



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2013-UNAT-290

Mirkovic
(Respondent/Applicant)

v.

Secretary-General of the United Nations
(Appellant/Respondent)

JUDGMENT

Before: Judge Richard Lussick, Presiding
Judge Mary Faherty
Judge Rosalyn Chapman

Case No.: 2012-318

Date: 28 March 2013

Registrar: Weicheng Lin

Counsel for Respondent/Applicant: Self-represented

Counsel for Appellant/Respondent: Simon Thomas

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgment No. UNDT/2012/030, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 24 February 2012 in the case of *Mirkovic v. Secretary-General of the United Nations*.

Facts and Procedure

2. Ms. Djurdja Mirkovic joined the International Criminal Tribunal for the former Yugoslavia (ICTY) in October 1998. She was a Trial Support Assistant at the G-5 level when this case arose.

3. In August 2010, the ICTY General Service staff were invited to take the 2010 ICTY competitive examination for promotion from the General Service category to the Professional category (“G to P” exam), in various occupational groups. The written component of the exam was to take place on 1 December 2010. Staff members were informed of the eligibility criteria and were provided with relevant administrative issuances.

4. On 1 September 2010, Ms. Mirkovic applied to take the “G to P” exam in the Human Rights occupational group. She was informed, on 19 October 2010, that she was not eligible to take the exam because she did not meet the minimum academic qualifications and/or experience required for the Human Rights occupational group. By e-mail dated 22 October 2010, Ms. Mirkovic asked the Chief of the Examinations and Tests Section (ETS) of the Office of Human Resources Management (OHRM) for contact details of the Chair of the Central Examinations Board (CEB) for the purpose of an appeal. The Chief of the ETS directed Ms. Mirkovic to “send [her] appeal to OHRM-GtoP@un.org”. On 26 October 2010, another ETS staff member advised Ms. Mirkovic by e-mail that she “must send [her] appeal to [the above] e-mail address to be considered”.

5. Also on 26 October 2010, Ms. Mirkovic appealed to the Chair of the CEB for review of the decision on her ineligibility for the “G to P” exam in the Human Rights occupational group, and copied the Chief of the ETS. On 1 November 2010, she e-mailed the Chief of the ETS for an update on her appeal. On 8 November 2010, she telephoned the Chief of the ETS, who this time orally informed Ms. Mirkovic that applications for the “G to P” exam from ICTY staff were not reviewed by the CEB, and that, unlike other Secretariat staff, an ICTY staff member did not have the right to appeal a negative decision on his or her application for the “G to P” exam. The Chief of the ETS did not respond to Ms. Mirkovic’s e-mails for written confirmation of his oral decision.

6. The written component of the 2010 ICTY G to P exam was held on 1 December 2010.

7. On 5 January 2011, Ms. Mirkovic requested management evaluation of the oral decision that the Chief of the ETS took on 8 November 2010. She was informed, on 24 March 2011, that this decision should be reversed, as it contravened her right to be accorded the same or similar procedural safeguards as were accorded to similarly-situated staff members. Ms. Mirkovic was advised that, should she wish to appeal the ineligibility decision, she should appeal to the CEB within 10 days, which she did.

8. On 19 April 2011, the CEB informed Ms. Mirkovic of its decision to uphold the ineligibility decision of 8 November 2010.

9. Ms. Mirkovic appealed. In Judgment No. UNDT/2012/030, the UNDT rejected the Respondent's argument that Ms. Mirkovic's application against the oral decision of 8 November 2010 was not receivable. The UNDT concluded that Ms. Mirkovic's application was receivable because the 8 November 2010 9 Tw 21.8cp 9 Tw 21.8cp 9 .3nC -1hhhon, she sMs. Mirkovic c2-04k 8se

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20. The UNDT found that Ms. Mirkovic was “entitled to be compensated for the violation of her due process rights and the moral injury resulting thereof” in the sum of EUR 2,000. This award of damages was predicated on the UNDT’s findings:

(i) that Ms. Mirkovic’s due process rights were violated by the contested decision “and that any reasonable person in [Ms. Mirkovic’s] situation of preparing for a competitive exam, especially one that could have such a significant impact on her career, would have suffered stress and emotional distress”;

(ii) that “the contradictory information received by [Ms. Mirkovic] on 22 October 2010 and 8 November 2010 on her right of appeal, and the subsequent failure of the Chief of the Examinations and Tests Section, OHRM, to respond to her requests for a written confirmation added to the stress and injury suffered”; and significant impact that “reversal of the unlawful decision after the exam had already taken place

insufficient to repair the damage

to take the exam. The Chief of the ETS merely provided her, as requested, an e-mail address to which she could send her appeal. Similarly, the information provided by the ETS staff member on 26 October 2010 went no further than informing Ms. Mirkovic that she would need to send her appeal to that e-mail address for it to be considered. Ms. Mirkovic was not told that she had a right of appeal. The UNDT's decision on this point is, therefore, not supported by the facts.

23. The second exacerbating factor found by the UNDT was the failure of the Chief of the ETS to respond to Ms. Mirkovic's request for written confirmation of what he had told her. Written confirmation was not necessary, since the information given to her orally on 8 November 2010 by the Chief of the ETS was sufficient for her to request management evaluation. In fact, although she never received written confirmation, she did later request management evaluation. Thus, any stress suffered by Ms. Mirkovic was a result of her own decision to request written confirmation when such was not necessary.

24. Accordingly, we find that the UNDT's decision

28. Ms. Mirkovic may well have been disappointed and dissatisfied by what she had been told by the Chief of the ETS, but any hurt she may have experienced did not, in our opinion, rise to the level of compensable damages.

Judgment

29. In light of the foregoing, the appeal is allowed and the Judgment of the UNDT is set aside.

Original and Authoritative Version: English

Dated this 28th day of March 2013 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Faherty

(Signed)

Judge Chapman

Entered in the Register on this 24th day of May 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar