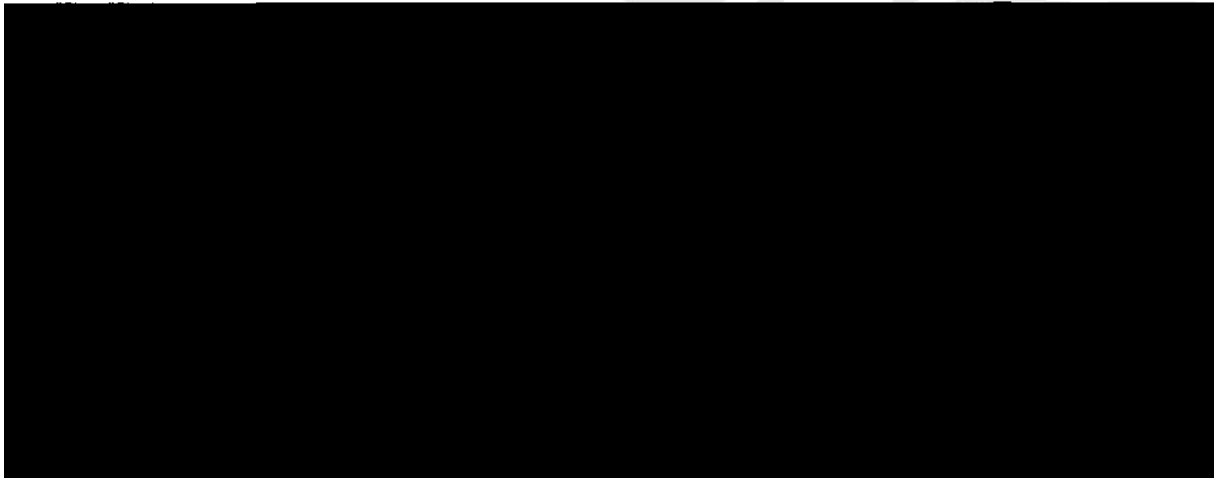




Judgment No. 2014-UNAT-425



JUDGE SOPHIA ADINYIRA , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Sheryl Simmons against Judgment No. UNDT/2013/050 , rendered by the United Nations Dispute Tribunal in New York in the case of *Simmons v.*

official offer". In response, Ms. Simmons informed OCHA that she was interested in the Jerusalem post. Ms. Simmons was then requested to contact the universities she had attended, in addition to providing other employment documentation.

6. On 19 May 2010, the Office of Human Resources Management (OHRM) sent a letter to Ms. Simmons, noting that the Organization was "considering [her] application for a position with significant management functions which require[d] certification of suitability of the candidates for those functions". OHRM informed Ms. Simmons that she needed to advise whether she had ever been subject to a preliminary investigation or disciplinary proceedings. In an accompanying e-mail, which was entitled "Self-Certification for Designation Clearance: Ms. Sheryl Johnson-Simmons", OHRM stated that the Office was "conducting a designation clearance .., in connection with [her] application for a vacancy". Ms. Simmons responded in the negative to the question of whether she had ever been subject to a preliminary investigation or disciplinary proceedings, and signed the letter on the same day.

7.

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any specific evidence, other than her own statements, to support her allegations that she suffered moral damages as a direct result of the alleged breaches of her rights.

Considerations

20.

24. The UNDT ruled that the reason for Ms. Simmons' non-selection for the Programme Budget Officer post was credible, as she was graded anonymously and each of the three different individuals reached the conclusion that her performance was less than acceptable. We find that Ms. Simmons failed to produce sufficient evidence to prove impropriety in the decision making.

25. Ms. Simmons argues further that, pursuant to the Hiring Managers Manual, she should have been selected from the roster without further evaluation of her candidacy, as it had already been rigorously vetted by the central review committee.

26. Regarding the Appellant's claim that the Administration abused its discretion in choosing to re-evaluate her candidacy for the post, the Secretary-General correctly stated that the vacancy issued was for a Programme Budget Officer post at the P-4 level but Ms. Simmons had only been previously rostered for the post of Administrative Officer at the P-4 level; it was appropriate to require her to take part in an examination.

27. Ms. Simmons claims further that because she has previously had to bring complaints to the internal justice system, the management has retaliated against her employment rights by withholding her promotion. In addition, she argues that the UNDT erred in law when it failed to declare that Ms. Van Buerle should have been automatically disqualified from handling further recruitment involving Ms. Simmons' candidacy due to her bias against Ms. Simmons.

28. Ms. Simmons failed to put forward any specific evidence substantiating her claim of discrimination, bias and retaliation to warrant a reversal of the findings of the UNDT.

29. The appeal on this ground fails.

*Cancellation of the Administrative Officer Post*

30. Regarding the cancellation of the Administrative Officer Post with OCHA in Jerusalem, Ms. Simmons submits this was also in retaliation for having had legal successes against the Administration's prior abuse of process. She submits that the Administration has deliberately obstructed her career advancement in contributing to a loss of chance and quashing a legitimate expectation.

31. We reject these submissions as the Administration provided evidence to show the cancellation of the post was based on organizational and budgetary reasons. The jurisprudence of the Appeals Tribunal in several cases has been that the Organization has the power to restructure some or all of its units which include cancellation or abolition of posts or reassignment due to organizational or budgetary reasons.<sup>3</sup> Finally Ms. Simmons has failed to demonstrate any error in the UNDT findings; she has not been able to adduce sufficient evidence or arguments of substance to call into question the decisions and the way in which they have been reached by the Administration.



Original and Authoritative Version: English

Dated this 2<sup>nd</sup> day of April 2014 in New York, United States.

(Signed) ~~D( (t5 C13m On31S 1013m On36S E/1013) On3) /1013~~ Adinyira, Presiding ~~313~~)-71