
    - (ii) Recitemt at he Pofesonal category of stiff from he

      General Seice and clated categories in he United Nations Secretariat

      ecitemt to he Pofesonal category at he United Nations Secretariat of the United Secretariat of the United Secretariat of the Categories and clate appropriate copatitive eximations hall be made in the line in the United Secretariat of the United Secretaria
  - (c) Staff ethersappointed to the Profesional categoryaftera competitive extination shall be suject to annulatory training enter under conditions established by the Secretary General.

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- 39. Staff Ric 4.14(b) does not make any distance inction between General Seisce level and Profesional level staff ecines ded on scessic coppletion of a coppatitive extination.
- 40. Parnto Staff Rue 4.14 (b), a taff emberin he language sixesneedsto satisfy he following annuatory and chanter conditions to be gained a continuing appointent (a) he taff emberin he United Nations Secretariateline existed pron scenditions of a compatitive eximation parnto Staff Rue 4.16; (b) he taff ember tarcophete to was on a fixed-tempointent and (c) he taff embersisce tan have been at factory
- 41. We herefore agree in the UNDT's finding hat Staff Rue 4.14(b) applies to all appointents to possetting special lang agree commence in the United Nations Secretarist including appointents to poss sat he General Seisce level, is as MsBensispos
- 42. Saff Rie 4.16(b)(i) applies to (a) he appoint to f P-1 and P-2 level post hat are beject to he symbol describe ranges at he United Nations Secretariat and to (b) he appoint to post rigging pecial language commence in he United Nations Secretariat
- 43. Staff Rle 4.16(b)(i) takes no distriction between post reigng special language commence at the General Seice level and posterigng special language commence at the Profesional level. It follows trat Staff Rle 4.16(b)(i) is applicable to all appointents to posterigng special language commence it in the United Nations Secretariating postathe General Seice level.
- 44. We find no eprin he following e as ning of he UNDT in hisegad: 11
  - ... Moreover according to the general legal principle of interpretation, ubi lex non distinguit, nec nos distinguere debemus, i.e. twee the lawdoesnot distinguita, neither shold the wide distinguita, the interpretation of the lawcannot distinguita twee the lawdoesnot distinguita twee the lawdoesnot distinguita and cannot create and/or add an exception (s to an established the interpretation applicability and the heavy littles area of application. The [Distel] Tibrual considers that for saff the 4.16 to apply only to P-level possible fist patof to the fist of the 4.16 (b) (i) shold have had a different content of the saforing structure. Appointment to P-1 and P-2 level posthatate beginning the saforing structure of the saforing structure.

<sup>11</sup> Ibid., par. 49.

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THE UNITED NATIONS APPEALS TRIBUNAL							
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		JudgmentJudg	gmOsT9NP O()	T 0A02 392.1	721.38 Tm069		

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Oiginal and Ahoiate Veison: Englis

Dated his 8 h dayof October 2016 in NeWok, United Sates

(Signed) (Signed)

Jdge Lisck, Peisding Jdge Thoras Felix Jdge Knieim

Entered in the Registron his 20 h day of Decemen 2016 in New Vok, United States

(Signed)

Weicheng Lin, Regi**s**r